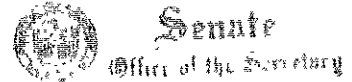


SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



13 JUL -1 1948

SENATE

S. B. 35

RECEIVED BY: *ju*

Introduced by Senator Cynthia Villar

EXPLANATORY NOTE

This bill is designed to harmonize and simplify the government's administration of programs and policies on the grant of fiscal and non-fiscal incentives to promote foreign and domestic investments in the Philippines.

This is hoped to be achieved by the empowerment of the Board of Investments (BOI) as governed by its Board of Governors which shall be composed of representatives from key Departments of the government.

A more efficient system is likewise hoped to be in place through the creation of an Investment Promotion Action Center (i-PAC) that will serve as a melting pot for information from concerned agencies and as a link thereto to fast track dealings with them.

Straight forward incentives to registered enterprises are provided from direct tax incentives (such as Net operating Loss Carryover) and indirect taxes like zero percent Value Added Tax. Income Tax holiday or Reduced Income Tax is still in place to qualified enterprises. Varying incentives are likewise given to different Registered Enterprises, i.e. Export, Domestic, and Strategic Enterprises and those located in Ecozones and Freeport Zones. Special incentives are likewise given to Domestic Enterprises located in the identified thirty Poorest Province or Less Developed Areas.

Considering the serious need for congruent laws on investments and incentives, early enactment of this bill is earnestly sought.


CYNTHIA VILLAR

13 JUL -1 07:48

SENATE

S. B. 35

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Introduced by Senator Cynthia Villar

THE INVESTMENTS AND INCENTIVES CODE OF THE PHILIPPINES

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

PRELIMINARY TITLE

CHAPTER I

TITLE AND DECLARATION OF POLICY

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

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

- (a) The State shall pursue a market-responsive investment regime;
- (b) The State shall formulate industry and sectoral development programs;
- (c) The State shall undertake investment promotion activities;
- (d) The State shall grant incentives that are simple to administer, time-bound and performance-based; and
- (e) The State recognizes that industrial peace is essential to attracting investments.

CHAPTER II

ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS

SEC. 3. *The Board of Investments (BOI).* - The Board of Investments hereinafter referred to as the "BOI" shall implement the provisions of this Code except as otherwise provided therein.

SEC. 4. *Composition of the BOI Board of Governors.* - The BOI Board of Governors, hereinafter referred to as the "Board", shall be composed of nine (9) governors: the Secretary of the Department of Trade and Industry (DTI), the Secretary of the Department of Finance (DOF), the Director General of the National Economic and Development Authority (NEDA), the DTI Undersecretary for Investments and Industry Group (IIG), the DTI Undersecretary of International Trade Group (ITG), the DTI Undersecretary of Regional Operations Group (ROG) and three (3) representatives

1 from the private sector. The Secretary of the DTI shall concurrently be the Chairman of
2 the BOI and the DTI Undersecretary for Investments and Industry Group shall be the
3 concurrent Vice Chairman and Managing Governor of the BOI. The three (3)
4 representatives from the private sector shall be appointed by the President for a term
5 not exceeding four (4) years: *Provided*, That a governor may be reappointed: *Provided*,
6 *further*, That a governor shall serve as such until his successor shall have been
7 appointed and qualified.

8
9 The Managing Governor of the BOT shall be assisted by four (4) career officials
10 with the rank of Deputy Managing Governor, who shall be appointed by the Board, upon
11 the recommendation of the Managing Governor.

12
13 Members of the Board shall receive a reasonable *per diem* for every meeting
14 attended.

15
16 SEC. 5. *Qualifications of the BOI Board of Governors.* - The governors of the BOI
17 shall be citizens of the Philippines, at least thirty-five (35) years old, with proven probity
18 and integrity, of good moral character and of recognized competence in economics,
19 business, marketing, advertising, management or its equivalent.

20
21 SEC. 6. *Powers and Functions of the Board.* - The Board shall be responsible for
22 the regulation and promotion of investments. It shall hold meetings at least once a week
23 for the conduct of business or as often as may be necessary upon the call of the
24 Chairman or upon the request of the Managing Governor. The notice of regular and
25 special meetings shall be given to all the members of the Board and the presence of
26 five (5) members shall constitute a quorum and the affirmative vote of five (5) members
27 in a meeting validly held shall be necessary to exercise its powers and perform its
28 functions which shall include the following:

29
30 A. Investment Promotion-Related Functions:

31 (1) Formulate an evolving National Framework for Investment Promotions
32 (NFIP), that will govern all Investments Promotion Agencies (IPAs);

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

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

40 (4) Establish the Investment Promotion Action Center (*i-PAC*);

41 (5) Establish and operate regional investment centers in the Philippines, and
42 establish and operate overseas investment offices.

43
44 B. Regulatory Functions:

45 (1) Formulate an evolving National Framework for Industrial Development
46 (NFID). The NFID shall identify key emerging markets or industries that will
47 substantially enhance the competitiveness of the country's industries, such as, but
48 not limited to agricultural technology, biomedical devices and systems, renewable
49 energy, logistics and information communications and technologies;

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

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

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

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

8 (6) Recommend to the President the suspension of the nationality requirement
9 provided for in this Code in appropriate cases such as those involving bilateral,
10 multilateral, or regional investments, or other trading agreements of the Philippines with
11 other countries; or when the existing laws of another country where the investor comes
12 from provides no nationality restrictions for Filipino investors or provides for reciprocal
13 nationality accommodations;

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

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

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

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

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

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

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

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

38 (15) After due notice and hearing, cancel the registration or suspend the
39 incentives of a BOI registered enterprise and/or require refund of incentives, including
40 interests and monetary penalties;

41 (16) Establish a mediation center to resolve controversies and/or disputes
42 between BOI registered enterprises;

43 (17) After due hearing, decide controversies that may arise between BOI
44 registered enterprises or investors therein which espouse conflicting interests arising
45 from the implementation of this Code. The Board shall have the power to subpoena
46 witnesses, administer oaths, and compel the production of books, papers and other
47 evidence, and to cite for contempt any person or organization that fails to comply with
48 the aforestated processes: *Provided*, That the Board may grant immunity from
49 prosecution to any person whose testimony or documents or other evidence is
50 necessary or relevant to the case:

51 *Provided, further*, That a registered enterprise may file a motion for
52 reconsideration of a decision or final order within fifteen (15) days from notice thereof,

1 with proof of service on the parties affected. No second motion for reconsideration of a
2 decision or final order by the same party shall be entertained;

3 (18) Recommend to the Commissioner of the Bureau of Immigration the
4 employment of foreign nationals in BOI registered enterprises and the grant of Investor's
5 Visa;

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

11 (20) Waive, condone or reduce fines or penalties imposed on BOI registered
12 enterprises;

13 (21) Determine the organizational structure of the BOL. Appoint, discipline or
14 remove its personnel consistent with the provisions of civil service laws, rules and
15 regulations; and

16 22) Exercise all the powers necessary or incidental to attain the purposes of this
17 Code and other laws vesting additional functions on the Board.
18

19 *SEC. 7. Appointment of BOI Personnel.* - The Managing Governor, upon
20 recommendation of the Board, shall appoint its personnel subject to civil service laws,
21 rules and regulations. All positions in the BOI shall be governed by compensation,
22 position classification systems, and qualification standards approved by the Board
23 based on a comprehensive job analysis and audit of actual duties and responsibilities.
24 The compensation plan shall be comparable with the prevailing compensation plan of
25 other IPAS such as Philippine Economic Zone Authority (PEZA) and shall be subject to
26 periodic review by the Board without prejudice to yearly merit reviews or increases
27 based on productivity. The BOI shall therefore be exempt from existing laws, rules and
28 regulations on compensation, position classification and qualification standards.
29

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

37 The i-PAC shall be composed of all government agencies involved in the
38 establishment or operation of business including, but not limited to, all IPAs, the
39 Securities and Exchange Commission (SEC), the Bureau of Internal Revenue (BIR), the
40 Bureau of Customs (BOC), the Bureau of Immigration (BI), the Department of Trade
41 and Industry (DTI), the Department of the Interior and Local Government (DILG), the
42 Department of Agriculture (DA), the Department of Environment and Natural Resources
43 (DENR), the Department of Labor and Employment (DOLE), the Department of Foreign
44 Affairs (DFA), the Department of Energy (DOE), the Department of Public Works and
45 Highways (DPWH), the Department of Agrarian Reform (DAR) and such other agencies
46 as may be determined by the Board. The government agencies involved shall designate
47 representatives to the i-PAC that are clothed with authority to act and approve/deny any
48 matter relative to their respective agencies.
49

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

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

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

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

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

9 (e) Act, in coordination with appropriate government offices or agencies, such as
10 the Office of the Ombudsman and the Civil Service Commission (CSC), on complaints
11 filed by any investor or potential investor against any public official or employee or any
12 office, agency or instrumentality, including local government units (LGUs) and officials,
13 as well as any government-owned and -controlled corporation (GOCC), in connection
14 with any act or duty required by law to facilitate the entry of local and foreign
15 investments.

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

17
18 SEC. 10. *Honoraria and Allowances.* - The Board shall provide for reasonable
19 honoraria and allowances for the i-PAC members and its personnel
20

21 TITLE II 22 DEFINITION OF TERMS 23

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

25 (a) "BOI" shall refer to the Board of Investments created under this Code.

26 (b) "Investments promotion agencies (IPAs)" shall include the BOI, the PEZA, the
27 Bases Conversion Development Authority (BCDA), the Subic Bay Metropolitan Authority
28 (SBMA), the Clark Development Corporation (CDC), the John Hay Management
29 Corporation (JHMC), the Poro Point Management Corporation (PPMC), the Bataan
30 Technology Park Inc. (BTPI), the Cagayan Economic Zone Authority (CEZA), the
31 Zamboanga City Special Economic Zone Authority (ZCSEZA), the PHIVIDEC Industrial
32 Authority (PIA), the Aurora Special Economic Zone Authority (ASEZA), and all other
33 IPAs that may be created by law.

34 (c) "Registered enterprise" shall mean any individual, partnership, corporation,
35 Philippine branch of a foreign corporation or other entity incorporated and/or organized
36 and existing under Philippine laws and registered with an IPA, in accordance with this
37 Code: *Provided, however,* That the term "registered enterprise" shall not include any of
38 the following service enterprises such as, but not limited to, those engaged in customs
39 brokerage, trucking/forwarding services, janitorial services, security services, insurance
40 and/or banking and other financial services, consumers cooperatives, credit unions,
41 consultancy services, restaurants or such other services, within the, economic zones,
42 as may be determined by the IPA Board, duly accredited and/or licensed by any of the
43 IPAs and whose income derived within the economic zones shall be subject to taxes
44 under the National Internal Revenue Code (NIRC) of 1997, as amended.

45 (d) "Investments priorities plan (IPP)" shall refer to the list of industries, services
46 and other economic activities, which will be eligible for incentives under this Code,
47 prepared and determined as priority or preferred activities in accordance with Title III,
48 Chapter I of this Code,

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

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

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

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

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

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

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

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

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

28 *Provided*, That in the case of paragraph (2) above, only sales to an export
29 enterprise of capital equipment, raw materials, production supplies, packaging
30 materials and other production requirements needed for the registered activity of
31 the export enterprise; and sales to international sea or air transport operations of
32 goods, equipment, spare parts and supplies, except fuel, to be used in the
33 aircraft or seacraft and capital equipment needed for the shipping or air transport
34 operations, shall be entitled to incentives for export enterprises under this Code.

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

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

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

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

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

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

1
2 The foregoing notwithstanding, services rendered locally by registered
3 enterprises that are paid for in freely convertible foreign currency shall be
4 considered as "export sales".

5 (j) An "export enterprise" shall mean a registered enterprise which is a
6 manufacturer, processor or service provider and whose export sale of its products
7 or services exceeds seventy percent (70%) of its total annual production of the
8 preceding taxable year. The export requirement herein provided may be reduced,
9 but shall not be less than fifty (50%), in meritorious cases under such conditions as
10 the board may determine.

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

14 (k) A "domestic enterprise" shall mean a registered enterprise, which produces
15 goods for sale or renders services exclusively to the domestic market or does not
16 comply with the minimum export requirement of an export enterprise.

17 (l) "Service enterprise" is an enterprise engaged or proposing to engage in
18 rendering technical, professional or other services listed in the IPP. Service enterprise
19 that earns more than seventy percent (70%) of its revenues paid for in foreign currency
20 generated from nonresident clients shall be entitled to the incentives provided to an
21 "export" enterprise.

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

26 (n) "Processing" shall mean converting raw materials into marketable form
27 through physical, mechanical, chemical, electrical, biochemical, biological or other
28 means, or by a special treatment or a series of actions, such as slaughtering, milling,
29 pasteurizing, drying or desiccating, quick freezing, that results in a change in the nature
30 or state of the products. Processing shall include assembly provided that a distinct or
31 new product is formed. Mere packing or packaging shall not constitute processing.

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

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

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

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

4 (s) "Freeport" is an isolated and policed area adjacent to a port of entry as
5 defined by Section 3519 of the Tariff and Customs Code, which shall be operated and
6 managed as a separate customs territory to ensure free flow or movement of goods,
7 except those expressly prohibited by law, within, into and exported out in the freeport
8 zone where imported goods may be unloaded for immediate transshipment or stored,
9 repacked, sorted, mixed or otherwise manipulated without being subject to taxes and
10 duties.

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

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

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

31 (w) "Capital equipment" refers to machinery, equipment, and components
32 thereof, spare parts, accessories, tools, devices, apparatus, fixtures, fittings and
33 accompaniments which are directly and/or reasonably needed in the registered activity
34 of the enterprise and those required for pollution abatement and control, cleaner
35 production and water reduction/ conservation.

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

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

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TITLE III
INVESTMENTS WITH INCENTIVES

CHAPTER I
QUALIFIED ACTIVITIES

SEC. 12. *Investments Priorities Plan (IPP)*. - The BOI, upon consultation with the Office of the President, concerned IPAs and appropriate government agencies and the private sector, shall formulate the IPP to be submitted to the President for his/her approval. In the listing of the activity in the IPP, the following shall be complied with:

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

(b) The activity shall satisfy the following conditions:

(1) Substantial amount of investments;

(2) Considerable generation of employment;

(3) Use of modern or new technology; or

(4) Installation of adequate environmental protection systems:

Provided, That items b(1) and b(4) above shall be present in all activities, and 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.

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

SEC. 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, and 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 Board 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 in the IPP.

SEC. 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.

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

A strategic project is a project that exhibits high social economic returns and requires large investments that will significantly contribute to the country's economic development. In the exercise of this authority, any three (3) 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.

1 Notwithstanding the preceding paragraphs of this section or any law to the
2 contrary, a project which shall lead to significant improvements in productivity and
3 value added and that will (a) produce or manufacture new, emerging and
4 technologically advanced product, or (b) involve breakthrough process innovation,
5 or (c) involve new and innovative service, shall also be deemed as "strategic
6 project."
7
8

9 CHAPTER II
10 INCENTIVES TO REGISTERED ENTERPRISES
11

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

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

26 SEC. 17. *Incentives to Registered Export Enterprises.* - All IPAs may administer
27 the following incentives to their respective registered export enterprises to the extent of
28 their registered activity:

29 (a) Income Tax Holiday (ITH). -- Activities of an export enterprise shall be entitled
30 to six (6) years off from the date of start of its commercial operations. The BIR shall
31 require a registered export enterprise availing of ITH to secure a certificate of eligibility
32 from the appropriate IP A before filing an official copy of its income tax return (ITR).
33 Thereafter, the registered export enterprise shall file its claim with the appropriate IP A
34 for validation. Failure to secure certification and/or to file the ITH availment for validation
35 by the appropriate IPA shall cause the forfeiture of the ITH availment for the taxable
36 period.

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

41 (c) Five percent (5%) Tax Rate on Gross Income Earned (GIE). Instead of the
42 above Reduced Income Tax rate, a registered export enterprise located inside or
43 outside the ecozone, industrial estate or freeport zone may opt and apply with the
44 concerned IPA for the five percent (5%) tax of the GIE in lieu of all national and local
45 taxes, including but not limited to, VAT on their registered activity, VAT on importation
46 directly related to their registered activity, documentary stamp taxes (DST) and excise
47 taxes, except real property tax on land owned by private developers. The allocation of
48 the five percent (5%) GIE pertaining to the LGU foregoing taxes hereunder shall be
49 governed by the charter or governing law of the IRA. Once the registered export
50 enterprise has made the choice, such choice shall be irrevocable for the duration of its
51 registration.

52 A registered export enterprise enjoying the five percent (5%) tax on GIE may
53 generate income from domestic sales up to thirty percent (30%) of its total income from

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

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

12 The BIR shall require a registered export enterprise availing of the NOLCO to
13 secure a certificate of eligibility from the appropriate *IPA* before filing an official copy of
14 its ITR with the appropriate *IP A* for validation of the NOLCO claim.

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

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

24 (f) Double Deduction for Training Expenses or Training Expenses Credit. -
25 Expenses incurred for local training given to employees and training expenses of
26 potential employees for the development of skills identified as necessary by the
27 appropriate government agencies, upon approval by the concerned *IP A*, shall entitle
28 the registered export enterprise to a special deduction from the taxable income
29 equivalent to one hundred percent (100%) of the total expenses over and above the
30 allowable ordinary and necessary business deductions for said expenses under the
31 NIRC of 1997, as amended.

32 The same benefit of double deduction shall likewise extend to expenses paid or
33 incurred by the registered export enterprise in its training projects in collaboration with
34 schools and universities accredited by the Department of Education (DepEd) or
35 Commission on Higher Education (CHED).

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

38 The concerned *IP A* shall issue the corresponding certificate of entitlement for
39 this incentive upon filing of an application for training expenses credit, otherwise, the
40 training expense credit shall be deemed waived.

41 (g) Double Deduction for Research and Development or Research and
42 Development Credit. - Expenses incurred for research and development conducted in
43 the Philippines relating to the business shall entitle the registered export enterprise to a
44 special deduction from taxable income equivalent to one hundred percent (100%) of the
45 total expenses over and above the allowable ordinary and business deductions for said
46 expenses under the NIRC of 1997, as amended.

47 The expenses for research and development shall be deductible from taxable
48 income on the taxable year the said research and development expenses were
49 incurred.

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

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

6 (i) The capital equipment is directly and/or reasonably needed and will be
7 used exclusively in the registered activity of the export enterprise unless prior
8 approval of the IP A is secured for the part time utilization of said equipment in a
9 non-registered activity to maximize usage thereof or the proportionate taxes and
10 duties are paid on a specific equipment and machinery being permanently used
11 for non-registered activities; they are not manufactured domestically in sufficient
12 quantity, of comparable quality and at reasonable prices; and

13 (ii) The approval of the IP A was obtained by the registered export
14 enterprise for the importation of such machinery, equipment and spare parts.
15 Approval of the IP A must be secured before any sale, transfer or disposition of
16 the imported capital equipment is made: *Provided*, That if such sale, transfer or
17 disposition is made within the first five (5) years from date of importation, any of
18 the following conditions must be present:

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

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

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

26 (dd) For reasons of proven technical obsolescence.

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

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

43 The registered export enterprise availing of the incentives provided under the
44 immediately preceding two (2) paragraphs shall be subject to the following: (i) that said
45 capital equipment will be used exclusively by the registered export enterprise in its
46 registered activity; (ii) that the capital equipment where the raw materials, supplies,
47 parts and semi-finished products were used would have qualified for tax and duty-free
48 importation; and (iii) that the approval of the concerned IP A is obtained by the
49 registered export enterprise, If the registered export enterprise sells, transfers or
50 disposes of the capital equipment, the provision in the preceding paragraphs for such
51 disposition shall apply.

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

4 (j) Tax and Duty-Free Importation of Source Documents. The importation of
5 source documents by leT-registered export enterprises shall be eligible for tax and duty-
6 free importation.

7 (k) Zero Percent (0%) Rate of VAT on the Sale by a Domestic Enterprise to a
8 Registered Export Enterprise. - The provisions of law to the contrary notwithstanding,
9 the sale by a domestic enterprise of goods and/or services to a registered export
10 enterprise, regardless of the latter's location and whether enjoying the ITH, the Reduced
11 Income Tax or the five percent (5%) tax on GTE shall be subject to zero percent (0%)
12 VAT rate: *Provided*, That such goods and/or services are required by registered export
13 enterprise's activity.

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

17 (m) Access to Bonded Manufacturing Warehouse. - Registered export
18 enterprises located outside ecozones or freeports shall have access to the utilization of
19 bonded warehousing system required by the project subject to such guidelines as may
20 be issued by the Board.

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

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

29
30 SEC. 18. *Tax Treatment/Other Incentives for Registered Enterprises in Ecozones*
31 *and Freeport Zones.* - In addition to the applicable incentives provided under the
32 preceding section on export incentives, registered enterprises locating in the Special
33 Economic Zones and Freeport Zones shall be entitled to the following incentives:

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

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

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

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

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

14 (6) Subject to such regulations respecting identity and safeguarding of the
15 revenue as the concerned IP A may deem necessary when the identity of an article
16 entered into the ecozones or freeports under the immediately preceding paragraph has
17 been lost, such article when removed from the ecozones or freeports and taken to the
18 customs territory shall be treated as foreign merchandise entering the country for the
19 first time, under the provisions of the Tariff and Customs Code of the Philippines, as
20 amended.

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

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

26 (9) Unless the contrary is shown, merchandise taken out of the ecozones or
27 freeports shall be considered, for tax purposes, to have been sent to customs territory.
28 Special Economic Zones declared by presidential proclamations or created by law may
29 avail of the incentives provided herein as conferred by the appropriate IPA subject to
30 such terms and conditions as may be provided by law.

31 (b) Tax Treatment of Services in the Ecozones or Freeports. - (1) Sale of service
32 by an entity from the customs territory to a registered ecozone or freeport enterprise or
33 by a registered ecozone or freeport enterprise to another ecozone or freeport enterprise
34 shall be treated as indirect export, and hence, shall not be subjected to internal revenue
35 taxes for such transaction. (2) Sale or service by a registered ecozone or freeport
36 enterprise to the customs territory shall be subject to the applicable internal revenue
37 laws and regulations.

38
39 SEC. 19. *Incentives for Registered Domestic Enterprises.* - Registered domestic
40 enterprises shall be qualified to the following incentives to the extent of their registered
41 activity:

42 (a) Income Tax Holiday (ITH). - Activities of a registered domestic enterprise
43 shall be entitled to four (4) years of ITH from the date of start of its commercial
44 operations.

45 The BIR shall require a registered domestic enterprise availing of ITH to secure a
46 certificate of eligibility from the appropriate IP A before filing an official copy of its
47 income tax return (ITR). Thereafter, the registered domestic enterprise shall file its claim
48 with the appropriate IP A for validation. Failure to secure a certification and/or to file the
49 ITH availment for validation by the appropriate IP A shall cause the forfeiture of the ITH
50 availment for the taxable period.

51 (b) Net Operating Loss Carryover (NOLCO). - The net operating loss of the
52 registered activity during the first five (5) years from start of commercial operation which
53 had not been previously offset as deduction from gross income shall be carried over as

1 a deduction from gross income for the next five (5) consecutive taxable years
2 innmediately following the year of such loss: *Provided, however,* That the NOLCO shall
3 be the actual loss without the benefit of the incentives provided herein.

4 The BIR shall require a registered domestic enterprise availing of the NOLCO to
5 secure a certificate of eligibility from the appropriate IPA before filing an official copy of
6 its ITR with the appropriate IP A for validation of the NOLCO claim.

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

10 (c) Accelerated Depreciation. - Accelerated depreciation of plant, machinery and
11 equipment that are reasonably needed and actually used for the production and
12 transport of goods and services may be depreciated using a rate not exceeding twice
13 the rate which would have been used had the annual allowance been computed in
14 accordance with the rules and regulations prescribed by the Secretary of Finance and
15 the provisions of the NIRC of 1997, as amended.

16 (d) Double Deduction for Training Expenses or Training Expenses Credit. -
17 Expenses incurred for local training given to employees and training expenses of
18 potential employees for the development of skills identified as necessary by the
19 appropriate government agencies, upon approval by the concerned IPA, shall entitle the
20 registered domestic enterprise to a special deduction from the taxable income
21 equivalent to one hundred percent (100%) of the total expenses over and above the
22 allowable ordinary and necessary business deductions for said expenses under the
23 NIRC of 1997, as amended.

24 The same benefit of double deduction shall likewise extend to expenses paid or
25 incurred by the registered domestic enterprise in its training projects in collaboration
26 with schools and universities accredited by the Department of Education (DepEd) or the
27 Commission on Higher Education (CHED).

28 The training expenses incurred shall be deductible from taxable income on the
29 taxable year the said training expenses were incurred. The concerned IPA shall issue
30 the corresponding certificate of entitlement for this incentive upon filing of an application
31 for training expenses credit, otherwise, the training expense credit shall be deemed
32 waived.

33 (e) Double Deduction for Research and Development or Research and
34 Development Credit. - Expenses incurred for research and development conducted in
35 the Philippines relating to the business shall entitle the registered domestic enterprise to
36 a special deduction from taxable income equivalent to one hundred percent (100%) of
37 the total expenses over and above the allowable ordinary and business deductions for
38 said expenses under the NIRC of 1997, as amended.

39 The expenses for research and development shall be deductible from taxable
40 income on the taxable year the said research and development expenses were
41 incurred.

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

45 (f) VAT and Duty Incentives on Importations of Capital Equipment and/or Raw
46 Material. - Importations of capital equipment and/or raw materials by registered
47 domestic enterprises shall be subject to a VAT and customs duty refund mechanism.

48 In order to facilitate the immediate processing, clearance and release of VAT and
49 customs duty refunds as provided *in* this Act, a trust liability account (TLA) is hereby
50 authorized to be established in the Bureau of the Treasury (BTr). All VAT and customs
51 duty payments pertaining to the importation of registered domestic enterprises of capital
52 equipment or raw materials shall be deposited in the TLA for the purpose of funding
53 valid V AT and customs duty refund claims. The claims for VAT and customs duty

1 refunds shall be made by the registered domestic enterprise to the DOF which, in turn
2 shall process, approve and release the V A T and customs duty refund.

3 The VAT and customs duty paid on imported capital equipment may be refunded:
4 *Provided*, That the capital equipment is being used by the registered domestic
5 enterprise pursuant to its registered activity. The amount of VAT and customs duty
6 refund on a particular shipment of raw materials shall be equivalent to the proportion of
7 raw materials used in the production to the total raw materials imported multiplied by the
8 amount of VAT and customs duty paid on such importation. No claim for refund shall be
9 allowed on VAT and customs duty paid on raw materials which are not or no longer
10 intended to be used in the registered activity.

11 The registered domestic enterprise shall file a claim for V A T and customs duty
12 refund within two (2) years after the payment was made. All amounts paid but no longer
13 allowed for refund shall immediately accrue to the general fund of the national
14 government.

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

19 In case of dispute under the V A T and customs duty refund mechanism provided
20 in this section, the pertinent provisions of the NIRC of 1997, as amended, and the Tariff
21 and Customs Code of the Philippines, as amended, shall apply.

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

30 (g) Preferential Access to Financing and Acceptable Form of Collaterals. -
31 Registered SMEs shall be accorded access to financing from government financial
32 institutions at preferential rates below the market rates.

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

35 (h) Assistance in the Preparation of Project Study. - Registered SMEs may be
36 provided assistance in the preparation of project study for purposes of registration under
37 this Code.

38
39 SEC. 20. *Incentives for Domestic "Strategic" Enterprises.* - All IPAs may
40 administer the following incentives to registered domestic enterprises engaged in
41 strategic projects, as defined under Section 15 of this Act, whenever applicable, to the
42 extent of their registered activity:

43 (a) Income Tax Holiday (ITH). - A registered domestic "strategic" enterprise shall
44 be entitled to an ITH equivalent to six (6) years from the date of start of its commercial
45 operations.

46 The BIR shall require a registered domestic "strategic" enterprise availing of the
47 ITH to secure a certificate of eligibility from the appropriate IPA before filing an official
48 copy of its income tax return (ITR). *Thereafter, the registered domestic "strategic"*
49 *enterprise shall file its claim with the appropriate IP A for validation.*

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

1 (b) Reduced Income Tax. - A registered domestic "strategic" enterprise may be
2 entitled to a preferential tax rate of fifteen percent (15%) of taxable income as defined
3 under Section 31 of the NIRC of 1997, as amended, for a period of eight (8) years.

4 If the domestic "strategic" enterprise registers within the first six (6) years from
5 the effectivity of this Act, it may opt to avail of the ITH prior to the reduced income tax:
6 *Provided*, That the ITH together with the reduced income tax shall be availed of for a
7 period of eight (8) years.

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

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

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

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

26 (e) Double Deduction for Training Expenses. - Expenses incurred for local
27 training given to employees and training expenses of potential employees for the
28 development of skills identified as necessary by the appropriate government agencies,
29 upon approval by the concerned IPA, may entitle the registered domestic "strategic"
30 enterprise to a special deduction from the taxable income equivalent to one hundred
31 percent (100%) of the total expenses over and above the allowable ordinary and
32 necessary business deductions for said expenses under the NIRC of 1997, as
33 amended. The same benefit of double deduction shall likewise extend to expenses paid
34 or incurred by the registered domestic "strategic" enterprise in its training projects in
35 collaboration with schools and universities accredited by the Department of Education
36 (DepEd) or the Commission on Higher Education (CHED).

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

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

42 (f) Double Deduction for Research and Development - Expenses incurred for
43 research and development conducted in the Philippines relating to the business may
44 entitle the registered domestic "strategic" enterprise to a special deduction from taxable
45 income equivalent to one hundred percent (100%) of the total expenses over and above
46 the allowable ordinary and business deductions for said expenses under the NIRC of
47 1997, as amended. The expenses for research and development shall be deductible
48 from taxable income *on* the taxable year the said research *and* development expenses
49 were incurred.

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

1 (g) VAT and Duty Incentives on Importations of Capital Equipment and/or Raw
2 Material. - Importations of capital equipment and/or raw materials by registered
3 domestic "strategic" enterprises shall be subject to a VAT and customs duty refund
4 mechanism.

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

15 The VAT and customs duty paid on imported capital equipment may be refunded:
16 *Provided*, That the capital equipment is being used by the registered domestic
17 "strategic" enterprise pursuant to its registered activity.

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

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

28 All applications for V AT and customs duty refund shall be processed and acted
29 upon within thirty (30) days after submission of complete documents. The refund shall
30 be in a form of cash or manager's/cashier's check payable to the registered domestic
31 "strategic" enterprise.

32
33 In case of dispute under the V AT and customs duty refund mechanism provided
34 in this section, the pertinent provisions of the NIRC of 1997, as amended, and the Tariff
35 and Customs Code of the Philippines, as amended, shall apply.

36 The registered domestic "strategic" enterprise availing of the above incentives
37 shall be subject to the following: (1) that said capital equipment will be used exclusively
38 by the registered domestic "strategic" enterprise in its registered activity; (2) that the
39 capital equipment where the raw materials, supplies, parts and semi-finished products
40 were used would have qualified for tax and duty-free importation; and (3) that the
41 approval of the concerned IPA is obtained by the registered domestic "strategic"
42 enterprise. If the registered domestic "strategic" enterprise sells, transfers or disposes of
43 the capital equipment, the provision of subsection (h) of Section 17 of this Act shall
44 apply.

45 (h) Employment of Foreign Nationals. - Subject to the provisions of Section 29 of
46 Commonwealth Act No. 613, as amended, a registered domestic "strategic" enterprise
47 may employ foreign nationals in managerial, technical or advisory positions.

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

53

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

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

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

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

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

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

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

31 (e) *Double Deduction for Training Expenses or Training Expenses Credit.* -
32 Expenses incurred for local training given to employees and training expenses of
33 potential employees for the development of skills identified as necessary by the
34 appropriate government agencies, upon approval by the concerned *IP A*, shall entitle
35 the registered domestic enterprise to a special deduction from the taxable income
36 equivalent to one hundred percent (100%) of the total expenses over and above the
37 allowable ordinary and necessary business deductions for said expenses under the
38 NIRC of 1997, as amended.

39 The same benefit of double deduction shall likewise extend to expenses paid or
40 incurred by the registered domestic enterprise in its training projects in collaboration
41 with schools and universities accredited by the Department of Education (DepEd) or the
42 Commission on Higher Education (CHED).

43 The training expenses incurred shall be deductible from taxable income on the
44 taxable year the said training expenses were incurred. The concerned *IP A* shall issue
45 the corresponding certificate of entitlement for this incentive upon filing of an application
46 for training expenses credit, Otherwise, the training expense credit shall be deemed
47 waived.

48 (f) *Double Deduction for Research and Development or Research and*
49 *Development Credit.* - Expenses incurred for research and development conducted in
50 the Philippines relating to the business shall entitle the registered domestic enterprise to
51 a special deduction from taxable income equivalent to one hundred percent (100%) of
52 the total expenses over and above the allowable ordinary and business deductions for
53 said expenses under the NIRC of 1997, as amended.

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

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

8 (g) VAT and Duty Incentives on Importations of Capital Equipment and/or Raw
9 Material. - Importations of capital equipment and/or raw materials by registered
10 domestic enterprises located in the thirty (30) poorest provinces' or LDAs shall be
11 subject to a VAT and customs duty refund mechanism. In order to facilitate the
12 immediate processing, clearance and release of VAT and customs duty refunds as
13 provided in this Act, a trust liability account (TLA) is hereby authorized to be established
14 in the Bureau of the Treasury (BTr). All VAT and customs duty payments pertaining to
15 the importation of registered domestic enterprises located in the thirty (30) poorest
16 provinces or LDAs of capital equipment or raw materials shall be deposited in the TLA
17 for the purpose of funding valid V AT and customs duty refund claims. The claims for V
18 AT and customs duty refunds shall be made by the registered domestic enterprise to
19 the DOF which, in turn, shall process, approve and release the VA T and customs duty
20 refund.

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

24 The amount of VAT and customs duty refund on a particular shipment of raw
25 materials shall be equivalent to the proportion of raw materials used in the production to
26 the total raw materials imported multiplied by the amount of VAT and customs duty paid
27 on such importation. No claim for refund shall be allowed on VAT and customs duty
28 paid on raw materials which are not or no longer intended to be used in the registered
29 activity.

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

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

38 In case of dispute under the VA T and customs duty refund mechanism provided
39 in this section, the pertinent provisions of the NIRC of 1997, as amended, and the Tariff
40 and Customs Code of the Philippines, as amended, shall apply.

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

50
51 SEC. 22. *Incentives for Private Ecozone Developers.* - Private ecozone
52 developers may avail of the incentives provided herein as conferred by the PEZA.
53

1 SEC. 23. *Incentives for Registered Enterprises in Supply Chain Cities.* -
2 Registered enterprises located in the supply chain cities shall be granted incentives
3 provided under Sections 17 and 18 hereof. A registered enterprise under the supply
4 chain city engaged in manufacturing may subcontract a portion of its manufacturing
5 processes to its affiliated entities outside the Philippines. Moreover, a registered
6 enterprise may book sales in the Philippines which sales include others undertaken
7 partially outside the Philippines by its affiliated entities.
8

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

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

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

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

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

31 (c) Reduction and Harmonization of Documentary Requirements Submitted to
32 Government Agencies. - The Board shall formulate guidelines for the reduction and
33 harmonization of related documentary requirements submitted to government agencies.
34

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

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

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

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

42 (d) He has not been institutionalized for any mental disorder or disability;

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

49 The minimum amount for investment provided for under this Code shall be made
50 applicable to visas granted to investors by the BOI, the PEZA, the SBMA, the CDC, the
51 ruMC, the PPMC, the BTPI, the CEZA, the ZCSEZA, the PIA, the ASEZA, and other
52 IPAs that may be created under the law.

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

4 SEC. 27. *Governing Incentive Provision for IPAs.* - All existing and future IPAs
5 vested with the power to confer and administer incentives shall offer incentives provided
6 in this Code: *Provided*, That the incentives granted under this Code to a registered
7 enterprise shall be applicable to the extent of the registered activity or project.
8

9 SEC. 28. *Relationship of IPAs and the BOI and Other Government Agencies.* - IP
10 As shall maintain their functions as provided for in their respective Charters except to
11 the extent that these have been modified by the provisions of this Code. For purposes
12 of efficient database on investment statistics and other investment data and information,
13 all IP As are required to submit to the BOI all investment data and information and such
14 other related data semi-annually or as may be required.
15

16 CHAPTER III 17 REGISTRATION OF ENTERPRISES 18

19 SEC. 29. *Qualifications of a Registered Enterprise.* - To qualify for registration
20 and be entitled to avail of incentives, an applicant must satisfy the following conditions:

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

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

33 (c) It will engage in an activity included in the IPP or in an export activity or in an
34 activity located in supply chain cities, thirty (30) poorest provinces or LDAs or in an
35 activity considered as "strategic project".

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

44 (e) If the applicant is engaged or proposes to engage in undertakings or activities
45 other than the registered projects, it shall install an accounting system adequate to
46 identify the investments, revenues, costs, and profits or losses of each registered
47 project undertaken by the enterprise separately *from* the aggregate investment,
48 revenues, costs and profits or losses of the whole enterprise, or to establish a separate
49 corporation for each registered project if the IPAs should so require to facilitate proper
50 implementation of this Code.
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CHAPTER IV
BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

SEC. 30. *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, as amended

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 at the prevailing rate at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technological assistance contracts at the exchange rate prevailing at the time of remittance, subject to the provisions of Section 74 of Republic Act No. 265, as amended.

(d) *Freedom from Expropriation.* -, There shall be no expropriation by the government of the property represented by investments or of the property of the enterprise except for public use, 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, as amended.

(e) *Requisition of Investment.* - There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof.

Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section 74 of Republic Act No. 265, as amended.

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CHAPTER V
ADMINISTRATION OF INCENTIVES

SEC. 31. *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. All applications and their supporting documents filed under this Code shall be confidential and shall not be disclosed to any

1 person except with the consent of the applicant or upon an order of a court of
2 competent jurisdiction.

3
4 *SEC. 32. No Double Registration of Enterprises.* - Export or domestic enterprises
5 shall not be allowed to register their export or domestic activity in more than one (1) IP
6 A. In the event that an enterprise shall transfer to another IPA, only the remaining
7 unutilized incentives shall be granted to the enterprise or the transferee, vendee or
8 assignee.

9
10 *SEC. 33. Criteria for Evaluation of Application.* - The following criteria shall be
11 considered in the evaluation of applications for registration under a preferred area:

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

18
19 *SEC. 34. Environmental Protection and Corporate Social Responsibility.* - Every
20 registered enterprise shall prepare a Program for Environmental Protection and
21 Corporate Social Responsibility (CSR) covering the period for its entitlement to fiscal
22 incentives. Such Program shall be undertaken on a per registration basis and shall be
23 submitted as an accompanying document to the application for registration to be
24 submitted to the appropriate IPA.

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

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

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

33
34 *SEC. 35. Approval and Registration Procedures.* - The IPA is authorized to adopt
35 rules and regulations to facilitate action on applications filed with it; prescribe criteria for
36 the evaluation of applications; devise standard forms for the use of applicants and
37 delegate to the regional offices of the DTI the authority to receive and process
38 applications for enterprises located in their respective regions.

39 Applications filed shall be considered automatically approved if not acted upon by
40 the IPA within ten (10) working days from official acceptance thereof. Deferment by the
41 IPA shall be considered as an official action:

42 *Provided, however,* That the IPA may defer action to a specific application not
43 more than twice: *Provided, finally,* That the IPA shall act upon the application within ten
44 (10) working days from compliance with the cause of the last deferment.

45
46 *SEC. 36. Certificate of Registration.* - A registered enterprise under this Code
47 shall be issued a Certificate of Registration under the seal of the IPA and the signature
48 of its Chairman and/or such other official or officer of the IPA as it may empower and
49 designate for the purpose. The certificate shall be in such form and style as the IPA may
50 determine and shall state, among other matters:

- 51 (a) The name of the registered enterprise;
52 (b) The activity in which the registered enterprise is proposing to engage; and

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

3
4 SEC. 37. *Validity of Registration.* - The registration shall be *valid* for a period of
5 twenty (20) years from the date of start of commercial operation except on certain
6 industries as may be determined by the Board and those export-oriented activities that
7 are registered with the IPAS.

8
9 SEC. 38. *Extension of Period of Availment of Incentives.* - The availment period
10 of the incentives provided herein may be extended by the concerned IPA in *the event*
11 that the registered enterprise has suffered operational *force majeure* or losses that have
12 impaired the viability of the registered activity.

13
14 SEC. 39. *Administration and Implementation of Incentives.* - The BOI, the PEZA
15 and the other IPAs shall be responsible for the administration and implementation of
16 incentives granted to their respective registered enterprises.

17
18 TITLE IV
19 FINAL PROVISIONS
20

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

26
27 SEC. 41. *Authority to Retain Funds.* - Registered enterprises availing of fiscal
28 incentives, except those located in the thirty (30) poorest provinces or LDAs, shall be
29 assessed with a maximum fee of one percent (1%) of the amount of incentives granted.
30 Said amount shall automatically accrue to the Board of Investments to be allotted for
31 investment promotions activities and other special projects to achieve the objectives of
32 this Code, subject to the usual accounting and auditing rules and procedures.

33
34 SEC. 42. *Protection of the Environment.* - The IP As, in coordination with the
35 appropriate agencies, shall take appropriate steps to enact the proper measures for the
36 protection of the environment, and shall coordinate with the Environmental Management
37 Bureau of the Department of Environment and Natural Resources (EMB-DENR) to
38 avoid undue delay in the issuance of the required Environmental Compliance Certificate
39 (ECC): *Provided, however,* That applications for environmental clearances, permits,
40 and/or licenses of registered enterprises shall be acted upon by the appropriate
41 government agency within thirty (30) days from date of official acceptance. In the event
42 that the appropriate government agency failed to act within the aforementioned date,
43 the application for the said environmental requirement shall be deemed complied with
44 for purposes of operation of the registered activity.

45
46 SEC. 43. *Appeals.* - All orders or decisions of the BOI or the IPA in cases
47 involving the provisions of this Code shall immediately be executory. No appeal from the
48 order or decision of the BOI or the IP A by the party adversely affected shall stay such
49 order or decision, unless a *supersedeas* bond equivalent to the amount stated in the
50 order or decision is posted by the appellant.

51 All appeals involving cases decided by the BOI or the IPA, except as provided in
52 the next succeeding paragraph, shall be filed with the Court of Appeals within fifteen
53 (15) days from receipt of notice of the order or decision or of the denial of the appellant's

1 motion for new trial or reconsideration. Within the same period, the aggrieved party may
2 file a motion for reinvestigation or reconsideration. Only one (1) motion for
3 reconsideration shall be allowed, subject to the posting of the aforementioned
4 *supersedeas* bond which shall be limited to cash and/or surety bond from a BOI-
5 accredited bonding company.

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

11
12 *SEC. 44. Suspension- and Forfeiture of Incentives of Registered Enterprises,*
13 *Refund and Penalties.* - When there is probable cause to believe that the registered
14 enterprise has violated its registration terms and conditions, the BOI or the IPA may
15 suspend its availment of incentives, until proven otherwise. The BOI or the IPA may
16 impose fines and penalties and/or forfeit the incentives granted to its registered
17 enterprises whenever there are violations of the registration terms and conditions by the
18 latter, without prejudice to the cancellation of the registration of said enterprise.

19 In case of cancellation of the Certificate of Registration granted under this Code,
20 the BOI or the IPA may, in appropriate cases, require the refund of incentives availed of
21 and impose corresponding fines and penalties. Any enterprise which violates any
22 provision of this Code, its implementing rules and regulations, the terms and conditions
23 of its registration, or of any lawful directive of the BOI or the IPA, shall be subject to a
24 fine not to exceed One million pesos (P1,000,000.00), without prejudice to the
25 disapproval of its application for registration or cancellation of its registration: *Provided,*
26 *That any willful commission of fraudulent misrepresentation in its application for*
27 *registration or submission of reports or gross violation of this Code and its*
28 *implementing rules and regulations, a fine of at least One million pesos (P1,000,000.00)*
29 *but not to exceed Ten million pesos (P10,000,000) shall be imposed, in addition to other*
30 *penalties that may be imposed by the BOI or the IPA.*

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

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

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

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

50
51 *SEC. 45. Disposition of Savings from the Implementation of this Act.* - The total
52 amount of savings to be generated from the implementation of this Act shall be

1 allocated annually and used exclusively for the provision of scholarships under the
2 CHED.

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

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

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

14
15 **SEC. 47. *Transitory Provision.*** - The incentives under Section 17 of this Act shall
16 be applicable to existing BOI-registered export enterprises, particularly the tax and duty-
17 free importation of equipment and raw materials by the said BOI-registered export
18 enterprises. Until the IRR of this Act take effect, the present rules and regulations under
19 the old investments laws shall apply to the extent that they are not inconsistent with the
20 provisions of this Act.

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

25
26 **SEC. 49. *Repealing Clause.*** - The following provisions are hereby repealed:

27 (a) Books I, V and VI of Executive Order No. 226, series of 1987, otherwise
28 known as "The Omnibus Investments Code of 1987";

29 (b) Section 24 of Republic Act No. 7916, otherwise known as "An Act Providing
30 for the Legal Framework and Mechanisms for the Creation, Operation, Administration
31 and Coordination of Special Economic Zones in the Philippines, Creating for the
32 Purpose the Philippine Economic Zone Authority (PEZA), and for other Purposes
33 (Special Economic Zone Act of 1995)";

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

37 (d) Fourth paragraph of Presidential Decree No. 529 (restored by FIRB
38 Resolution 19-87), otherwise known as "Granting to Petroleum Exploration
39 Concessionaires under the Petroleum Act of 1949 Exemption from Customs Duty and
40 Compensating Tax on Importations of Machinery and Equipment, Spare Parts and
41 Materials Required for Their Exploration Operations";

42 (e) Sections 8, 9 and the second sentence of the first paragraph and second
43 paragraph of Section 10 of Presidential Decree No. 538, otherwise known as "Creating
44 and Establishing the PHIVIDEC Industrial Authority and Making Its Subsidiary Agency
45 of the Philippine Veterans Investment Development Corporation Defining Its Powers,
46 Functions and Responsibilities, and for Other Purposes";

47 (f) Section 36(e) and (f) (1) and (2) of Presidential Decree No. 705, otherwise
48 known as the "Revised Forestry Code";

49 (g) Section 16 (c) and (d) and Section 17 of Republic Act No. 7844, otherwise
50 known as "An Act to Develop Exports as a Key Towards the Achievement of the
51 National Goals Towards the Year 2000 (Export Development Act of 1994)";

52 (h) Chapter XVI, Sections 90, 92, 93(a) 2 and (b) of Republic Act No. 7492,
53 otherwise known as the "Philippine Mining 3 Act of 1995";

1 (j) Section 9 of Republic Act No. 8479, otherwise known as the "Downstream Oil
2 Deregulation Act of 1998";

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

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

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

15 (m) Section I and Section 2(a) and (b) and Section 6 of Executive Order No. 528,
16 series of 2006, Amending Executive Order No. 31, series of 2004, "Reducing the Rates
17 of Duty on Capital Equipment, Spare Parts and Accessories Imported by BOI-registered
18 new and Expanding Enterprises";

19 (n) Section 4(e) of Republic Act No. 7903, otherwise known as "Zamboanga City
20 Special Economic Zone Act of 1995"; and

21 (o) Section 1 of Executive Order No. 619, otherwise known as "Creating and
22 Designating Special Economic Zones Pursuant to Republic Act No. 7916, as Amended
23 by Republic Act No. 8784, in Relation to Republic Act No. 7227, as Amended by
24 Republic Act No. 9400, Inside the Clark Freeport Zone".

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

28
29 SEC. 50. *Survivor Clause.* - (a) The provisions of this Act to the contrary
30 notwithstanding, the following laws, decrees and orders shall continue to have full force
31 and effect:

32 (1) Book VI, Article 78 of Executive Order No. 226, series of 1987, otherwise
33 known as "The Omnibus Investments Code of 1987";

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

36 (3) Section 23 of Republic Act No. 7916, otherwise known as "An Act Providing
37 for the Legal Framework and Mechanisms for the Creation, Operation, Administration
38 and Coordination of Special Economic Zones in the Philippines, Creating for the
39 Purpose the Philippine Economic Zone Authority (PEZA), and for other Purposes
40 (Special Economic Zone Act of 1995)"; and

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

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

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

51 (2) Sections 10, 16(a), (b) and (c) and Section 17(a) to (e) of Presidential Decree
52 No. 972, as amended by Presidential Decree No. 1174, otherwise known as

1 "Promulgating an Act to Promote an Accelerated Exploration, Development,
2 Exploitation, Production and Utilization of Coal";

3 (3) Section 12 of Presidential Decree No. 87, otherwise known as "An Act to
4 Promote the Discovery and Production of Indigenous Petroleum, and Appropriating
5 Funds Therefor";

6 (4) Section 4(a) and (d) of Presidential Decree No. 1442, as restored by FIRE
7 Resolution 19-87, otherwise known as "An Act to Promote the Exploration and
8 Development of Geothermal Resources"; and

9 (5) Chapter II, Section 4(A), (B), (C) and (D); and Chapter VIII, Section 19(A),
10 (B) and (C) of Republic Act No. 9295, Entitled "An Act Promoting the Development of
11 Philippine Domestic Shipping, Shipbuilding, Ship repair and Ship Breaking, Ordaining
12 Reforms in Government Policies Towards Shipping in the Philippines and for other
13 Purposes";

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

16
17 SEC. 51. *Effectivity*. - This Act shall take effect fifteen (15) days following its
18 publication in the *Official Gazette* or in a newspaper of general circulation, whichever is
19 earlier.

20
21 Approved,