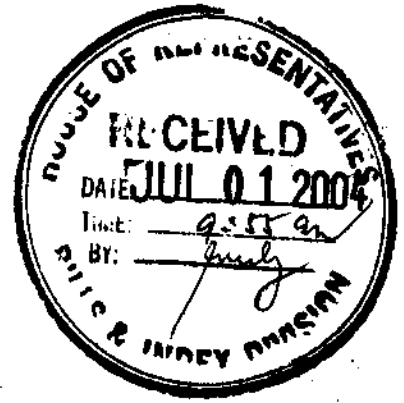


Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 122



Introduced by **Representative JOEY SARTE SALCEDA**

EXPLANATORY NOTE

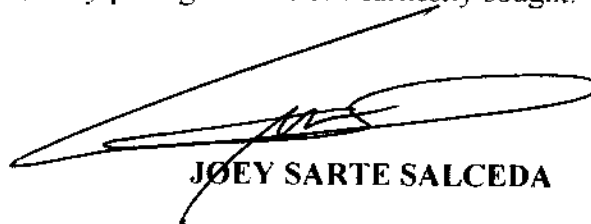
The reshaping of the global economy along the principles of free trade and international exchange under the auspices of the world Trade Organization (WTO) is a cue for Philippine Policy-makers to align our domestic economy along the lines of competitive advantage vis-à-vis our neighbors in the Asia-Pacific region and trading partners from the rest of the world.

Foreign direct investments that embody advanced technology is particularly desirable in lending our products a cutting edge in world markets. To attract such investments from companies that operate on the technology frontiers of the world's most competitive industries, we have skills of Filipino workers, the facilities offered by our special economic zones and the country's strategic location in the fast rising Asia-Pacific region.

This bill proposes to extend the maximum period for the income tax holiday offered to especially desirable investors from eight (8) to twelve (12) years, subject to the extension merely tries to align the Philippines' income tax holiday such that it matches that our neighboring countries. To cite, the income tax holiday in Singapore and Malaysia may be availed of for a maximum of twelve (12) years, and for a maximum of ten (10) years in Taiwan. In the US and some countries of Europe, this period can be extended to as long as fifteen (15) years.

By matching this incentive being offered by other countries, we stand a sufficiently even chance of attracting investments and partners that will be crucial in our drive for development.

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



JOEY SARTE SALCEDA

Republic of the Philippines
House of Representatives
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House Bill No. 122

Introduced by Representative JOEY SARTE SALCEDA

AN ACT
HARMONIZING AND RATIONALIZING THE ADMINISTRATION AND GRANT OF
FISCAL AND NON-FISCAL INCENTIVES, REPEALING FOR THIS PURPOSE
EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS
CODE OF 1987

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

PRELIMINARY TITLE

TITLE AND DECLARATION OF POLICY

SECTION 1. *Title of the Code.* – This Code shall be known as “The Investments and Incentives Code of the Philippines.” The incentives provided for in this Code shall govern all investment promotion agencies and sectors granting incentives under special laws.

SEC. 2. *Declaration of Investment Policies.* – The development of the national economy shall be promoted in consonance with the principles and objectives of achieving global competitiveness, fostering economic efficiency and encouraging and supporting investments that promote countrywide development and create productive and quality employment. Accordingly, the following are the declared policies of the State:

(1) The State shall create and maintain a stable and market-responsive investment regime that will encourage and support private sector investments.

(2) The State shall extend fiscal and non-fiscal incentives to promote investments in activities that will significantly contribute to the achievement of the country's development objectives consistent with the medium term development plan of the Philippines.

(3) The State shall grant incentives based on a system that is clear and simple to administer, time-bound and performance-based, taking into consideration the need to be competitive in attracting investments *vis-à-vis* other countries in the region.

(4) The State shall adopt an integrated, cohesive and comprehensive investment incentives law including a single administering agency, whenever applicable, that shall be recognized as the governing statute on the grant of investment incentives. To this end, all investment incentive schemes shall be rationalized, thereby harmonizing the fiscal incentives granted by all investment incentive-giving agencies of the government.

(5) The State recognizes that industrial peace is an essential element of economic growth and it is the principal responsibility of the State to ensure that such condition prevails.

(6) The State shall undertake investment promotion initiatives deemed crucial to the attainment of each investment goal and objective.

TITLE I

ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS

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

SEC. 4. *The Board of Governors; Management Committee.*

(A) The Board of Governors. – The BOI Board of Governors shall be composed of nine (9) governors: the Secretary of the Department of Trade and Industry (DTI); the Director General of the National Economic and Development Authority (NEDA); the Secretary of the Department of Finance (DOF); three (3) undersecretaries of Trade and Industry; and three (3) representatives from the private sector to be chosen by the President. The Secretary of Trade and Industry shall concurrently be the Chairman of the Board and the Undersecretary of the DTI for Industry and Investments shall concurrently be the Vice Chairman of the Board and its managing governor. The other two (2) undersecretaries of Trade and Industry may designate their permanent representatives in cases of absence or unavailability. The three (3) representatives from the private sector shall be appointed by the President for a term of four (4) years, which may be extended by the President for another four (4) years: *Provided*, That one of the governors from the private sector shall serve the Board on a full-time

basis: *Provided, however*, That upon the expiration of his term, a governor shall serve as such until his successor shall have been appointed and qualified: *Provided, further*, That no vacancy shall be filled up except for the unexpired portion of any term, and that no one may be designated to be a governor of the Board in an acting capacity but all appointments shall be *ad interim* or permanent: *Provided, finally*, That no governor from the private sector shall serve for more than eight (8) years.

(B) The BOI Management Committee. – The BOI Management Committee is hereby created and the Board of Governors may delegate some of its functions thereto, in appropriate cases, in which case, the performance of such delegated functions shall no longer require Board approval and confirmation.

SEC. 5. *Qualifications of Governors of the Board.* – The governors of the Board shall be citizens of the Philippines, at least thirty (30) years old, of good moral character and of recognized competence in the fields of law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

SEC. 6. *Appointment of Board Personnel.* – The Board shall appoint its technical staff and other personnel subject to Civil Service law, rules and regulations.

SEC. 7. *Powers and Duties of the Board.* – The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary, generally once a week on such day as it may fix. Notice of regular and special meetings shall be given to all members of the Board. The presence of five (5) members of the Board shall constitute a quorum and the affirmative vote of five (5) members of the Board in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:

(1) Promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Code;

(2) Process and approve, deny, suspend, revoke applications for registration with the Board, imposing terms and conditions as it may deem necessary to promote the objectives of this Code, including the refund and forfeiture of incentives when appropriate, restricting availment of certain incentives not needed by the project upon the determination of the Board, requiring performance bonds from BOI-accredited bonding companies, and payment of application, registration, publication and other necessary fees when warranted, may limit the availment of the tax holiday incentive to the extent that the investor's country law or treaties with the Philippines allows a credit for taxes paid in the Philippines;

(3) Delegate, in appropriate cases, some of its functions to the BOI management committee or to any official of the Board with the rank equivalent to a department director;

(4) After due hearing, decide controversies concerning the implementation of the relevant provisions of this Code that may arise between BOI-registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: *Provided*, That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President for decision. To effectively exercise this power, the Board shall have the power to subpoena witnesses, administer oaths and compel the production of books, papers and other evidences, and to cite for contempt any person/organization that fails to comply with the aforesaid processes: *Provided, further*, That to arrive at the truth, the investigator(s) may grant immunity from prosecution to any person who possesses documents or other evidence or whose testimony is necessary or relevant to determine such truth in any investigation;

(5) Recommend to the Commissioner of Immigration the entry into the Philippines for employment of foreign nationals registered with the BOI;

(6) Periodically check and verify, either by inspection of the books or by requiring regular reports, the proportion of the participation of Philippine nationals in a BOI-registered enterprise to ascertain compliance with its qualification to retain registration under this Code;

(7) Periodically check and verify the compliance by BOI-registered enterprises with the relevant provisions of this Code, the rules and regulations promulgated under this Code and the terms and conditions of registration;

(8) After due notice, cancel the registration or suspend the enjoyment of incentives benefits of a BOI-registered enterprise and/or require refund of incentives enjoyed by such enterprise including interests and monetary penalties, and levy properties of the registered enterprise, if appropriate, for (a) failure to maintain the qualifications required by this Code for registration with the Board or (b) for violation of any provision of this Code, the rules and regulations issued under this Code, the terms and conditions of registration, laws for the protection of labor or the consuming public: *Provided*, That the registration of an enterprise whose project timetable, as set by the Board is delayed by one (1) year, shall be considered automatically cancelled unless otherwise reinstated as a registered enterprise by the Board;

(9) Determine the organizational structure of the BOI taking into account Section 6 of this Code, appoint, discipline and remove its personnel consistent with the provisions of the Civil Service rules and regulations;

(10) Prepare or contract for preparation of feasibility and other pre-investment studies, either upon its own initiative or upon the request of Philippine nationals who commit themselves to invest

therein and show the capability of doing so: *Provided*, That if the venture is implemented, then the amount advanced by the Board shall be repaid within five (5) years from the date the commercial operation of said enterprise starts;

(11) When feasible and considered desirable by the Board, require BOI-registered enterprises to list their shares of stock in any accredited stock exchange or directly offer a portion of their capital stock to the public and/or their employees;

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

(13) Recommend to the President of the Philippines, in appropriate cases and subject to the conditions, which the Board deems necessary, the suspension of the nationality requirement provided for in this Code or any other nationalization statute;

(14) Establish offices in the Philippines and abroad;

(15) Prepare or contract for the preparation of industry and sectoral development programs, the National Plan for Investment Promotions (NPIP) and gather and compile statistical, technical, marketing, financial and other data required for the effective implementation of this Code;

(16) Within four (4) months after the close of the fiscal year, submit annual reports to the President that shall cover its activities in the administration of this Code, including recommendations on investment policies;

(17) Provide, directly or through Philippine Diplomatic Missions, such information as may be of interest to prospective foreign investors;

(18) Collate, analyze and compile pertinent information and studies concerning activities/industries/sector that have been or may be in the Investment Priorities Plan;

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

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

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

(1) To preside over the meetings of the Board of Governors;

(2) To render annual reports to the President and such special reports as may be requested;

(3) To act as liaison between investors seeking joint venture arrangements in particular areas of investments;

(4) Recommend to the Board of Governors such policies and measures he may deem necessary to carry out the objectives of this Code; and

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

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

(1) To act as managing governor of the Board, thereby executing all acts of administration;

(2) To preside over the meetings of the Board of Governors in the absence of the Chairman;

(3) Prepare the agenda for the meetings of the Board of Governors and submit for its consideration and approval the policies and measures which the Chairman deems necessary and proper to carry out the provisions of this Code;

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

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

TITLE II

DEFINITION OF TERMS

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

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

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

(c) “Registered enterprises” shall mean any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity incorporated and/or organized and existing under Philippine

laws; and registered with the Board in accordance with this Code or with other investment promotion agencies: *Provided, however,* That the term "registered enterprise" shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, developmental banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumers' cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions.

(d) "Technological assistance contracts" shall mean contracts for: (1) the transfer, by license otherwise, of patents, processes, formulas or other technological rights of foreign origin; and/or (2) foreign assistance concerning technical and factory management, design, planning, construction, operation and similar matters.

(e) "Foreign loans" shall mean any credit facility or financial assistance other than equity investment denominated and payable in foreign currency or where the creditor has the option to demand payment in foreign exchange and registered with the Central Bank and the Board.

(f) "Investment Priorities Plan (IPP)" shall mean the list of industries and activities prepared by the BOI, which will be eligible for incentives applicable under Section 16 of this Code which includes industries with high comparative advantage, activities that will produce new product/service and export-oriented industries.

(g) "New product/service" shall refer to any product/service not locally manufactured/rendered or not sufficiently manufactured/rendered to meet the demands for the said product/service.

The BOI, in consultation with the National Economic and Development Authority (NEDA), shall prepare an annual list of products/services that are not sufficiently manufactured/rendered.

(h) "Industries with high comparative advantage" shall refer to industries which have export potential or those which have economically viable Domestic Resource Costs (DRCs) and/or High Revealed Comparative Advantage (RCA) indices.

(i) "Domestic Resource Cost (DRC)" refers to the economic value in pesos of domestic resources needed to save or earn foreign exchange.

(j) "Revealed Comparative Advantage Index (RCA Index)" is the ratio of a given commodity's share in the country's total exports to that commodity's share in the total exports of the world.

(k) "Gross income earned" shall refer to gross sales or gross revenues derived from entitled business activities within the ecozone and freeport, less sales returns, discounts and allowances, cost of goods sold, cost of goods manufactured and sold or cost of services, as defined in the National Internal Revenue Code of 1997, as amended.

(l) "Tax Credit" shall mean any credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or by the Board or concerned IPA, if so delegated by the Secretary of Finance. The tax credit certificate issued pursuant to this Code shall not be transferable. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government: *Provided*, That the tax credit issued under this Code shall form part of the gross income of the grantee for income tax purposes under Section 32 of the National Internal Revenue Code of 1997, as amended, and therefore taxable: *Provided, further*, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.

(m) "Export sales" shall mean the sales values and/or revenues, determined from invoices, bills of lading, inward letters of credit, landing certificates and other commercial documents, of products/services (1) shipped out of the country and sold in the territory of another country by registered enterprises (direct exportation); or, (2) sold to other export producers whether registered enterprises or not, for further processing to be shipped out of the country and sold in the territory of another country by such export producers (indirect exportation); or, (3) sales of export products/services by registered enterprise and/or export producers to entities/institutions allowed to import tax and duty-free goods for consumption in the country; or, (4) services rendered to clients abroad such as knowledge, information, technology and systems and/or application or installation thereof in the project sites including but not limited to the fields of engineering and construction design, logistics, repair and maintenance, and services provided to international airlines/shipping lines/military aircraft or seacraft even if rendered locally, excluding mere deployment of people or individual practice of profession abroad (constructive exportation).

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other nonresidents of the Philippines as well as returning overseas Filipinos under the Internal Export Program of the government shall also be considered export sales.

(n) "Service provider" refers to an enterprise engaged or proposing to engage in rendering technical, professional or other services. The Board shall formulate an annual list of services not covered herein.

(o) "Export enterprise" shall mean a manufacturer, processor or service provider that earns fifty percent (50%) of its annual dollar sales or fifty percent (50%) of its sales volume from exports.

An export trader that earns one hundred percent (100%) of its annual sales from exports shall be deemed to be an export enterprise.

The Information Technology (IT) industry shall automatically be considered as export enterprise but subject to the preparation of a negative list by the Board.

(p) "Domestic enterprise" shall mean an enterprise which produces goods for sale, or renders services exclusively to the domestic market or if exporting, a portion of its output does not consistently export at least fifty percent (50%).

(q) "Production cost" shall mean the total of the cost of direct labor, raw materials and manufacturing overhead, determined in accordance with generally accepted accounting principles, which are incurred in manufacturing or processing the products of a registered enterprise.

(r) "Processing" shall mean converting of raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means, or by a special treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or desiccating, quick freezing, that results in a change in the nature or state of the products. Merely packing or packaging shall not constitute processing.

TITLE III
INVESTMENTS WITH INCENTIVES
CHAPTER I
QUALIFIED ACTIVITIES

SEC. 11. *Investment Priorities Plan (IPP)*. – Not later than the end of June of every third year, the BOI, after consultation with the investment promotion agencies and other appropriate government agencies and the private sector, shall submit to the President the IPP: *Provided, however,* That the deadline for submission may be extended by the President.

Upon approval of this Code, the IPP shall be prepared within one hundred twenty (120) days by the BOI, in consultation with the NEDA, the IPAs, other appropriate government agencies, and the private sector and in accordance with the criteria for determining the list of industries eligible for incentives under Section 16 (A) – (G) of this Code.

The IPP shall be prepared once every three (3) years by the BOI to be submitted to the President for his approval not later than the end of June of the year immediately preceding the three (3)-year period to be covered by the IPP.

The IPP shall contain the industries or activities with high comparative advantage as evidenced by indicators such as DRC and RCA. It shall also include those that will engage in the production or manufacture of new product/service and export product/service.

SEC. 12. *Criteria in the Investment Priorities Plan.* – No economic activity shall be included in the IPP unless it is shown to be economically, technically and financially sound after thorough investigation and analysis by the Board.

The determination of preferred areas of investment to be listed in the IPP shall be based on long-run comparative advantage, taking into account the value of social objectives and employing economic criteria along with market, technical and financial analyses.

The Board shall take into account the following:

- (a) Primarily, the economic soundness of the specific activity as shown by its economic internal rate of return;
- (b) The extent of contribution of an activity to a specific developmental goal;
- (c) Other indicators of comparative advantage (e.g., DRC, RCA); and
- (d) The market and technical aspects and considerations of the activity proposed to be included.

SEC. 13. *Amendments.* – Subject to publication requirements and the criteria for investment priority determination, the BOI may, at any time, add additional areas in the IPP, alter any of the terms of the declaration of an investment area or terminate the status of preference. In no case, however, shall any amendment of the IPP impair whatever rights that may have already been legally vested in qualified enterprises which shall continue to enjoy such rights to the full extent allowed under this Code. The Board shall not accept applications in an area of investment prior to the approval of the same as a preferred area nor after approval of its deletion as a preferred area of investment.

SEC. 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, or until the Board approves registration of enterprises.

CHAPTER II

INCENTIVES TO REGISTERED ENTERPRISES

SEC. 15. *Governing Incentive Provision for Investment Promotion Agencies.* – All existing and future IPAs vested with the power to grant incentives, including but not limited to the PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA, ZCSEZA and PHIVIDECA Industrial Authority, as well as all industries granted investment incentives under special laws, shall draw their incentives under this Code.

For this purpose, the incentive provisions of the governing laws of the investment promotion agencies and industries are hereby repealed accordingly.

SEC. 16. *Incentives to Registered Enterprises.* – All investment promotion agencies may grant the following incentives to their respective registered enterprises to the extent of the activity/project:

(A) **Income Tax Holiday or Net Operating Loss Carryover**

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

Category A – Domestic-oriented activities located within the National Capital Region (NCR) shall be entitled to four (4) years income tax holiday.

Category B – Domestic oriented activities producing/rendering distinct or new products/services or located outside NCR shall be entitled to six (6) years income tax holiday.

Category C – Export-oriented activities or a limited number of domestic-oriented activities with strong backward and forward linkages shall be entitled to eight (8) years income tax holiday.

Enterprises with existing operations that qualify for registration shall be limited to their incremental capacities and/or incremental sales value for ITH availment.

Enterprises that register within six (6) years from the effectivity of this Act with their respective IPAs shall be granted a maximum period of twelve (12) years income tax holiday if the activities they engage in will exhibit high social economic returns, require large investments and comply with any of the following conditions:

- (a) Project would create high value-added;
- (b) Project would generate sizeable employment; or
- (c) Project would use new and internationally accepted and high level of technology.

Such project shall be determined and approved by a unanimous decision of an inter-agency committee composed of the secretaries of the DTI, NEDA and DOF. The activities covered herein

shall also be granted the other incentives even these may or may not be listed in the IPP: *Provided*, That all the requirements are complied with.

Net Operating Loss Carryover (NOLCO) – The net operating loss of the business or enterprise during the first five (5) years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next five (5) consecutive taxable years immediately following the year of such loss: *Provided, however*, That operating loss resulting from availment of incentives provided in this Code shall not be entitled to NOLCO.

A registered enterprise availing of ITH or NOLCO must secure a prior certification of entitlement from the concerned IPAs before filing their income tax returns (ITR) with the Bureau of Internal Revenue (BIR). For this purpose, the statutory time for filing of the income tax returns (ITR) of the concerned registered enterprise with the BIR shall be automatically extended for a period of sixty (60) days therefrom, without penalties, interests and surcharges.

Registered enterprises availing of the ITH as herein provided shall not be entitled to avail of the NOLCO and vice-versa. Registered enterprises shall have the option to avail of the ITH or NOLCO at the time of registration, but once the option is made, no amendment shall be allowed.

(B) Imposition of a Tax Rate of Five Percent (5%) on Gross Income Earned (GIE) – Except for real property tax on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within an economic zone or freeport. In lieu thereof, five percent (5%) of the gross income shall be paid and remitted as follows:

I. For PEZA Special Economic Zones or Ecozones

(a) three percent (3%) shall be remitted to the national government; and

(b) two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

II. For Subic Bay Freeport/Clark Special Economic Zone/John Hay Special Economic Zone/Poro Point Economic and Freeport Zone/Morong Special Economic Zone

(a) three percent (3%) shall be remitted to the national government;

(b) one percent (1%) shall be remitted directly to the local government units (LGUs) concerned; and

(c) one percent (1%) to be included in a development fund to be utilized for the development of municipalities contiguous to the base areas or ecozone/freeport.

III. For the Zamboanga City Economic Zone and Freeport

(a) two percent (2%) shall be remitted to the national government; and

(b) three percent (3%) which shall be allocated as follows.

(i) two percent (2%) to the City of Zamboanga; and

(ii) one percent (1%) to Barangay Special Development Fund.

IV. For the Cagayan Economic Zone and Freeport

(a) two percent (2%) shall be remitted to the national government;

(b) one percent (1%) shall be remitted directly to the Province of Cagayan;

(c) one-half percent (1/2%) to be shared by the municipalities affected by the declaration of the zone in proportion to their income from business activities within the zone; and

(d) one and one-half percent (1 1/2%) shall be remitted directly to the Cagayan Economic Zone Authority.

The five percent (5%) gross income earned incentive shall not be available to BOI and PHIVIDEA registered enterprises.

(C) Accelerated Depreciation – Accelerated depreciation of plant, machinery and equipment that are reasonably needed and actually used for the production and transport of goods and services may be depreciated using a depreciation rate twice as fast as the normal rate in accordance with the rules and regulations prescribed by the Secretary of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended: *Provided*, That the taxpayer notifies in writing the Commissioner of Internal Revenue at the beginning of the depreciation period as to what depreciation rate allowed thereunder shall be used by the said taxpayer.

(D) Capital Equipment Incentives – Importation's of capital equipment, spare parts, production consumables, or those required for pollution abatement and control including consignment thereof by registered export-oriented enterprises upon the effectivity of this law, shall be exempted to the extent of one hundred percent (100%) of the taxes and customs duties: *Provided*, That the importation thereof shall be used exclusively by the registered enterprise in its registered activity: *Provided, further*, That the IPAs will undertake inquiries of their local availability: *Provided, finally*, That importation of source documents by enterprises engaged in information technology shall likewise be fully exempt for the period stated herein.

The aforementioned importations of registered domestic-oriented enterprises shall be subject to payment of one percent (1%) customs duty and the value-added tax (VAT) as prescribed under the NIRC of 1997, as amended.

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

- (1) If made to another enterprise enjoying tax and duty exemption on imported capital equipment;
- (2) If made to another enterprise, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
- (3) Exportation of the capital equipment, machinery, spare parts or source documents or those required for pollution abatement and control; and
- (4) For reasons of proven technical obsolescence.

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

A tax credit equivalent to the amount of taxes and/or duties paid on raw materials, supplies, parts and semi-finished products used in the fabrication of the machinery and capital equipment shall be given to registered export-oriented enterprises which purchased said machinery and capital equipment from a domestic manufacturer: *Provided*, (a) That said capital equipment, machinery and spare parts will be used exclusively by the registered enterprise in its registered activity; (b) That the capital equipment or machinery where the raw materials, supplies, parts and semi-finished products were used would have qualified for tax and duty-free importation; (c) That the value-added tax portion claimed as tax credit shall be reflected in the VAT return of the registered enterprise as a deduction from input tax under Section 110(c) of Republic Act No. 8424, otherwise known as "The Tax Reform Act of 1997," only upon issuance of the tax credit certificate; and (d) That the approval of the Board or the concerned IPA is obtained by the registered enterprise. If the registered enterprise sells, transfers or disposes of

these machineries, capital equipment and spare parts, the provision in the preceding paragraphs for such disposition shall apply.

The tax credit certificate issued shall be valid for a period of ten (10) years from date of issuance: *Provided, however*, That it shall form part of the gross income of the grantee for income tax purposes and therefore taxable: *Provided, finally*, That applications for tax credit under this subsection must be filed within one (1) year from date of delivery, otherwise, this incentive shall be considered as waived.

(E) Raw Material Incentives – Every registered export-oriented enterprise shall enjoy a tax credit equivalent to the internal revenue taxes and customs duties paid on the supplies, raw materials and semi- manufactured products used in the manufacture, processing or production of its export products forming part thereof, exported directly and indirectly by the registered export-oriented enterprise, based on the actual taxes and duties paid for such materials/supplies/semi-manufactured products by the registered enterprise.

The tax credit certificate issued shall be valid for a period of ten (10) years from date of issuance: *Provided, however*, That it shall form part of the gross income of the grantee for income tax purposes and therefore taxable: *Provided, finally*, That applications for tax credit under this subsection must be filed within two (2) years from exportation of the final product for indirect exports or one (1) year for direct exports, otherwise, this incentive shall be considered as waived.

All applications for tax credit must be acted upon within a period of ninety (90) days from official acceptance, otherwise, they shall be deemed automatically approved.

Registered export-oriented enterprises shall have access to the utilization of the bonded warehousing system.

(F) Incentives on Breeding Stocks and Genetic Materials – (1) Importation of breeding stocks and genetic materials within ten (10) years from the date of registration of commercial operation of the enterprise shall be exempt from all taxes and duties: *Provided*, That such breeding stocks and genetic materials are: (a) reasonably needed in the registered activity; and (b) approved by the Board or the concerned IPA.

(2) A tax credit equivalent to one hundred percent (100%) of the value of the taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported shall be given to the registered enterprise which purchases breeding stocks and genetic materials from a domestic producer: *Provided*, (a) That said breeding stocks and genetic materials would have been qualified for tax and duty-free importation under the preceding paragraph; (b) That the breeding stocks and genetic materials are reasonably needed in the registered activity; (c) That

approval of the Board or the concerned IPA has been obtained by the registered enterprise; and (d) That the purchase is made within ten (10) years from the date of registration of commercial operation of the registered enterprise.

The tax credit certificate issued shall be valid for a period of ten (10) years from date of issuance: *Provided, however,* That the tax credit shall form part of the gross income of the grantee for income tax purposes and therefore taxable.

(G) **Deferred Imposition of the Minimum Corporate Income Tax (MCIT)** – The Minimum Corporate Income Tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year shall be imposed when the minimum corporate income tax is greater than the income tax computed under the NIRC of 1997, as amended, for the taxable year: *Provided, however,* That said MCIT shall be imposed only after the enterprise's entitlement period to the income tax-based incentives.

(H)(1) **Tax Treatment of Merchandise in the Export Processing Zones, Free Trade Zones or Freeports** – (a) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the export processing zone, free trade zone or freeport to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise, whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

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

(c) Domestic merchandise sent from the export processing zone, free trade zone or freeport to the customs territory shall, whether or not combined with or made part of other articles likewise of local origin or manufactured in the Philippines while in the export processing zone, free trade zone or freeport, be subject to internal revenue laws of the Philippines as domestic goods sold, transferred or disposed of for local consumption.

(d) Merchandise sent from the export processing zone, free trade zone or freeport to the customs territory shall, whether or not combined with or made part of other articles while in the zone, be subject to rules and regulations governing imported merchandise. The duties and taxes shall be based on the value of said imported materials (except when the final product is exempt).

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

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

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

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

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

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

(I) Exemption from Local Taxes and Licenses - Notwithstanding the provisions of law to the contrary, registered ecozone enterprises shall, to the extent of their construction, operation or production inside the ecozone, be exempt from the payment of any and all local government imposts, fees, licenses or taxes.

(J) Employment of Foreign Nationals - Subject to the provisions of Section 29 of Commonwealth Act No. 613, as amended, a registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding ten (10) years from its registration: *Provided*, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of the president, treasurer and general manager or their equivalents may be retained by foreign nationals beyond the period set forth herein and such officer is the owner or

a stockholder owning at least ten percent (10%) of the outstanding capital stock of the registered enterprise and he remains the owner or maintains his stockholdings therein.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. They shall be issued a multiple entry visa, valid for a period of three (3) years, to enter and leave the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports. The validity of the multiple entry visa shall be extendible yearly.

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

SEC. 17. *Incentive to Investors.* – A foreign national covered under Section 16 (J) of this Code who invests an amount of at least US\$150,000.00, either in cash and/or equipment, in a registered enterprise shall be entitled to a Special Investor's Resident Visa: *Provided, That:*

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

(4) He has not been institutionalized for any mental disorder or disability: *Provided, further, That* in securing the special investor's resident visa, the alien-applicant shall be entitled to the same privileges provided for under Section 16(J), last paragraph.

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

The minimum amount for investment provided for under this Code shall be made applicable to visas granted to investors by the PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA, ZCSEZA, PHIVIDEA and other investment promotion agencies.

CHAPTER III

REGISTRATION OF ENTERPRISES

SEC. 18. *Qualifications of a Registered Enterprise.* – To be entitled to register to avail of incentives, an applicant must satisfy the following conditions:

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

(2) That it will engage in an activity included in the IPP or projects identified under Section 16(A), paragraphs 6 and 7;

(3) That the activity it will engage in is not within the activities reserved by the Constitution to Philippine citizens or corporations owned and controlled by Philippine citizens, such as the operation of public utilities.

For this purpose and any law to the contrary notwithstanding, the business of constructing and repairing vessels or parts thereof shall not be considered a public utility and no certificate of public convenience shall be required thereof; and

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

CHAPTER IV

BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

SEC. 19. *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 and its implementing rules and regulations, remittability shall be as provided therein:

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

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

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

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

CHAPTER V

ADMINISTRATION OF INCENTIVES

SEC. 20. *Administration and Implementation of Incentives.* The investment promotion agencies shall be responsible for the implementation and administration of the incentives granted to their respective registered enterprises: *Provided, That* any incentive administration policy adopted by the

Board for incentives common to all registered enterprises shall be uniformly applied by all incentive administering agencies.

SEC. 21. *Application.* – Applications shall be filed with the IPAs or any other government office authorized by the Board to accept applications recorded in a registration book and the date appearing therein and stamped on the application shall be considered the date of official acceptance.

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

SEC. 22. *Criteria Evaluation of Application.* – The following criteria will be considered in the evaluation of applications for registration under a preferred area:

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

SEC. 23. *Approval and Registration Procedures.* – The Board is authorized to adopt rules and regulations to facilitate action on applications filed with it; prescribe criteria for the evaluation of several applications; devise standard forms for the use of applicants and delegate to the regional offices of the DTI the authority to receive and process applications for enterprises to be located in their respective regions.

Applications filed shall be considered automatically approved if not acted upon by the Board within fifteen (15) working days from official acceptance thereof. Deferment by the Board shall be considered as an official action: *Provided, however,* That the Board may defer action to a specific application not more than twice: *Provided, finally,* That the Board shall act upon the application within ten (10) working days from compliance with the cause of the last deferment.

SEC. 24. *Certificate of Registration.* – A BOI-registered enterprise under this Code shall be issued a Certificate of Registration under the seal of the Board of Investments and the signature of its Chairman and/or such other officer or employee of the Board as it may empower and designate for the purpose. The certificate shall be in such form and style as the Board may determine and shall state, among other matters:

- (a) the name of the registered enterprise;
- (b) the area of investment in which the registered enterprise is proposing to engage;

(c) the type of the activity it is undertaking or proposing to undertake; and

(d) the other terms and conditions to be observed by the registered enterprise by virtue of the registration.

SEC. 25. *Validity of BOI registration.* – A firm's registration with the Board shall be valid for a period of twenty (20) years from the start of commercial operation: *Provided, however,* That registered enterprises enjoying the tax treaty on double taxation privilege shall retain its registration solely for the said purpose.

SEC. 26. *Treaties on Double Taxation Preferential Tax Rate.* All projects registered with any of the IPAs shall be considered as BOI-registered preferred pioneer areas of activities for purposes of the treaties on double taxation/preferential tax rates with other countries.

SEC. 27. *Extension of Period of Availment.* – The availment period of the incentives provided herein may be extended by the concerned investment promotion agency in the event that the registered enterprise has suffered operational *force majeure* that has impaired its viability.

SEC. 28. *Duration of Incentives.* – Enterprises registered with PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA and ZCSEZA may enjoy the ITH or NOLCO granted by the concerned IPA prior to availment of the five percent (5%) GIE.

Fiscal incentives under this Code with no specific period of availment shall be terminated after a period of twenty (20) years from date of registration or start of commercial operation, whichever is applicable: *Provided, however,* That this shall not be applicable to the incentive of tax and duty free importation of capital equipment, raw materials, supplies and spare parts of enterprises registered with PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA and ZCSEZA.

SEC. 29. *Payment in the Form of Foreign Currencies.* – All IPAs may be allowed to receive foreign currencies as payment of application fees, fines and penalties, including refund of incentives.

TITLE IV

FINAL PROVISIONS

SEC. 30. *Personnel.* – All positions in the Board shall be governed by a compensation, position classification systems and qualification standards approved by the managing governor with the concurrence of the Board of Governors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans of a government financial institution and shall be subject to periodic review by the Board no more than every two (2) years without prejudice to yearly merit reviews or increases based

on productivity. The Board shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.

SEC. 31. *Authority to Retain Funds.* – The Board shall have the authority to retain one-half of the funds arising from the collection of fees from applications/certifications of registration and/or incentives availment, fines, penalties and refund of incentives and other sources of income subject to the usual accounting process.

SEC. 32. *Vested Rights.* – Existing registered enterprises which are enjoying the incentives under Books One and Six of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, shall continue to enjoy such incentives under their respective registration, in accordance with the provisions of their respective laws prior to the enactment of this Code: *Provided, however,* That enterprises which made investments on projects approved or registered by the investment promotion agencies six (6) months before the effectivity of this Code may opt to be governed by the provisions of this Code.

SEC. 33. *Protection of the Environment.* – The BOI, in coordination with the appropriate agencies, shall take concrete and appropriate steps to enact the proper measures for the protection of the environment and shall coordinate with the Environmental Management Bureau of the Department of Environment and Natural Resources (DENR) to avoid undue delay in the issuance of the required Environmental Compliance Certificate (ECC): *Provided, however,* That applications for environmental clearances, permits and/or licenses of registered enterprises shall be acted upon by the appropriate government agency within one hundred twenty (120) days from date of official acceptance. In the event that the appropriate government agency failed to act within the aforementioned date, the application for the said environmental requirement shall be deemed complied with for purposes of operation of the registered activity: *Provided, finally,* That the Board may withdraw the certificate of registration issued to the enterprise should the appropriate government agency eventually deny the application.

SEC. 34. *Suspension and Forfeiture of Incentives of BOI-Registered Enterprises; Refund and Penalties.* – When there is probable cause to believe that the registered enterprise has violated its registration terms and conditions, the Board may suspend its availment of incentives, until proven otherwise.

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

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

Any enterprise which violates any provision of this Code, its implementing rules and regulations, the terms and conditions of its registration, of any lawful directive of the Board, or willfully commits any fraudulent misrepresentation in the course of filing an application for registration, or in the availment of incentives, including all official reports required to be submitted by the Board, shall be subject to a fine of not more than One million pesos (P1,000,000.00), without prejudice to the disapproval of its application for registration or cancellation of its registration.

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

Responsible officers of such enterprises, including duly appointed external consultants-agents who knowingly commit, aid or abet the commission of any of the acts mentioned above, shall be subject to a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00).

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

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

SEC. 35. Appeals from Board's Decision. – All orders or decisions of the Board in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision, unless a *supersedeas* bond equivalent to the amount stated in the order or decision is posted by the appellant.

All appeals involving cases decided by the Board, except as provided in the next succeeding paragraph, shall be filed with the Court of Appeals within fifteen (15) days from notice of the order or decision or of the denial of the appellant's motion for new trial or reconsideration. Within the same period, the aggrieved party may file a motion for reinvestigation or reconsideration. Only one (1) motion for reconsideration shall be allowed, subject to the posting of the aforementioned *supersedeas* bond which shall be limited to cash and/or surety bond from a BOI-accredited bonding company.

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

SEC. 36. *Effectivity of Implementing Rules and Regulations.* – The IPAs, NEDA, DOF, DTI and other appropriate government agencies shall promulgate rules and regulations to implement the intent and provisions of this Code. Such rules and regulations shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

SEC. 37. *Separability Clause.* – The provisions of this Code are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

SEC. 38. *Repealing Clause.* – The following provisions or laws are hereby repealed:

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

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

(3) Presidential Decree No. 218 – “Prescribing Incentives for the Establishment of Regional or Area Headquarters;”

(4) Presidential Decree No. 1419 – “Prescribing Incentives for the Establishment of Multinational Regional Warehouses by Multinational Companies Supplying Spare Parts or Manufactured Components and Raw Materials to the Asia-Pacific Area;”

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

Presidential Decree No. 1893 – “Further Amending Presidential Decree (P.D.) No. 1623 entitled, ‘Authorizing the Issuance of Special Investors Resident Visas to Aliens and for Other Purposes,’ as amended;”

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

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

(8) Presidential Decree No. 538 - "A Decree Creating and Establishing the PHIVIDEC Industrial Authority and Making it a Subsidiary Agency of the Philippine Veterans Investment Development Corporation, Defining its Powers, Functions and Responsibilities and for Other Purposes;"

(9) Executive Order No. 815 - "To Safeguard and Promote the Development of the Philippine Semiconductor Electronics Industry;"

(10) Executive Order No. 1045 - "Modifying Fiscal Incentives to BOI-Registered Enterprises;"

(11) Republic Act No. 7888 - "An Act to Amend Article 7(13) of Executive Order No. 226, Otherwise Known as the Omnibus Investment Code of 1987;"

(12) Book I of Executive Order No. 226 is hereby absolutely repealed;

(13) Books V and VI of Executive Order No. 226 are hereby absolutely repealed;

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

(15) The provisions of Section 12 (b), (c), (g) of Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992, Section 6 of Proclamation No. 984, "Creating the Morong Special Economic Zone pursuant to Republic Act No. 7227," Section 5 of Proclamation No. 216, "Creating the Poro Point Special Economic Zone Pursuant to Republic Act No. 7227;" Section 3 of Executive Order No. 32, Series of 1994, amending Executive Order 103, Series of 1993, "Establishing the John Hay Development Corporation;" Section 4, paragraphs (e), (f) and (g) of Republic Act No. 7903, otherwise known as "Zamboanga City Special Economic Zone Act of 1995;" and Section 4, paragraphs (b), (c) and (e) of Republic Act No. 7922 entitled, "Cagayan Special Economic Zone Act of 1995" which are inconsistent with this Act, are hereby repealed or modified accordingly: *Provided, however,* That they shall draw their respective incentives from any of those provided for under this Code.

(16) The incentives provisions under other investment incentives laws catering to specific industries are hereby repealed as follows:

Section 36(f) of Presidential Decree No. 705, otherwise known as the "Revised Forestry Code;" Section 12 of Presidential Decree No. 87, otherwise known as the "Oil Exploration Development Act of 1972;" Sections 8, 9 and 10 of Presidential Decree No. 538, otherwise known as the "Philippine Veterans Investment Development Corporation;" Sections 16 and 17 of Presidential Decree No. 972, otherwise known as the "Coal Development Act;" Sections 4(a) and (d) of Presidential Decree No. 1442, otherwise known as the "Geothermal Exploration and Development Act;" Sections 10 and 11 of

Republic Act No. 7156, otherwise known as the "Mini-hydroelectric Incentive Act;" Sections 6, 7 and 8 of Republic Act No. 7103, otherwise known as the "Iron and Steel Industry Act;" Sections 6 and 7 of Republic Act No. 7471, otherwise known as the "Philippine Overseas Shipping Development Act;" Sections 19 and 20 of Republic Act No. 7279, otherwise known as the "Urban Development and Housing Act of 1992;" Sections 61 and 62 of Republic Act No. 6938, otherwise known as the "Cooperative Code of the Philippines;" Sections 16 and 17 of Republic Act No. 7844, otherwise known as the "Export Development Act of 1994;" Section 12 of Republic Act No. 8047, otherwise known as the "Book Publishing Industry Development Act;" Sections 83, 90, 91, 92 and 93 of Republic Act No. 7942, otherwise known as the "Philippine Mining Act of 1995;" Section 12 of Republic Act No. 7718, otherwise known as the "Build-Operate-Transfer Law;" Section 3(a), (c), (d) and (h) of Republic Act No. 8502, otherwise known as the "Jewelry Industry Development Act of 1998;" Section 35 of Republic Act No. 8550, otherwise known as the "Philippine Fisheries Code of 1998;" and Section 9 of Republic Act No. 8479, otherwise known as the "Downstream Oil Deregulation Act of 1998;"

(17) The provisions of Commonwealth Act No. 146, as amended, are hereby modified accordingly; and

(18) The provisions of Section 3(e) and (f) of Republic Act No. 7042, as amended by Republic Act No. 8179, otherwise known as "The Foreign Investments Act, as Amended," are hereby modified by Section 10(P) and (Q) of this Code. The provision of Section 5 of Republic Act No. 7103 is modified accordingly.

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

SEC. 39. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Approved,