

HOUSE OF REPRESENTATIVES

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House Bill No. _____

Introduced by Representative Susan A. Yap

EXPLANATORY NOTE

Following the global economic downturn that brought the economy almost to a stop in 2009, the country is now in need of fuel to spur growth in order to help the economy back on its feet. One of which takes the form of investments that should be able to facilitate economic activity in the country. Indeed, empirics will show the positive correlation between investments and economic growth, which has been earlier posited by economic literature.

In fact, even the 1987 Philippine Constitution acknowledged the significant role of the private sector, endeavoring optimum provision of opportunities to encourage its expansion. It is thus in the best interest of the country to enhance its competitiveness in the global economy through investment promotion and industrial development activities geared towards employment generation and countrywide development.

In view of such objectives, the government has put in place an array of incentives to encourage the inflow investments from the pockets of both domestic and foreign investors, ranging from the comprehensive Omnibus Investment Code (Executive Order 226 of 1987) to special laws that seek to prop up industries such as exports and renewable energy, among others. Therein, however, lays the folly as the plate of incentives has become seemingly complex, redundant and confusing to prospective investors, as well as an administrative nightmare for the bureaucracy. Not only that, the government coffers stand to suffer as more and more tax incentives prevent inflows of revenues. While incentives offer perks for investors, thus making it desirable to invest in the country, a balance must be achieved between revenue generation and investment climate. This bill seeks to offer this balance by providing for an updated and coherent investment policy that will enhance the country's investment programs and strategies but at the same time ensures that incentives are rationalized to address the problem of too many revenue-leakages.

To start off, the proposed measure distinguishes "strategic" enterprises from the "non-strategic" enterprises, where the former are seen to create more value-added to the economy. These are in turn, beneficiaries of the perks enjoyed by export enterprises, along with duty and value added tax (VAT) refunds on their capital equipment and raw material imports. Meanwhile, non-strategic enterprises - although not entitled to income tax holiday (ITH) or reduced income tax rate - will get net operating loss carry over (NOLCO), accelerated depreciation, and double deduction for training expenses, and research and development.

The bill likewise provides "locational incentives" for 20 years to domestic enterprises setting up shop in the 30 poorest provinces or "less-developed areas". These include a reduced income tax, NOLCO, VAT and duty refunds on capital equipment and raw material imports, accelerated depreciation, and double deduction for training expenses and research and development.

To carry out the objectives of the said measure, the Board of Investments – the major implementing agency – is given a roster of functions and powers that will improve its service-

delivery, including the formulation of the Investment Priority Plan and provision of assistance to micro and small enterprises, among other things. Under this agency, the Investment Promotion Action Center (i-PAC) shall be institutionalized to serve as the source of investment information and as the link to all government agencies to facilitate entry, retention, expansion and diversification of investments.



SUSAN A. YAP

Representative, 2nd District of Tarlac

HOUSE OF REPRESENTATIVES

House Bill No. 938

Introduced by Representative Susan A. Yap

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

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

5
6 Members of the Board shall receive a reasonable *per diem* for every meeting attended.
7

8 SEC. 5. *Qualifications of the BOI Board of Governors.* - The governors of the BOI shall be citizens
9 of the Philippines, at least thirty-five (35) years old, with proven probity and integrity, of good moral
10 character and of recognized competence in economics, business, marketing, advertising,
11 management or its equivalent.
12

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

21 A. Investment Promotion-Related Functions:

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

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

26 (3) Gather, consolidate and monitor investment data and information (both domestic and
27 foreign direct investments) from all IPAs and other concerned government agencies for submission
28 to the President and to Congress;

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

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

33 (6) Establish and operate regional investment centers in the Philippines, and establish and
34 operate overseas investment offices.
35

36 B. Regulatory Functions:

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

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

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

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

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

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

52 (7) Promulgate rules, regulations and policies on incentives which the IP As are mandated to
53 implement;

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

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

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

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

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

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

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

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

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

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

Provided, further, That a registered enterprise may file a motion for reconsideration of a decision or final order within fifteen (15) days from notice thereof, with proof of service on the parties affected. No second motion for reconsideration of a decision or final order by the same party shall be entertained;

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

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

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

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

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

SEC. 7. Appointment of BOI Personnel. - The Managing Governor, upon recommendation of the Board, shall appoint its personnel subject to civil service laws, rules and regulations. All positions in the BOI shall be governed by compensation, position classification systems, and qualification standards approved by the Board based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan of Philippine Economic Zone Authority (PEZA) and shall be subject to periodic review by the

1 Board without prejudice to yearly merit reviews or increases based on productivity. The BOI shall
2 therefore be exempt from existing laws, rules and regulations on compensation, position
3 classification and qualification standards.

4
5 SEC. 8. *The Investment Promotion Action Center (i-PAC).* - There is hereby created an i-PAC in
6 the BOI in place of the current One Stop Action Center (OSAC) created under Executive Order
7 No. 136, series of 1987, entitled "Establishing the Council for Investment in Trade, Industry,
8 Tourism, Agriculture, Natural Resources, Transportation, Communication and Services, and for
9 Other Purposes". The i-PAC shall serve as the source of investment information and as the link to
10 all government agencies to facilitate entry, retention, expansion and diversification of investments.
11 The i-PAC shall be composed of all government agencies involved in the establishment or operation
12 of business including, but not limited to, all IPAs, the Securities and Exchange Commission (SEC),
13 the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC), the Bureau of Immigration
14 (BI), the Department of Trade and Industry (DTI), the Department of the Interior and Local
15 Government (DJLG), the Department of Agriculture (DA), the Department of Environment and
16 Natural Resources (DENR), the Department of Labor and Employment (DOLE), the Department
17 of Foreign Affairs (DFA), the Department of Energy (DOE), the Department of Public Works and
18 Highways (DPWH), the Department of Agrarian Reform (DAR) and such other agencies as may be
19 determined by the Board. The government agencies involved shall designate representatives to the i-
20 PAC that are clothed with authority to act and approve/deny any matter relative to their respective
21 agencies.

22
23 SEC. 9. *Powers and Functions of the i-PAC.* - The i-PAC shall exercise and perform the
24 following powers and functions:

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

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

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

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

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

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

41
42 SEC. 10. *Honoraria and Allowances.* - The Board shall provide for reasonable honoraria and
43 allowances for the i-PAC members and its personnel

44 45 TITLE II 46 DEFINITION OF TERMS

47
48 SEC. 11. *Definition of Terms.* - As used herein, the following shall mean:

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

50 (b) "Investments promotion agencies (IPAs)" shall include the BOI, the PEZA, the Bases
51 Conversion Development Authority (BCDA), the Subic Bay Metropolitan Authority (SBMA), the
52 Clark Development Corporation (CDC), the John Hay Management Corporation (JHMC), the Poro
53 Point Management Corporation (PPMC), the Bataan Technology Park Inc. (BTPI), the Cagayan
54 Economic Zone Authority (CEZA), the Zamboanga City Special Economic Zone Authority

(ZCSEZA), the PHIVIDECA Industrial Authority (PIA), the Aurora Special Economic Zone Authority (ASEZA), and all other IPAs that may be created by law.

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

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

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

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

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

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

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

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

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

(4) sales of goods to a nonresident buyer, except automobiles and non-essential goods, manufactured or processed in the Philippines, for delivery to a resident in the Philippines: *Provided,* That they are paid for in acceptable foreign currency. *Provided,* That in the case of paragraph (2) above, only sales to an export enterprise of capital equipment, raw materials, production supplies, packaging materials and other production requirements needed for the registered activity of the export enterprise; and sales to international sea or air transport operations of goods, equipment, spare parts and supplies, except fuel, to be used in the aircraft or seacraft and capital equipment needed for the shipping or air transport operations, shall be entitled to incentives for export enterprises under this Code. Sales of locally manufactured or assembled goods for household and personal use under the Internal Export Program and similar programs of the government shall be deemed as "export sales".

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

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

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

(3) services rendered to international airlines or shipping lines, or foreign military aircraft or seacraft, or information and communication technology enterprises, even if rendered locally. *Provided*, That in the case of paragraph (2) above, only services for an export enterprise performed by subcontractors and/or contractors in the manufacture or processing of goods; other services necessary for the registered activity of an export enterprise; and in the case of paragraph (3), only services for the overhaul, repair and maintenance for international shipping or air transport operations, and foreign military aircraft or seacraft, shall be entitled to incentives for export enterprises under this Code.

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

(j) An "export enterprise" shall mean a registered enterprise which is a manufacturer, processor or service provider and whose export sale of its products or services exceeds seventy percent (70%) of its total annual production of the preceding taxable year. An export trader that buys and sells for its own account products of micro and small enterprises and earns one hundred percent (100%) of its annual sales from exports of the same shall be deemed to be an export enterprise.

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

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

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

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

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

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

(q) "Ecozone developer" shall refer to a business entity duly registered with the PEZA to develop, operate and maintain an ecozone that will put up the required infrastructure facilities and utilities, to include among others, light and power system, water supply and distribution system, sewerage and drainage system, pollution control devices, communication facilities, paved road

1 network, administration building, standard factory buildings, and other facilities as may be required
2 by enterprises registered with the PEZA.

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

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

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

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

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

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

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

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

45 46 TITLE III 47 INVESTMENTS WITH INCENTIVES

48 49 CHAPTER I 50 QUALIFIED ACTIVITIES

51
52 SEC. 12. *Investments Priorities Plan (IPP)*. - The BOI, upon consultation with the Office of the
53 President, concerned IPAs and appropriate government agencies and the private sector, shall

1 formulate the IPP to be submitted to the President for his/her approval. In the listing of the activity
2 in the IPP, the following shall be complied with:

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

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

6 (1) Substantial amount of investments;

7 (2) Considerable generation of employment;

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

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

14 (c) The activity must comply with the specific qualification requirements and/or conditions
15 for a particular sector or industry as set by the Board and other limitations the Board may determine.
16

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

25 SEC. 14. *Publication*. - Upon approval of the IPP, in whole or in part, or upon approval of an
26 amendment thereof, the IPP or the amendment, specifying and declaring the areas of investment
27 shall be published in at least one (1) newspaper of general circulation and all such areas shall be open
28 for application until publication of an amendment or deletion thereof.
29

30 SEC. 15. *Strategic Projects*. - The President, upon recommendation of the Board, may allow
31 registration of a strategic project that may not be listed in the IPP, but will locate in the country as a
32 result of stiff competition with other countries.
33

34 A strategic project is a project that exhibits high social economic returns and requires large
35 investments that will significantly contribute to the country's economic development. In the exercise
36 of this authority, any three (3) of the following criteria shall be taken into account: (1) large capital
37 investments; (2) generate sizeable employment; (3) use of new and internationally accepted high level
38 of technology; and (4) creation of value-added.
39

40 CHAPTER II

41 INCENTIVES TO REGISTERED ENTERPRISES

42

43 SEC. 16. *Performance-Based Incentives*. - This Act shall provide two (2) types of performance-
44 based incentives to qualified enterprises, as herein classified: (1) the direct taxes incentives such as,
45 Net Operating Loss Carryover (NOLCO), a accelerated depreciation and double deduction for
46 training expenses and double deduction for research and development; and (2) the indirect taxes
47 incentives, such as zero percent (0%) rate of value-added tax (VAT) on sales, exemption from taxes
48 and/or customs duties on importation of capital equipment, raw materials and source documents
49 and wharfage dues and export tax.
50

51 Qualified enterprises which avail of the Income Tax Holiday (ITH), or Reduced Income
52 Tax, or the five percent (5%) tax rate on Gross Income Earned (GIE), as the case may be, shall be
53 precluded from availing of the performance-based direct taxes incentives.
54

1 network, administration building, standard factory buildings, and other facilities as may be required
2 by enterprises registered with the PEZA.

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

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

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

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

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

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

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

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

45 46 TITLE III 47 INVESTMENTS WITH INCENTIVES

48 49 CHAPTER I 50 QUALIFIED ACTIVITIES

51
52 SEC. 12. *Investments Priorities Plan (IPP).* - The BOI, upon consultation with the Office of the
53 President, concerned IPAs and appropriate government agencies and the private sector, shall

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

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

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

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

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

(d) *Net Operating Loss Carryover (NOLCO).* - The net operating loss of the registered activity during the first five (5) years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next five (5) consecutive taxable years immediately following the year of such loss: *Provided, however,* That the NOLCO shall be the actual loss without the benefit of the incentives provided herein. The BIR shall require a registered export enterprise availing of the NOLCO to secure a certificate of eligibility from the appropriate IPA before filing an official copy of its ITR with the appropriate IP A for validation of the NOLCO claim.

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

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

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

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

(CHED). The training expenses incurred shall be deductible from taxable income on the taxable year the said training expenses were incurred.

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

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

The expenses for research and development shall be deductible from taxable income on the taxable year the said research and development expenses were incurred. The concerned IPA shall issue the corresponding certificate of entitlement for this incentive upon filing of an application for research and development expenses credit; otherwise, the research and development, expenses credit shall be deemed waived.

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

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

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

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

(bb) 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;

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

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

(2) The sale by a domestic manufacturer to a registered export enterprise of machinery and capital equipment and raw materials, supplies, parts and semi-finished products, used in the

1 fabrication of machinery and capital equipment used in the registered activity of the latter shall be
2 subject to a zero-percent (0%) VAT rate.

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

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

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

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

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

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

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

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

35
36 SEC. 18. *Tax Treatment/Other Incentives for Registered Enterprises in Ecozones and Freeport Zones.* -
37 In addition to the applicable incentives provided under the preceding section on export incentives,
38 registered enterprises locating in the Special Economic Zones and Freeport Zones shall be entitled
39 to the following incentives:

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

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

52 (3) Merchandise sent from the' ecozones or freeports to the *customs* territory shall, whether or
53 not combined with or made part of other articles likewise of local origin or manufactured in the
54 Philippines while in the ecozones or freeports, be subject to internal revenue and customs laws of

1 the Philippines as domestic goods sold, transferred or disposed of for local consumption. If the
2 finished goods have imported components, the duties shall be based on the value of said imported
3 materials, except when the final product is exempt.

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

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

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

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

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

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

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

37
38 SEC. 19. *Incentives for Registered Domestic Enterprises.* - Registered domestic enterprises not
39 engaged in strategic projects under the sectors or industries under the IPP including registered
40 micro, small and medium enterprises (SMEs) as defined by the appropriate agency, shall be qualified
41 to the following incentives to the extent of their registered activity:

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

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

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

1 *Provided, however,* That the NOLCO shall be the actual loss without the benefit of the incentives
2 provided herein.

3 The BIR shall require a registered domestic enterprise availing of the NOLCO to secure a
4 certificate of eligibility from the appropriate IPA before filing an official copy of its ITR with the
5 appropriate IPA for validation of the NOLCO claim. Failure to secure a certification and/or to file
6 the NOLCO availment for validation by the BOI or appropriate IPA shall cause the forfeiture of the
7 availment for the taxable period.

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

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

20 The same benefit of double deduction shall likewise extend to expenses paid or incurred by
21 the registered domestic enterprise in its training projects in collaboration with schools and
22 universities accredited by the Department of Education (DepEd) or the Commission on Higher
23 Education (CHED). The training expenses incurred shall be deductible from taxable income on the
24 taxable year the said training expenses were incurred. The concerned IPA shall issue the
25 corresponding certificate of entitlement for this incentive upon filing of an application for training
26 expenses credit; otherwise, the training expense credit shall be deemed waived.

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

32 The expenses for research and development shall be deductible from taxable income on the
33 taxable year the said research and development expenses were incurred.

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

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

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

47 The VAT and customs duty paid on imported capital equipment may be refunded: *Provided,*
48 That the capital equipment is being used by the registered domestic enterprise pursuant to its
49 registered activity. The amount of VAT and customs duty refund on a particular shipment of raw
50 materials shall be equivalent to the proportion of raw materials used in the production to the total
51 raw materials imported multiplied by the amount of VAT and customs duty paid on such
52 importation. No claim for refund shall be allowed on VAT and customs duty paid on raw materials
53 which are not or no longer intended to be used in the registered activity.

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

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

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

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

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

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

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

24
25 SEC. 20. *Incentives for Domestic "Strategic" Enterprises.* - All IPAs may administer the following
26 incentives to registered domestic enterprises engaged in strategic projects, as defined under Section
27 15 of this Act, whenever applicable, to the extent of their registered activity:

28 (a) Income Tax Holiday (ITH). - A registered domestic "strategic" enterprise shall be entitled
29 to an ITH equivalent to six (6) years from the date of start of its commercial operations. The BIR
30 shall require a registered domestic "strategic" enterprise availing of the ITH to secure a certificate of
31 eligibility from the appropriate IPA before filing an official copy of its income tax return (ITR).
32 Thereafter, the registered domestic "strategic" enterprise shall file its claim with the appropriate IPA
33 for validation.

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

36 (b) Reduced Income Tax. - A registered domestic "strategic" enterprise may be entitled to a
37 preferential tax rate of fifteen percent (15%) of taxable income as defined under Section 31 of the
38 NIRC of 1997, as amended, for a period of eight (8) years. If the domestic "strategic" enterprise
39 registers within the first six (6) years from the effectivity of this Act, it may opt to avail of the ITH
40 prior to the reduced income tax: *Provided,* That the ITH together with the reduced income tax shall
41 be availed of for a period of eight (8) years.

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

48 The BIR shall require a registered domestic "strategic" enterprise availing of the NOLCO to
49 secure a certificate of eligibility from the appropriate IPA before filing an official copy of its ITR
50 with the appropriate IPA for validation of the NOLCO claim. Failure to secure a certification
51 and/or to file the NOLCO availment for validation by the BIR or appropriate IPA shall cause the
52 forfeiture of the availment for the taxable period.

53 (d) Accelerated Depreciation. - Accelerated depreciation of plant, machinery and equipment
54 that are reasonably needed and actually used for the production and transport of goods and services

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

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

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

17 (f) Double Deduction for Research and Development - Expenses incurred for research and
18 development conducted in the Philippines relating to the business may entitle the registered
19 domestic "strategic" enterprise to a special deduction from taxable income equivalent to one
20 hundred percent (100%) of the total expenses over and above the allowable ordinary and business
21 deductions for said expenses under the NIRC of 1997, as amended. The expenses for research and
22 development shall be deductible from taxable income on the taxable year the said research and
23 development expenses were incurred.

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

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

30
31 In order to facilitate the immediate processing, clearance and release of VAT and customs
32 duty refunds as provided in this Act, a trust liability account (TLA) is hereby authorized to be
33 established in the Bureau of the Treasury (BTr). All VAT and customs duty payments pertaining to
34 the importation of registered domestic "strategic" enterprises of capital equipment or raw materials
35 shall be deposited in the TLA for the purpose of funding valid VAT and customs duty refund
36 claims. The claims for VAT and customs duty refunds shall be made by the registered domestic
37 "strategic" enterprise to the DOF which, in turn, shall process, approve and release the VAT and
38 customs duty refund.

39 The VAT and customs duty paid on imported capital equipment may be refunded: *Provided,*
40 That the capital equipment is being used by the registered domestic "strategic" enterprise pursuant
41 to its registered activity. The amount of VAT and customs duty refund on a particular shipment of
42 raw materials shall be equivalent to the proportion of raw materials used in the production to the
43 total raw materials imported multiplied by the amount of VAT and customs duty paid on such
44 importation. No claim for refund shall be allowed on VAT and customs duty paid on raw materials
45 which are not or no longer intended to be used in the registered activity.

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

49 All applications for VAT and customs duty refund shall be processed and acted upon within
50 thirty (30) days after submission of complete documents. The refund shall be in a form of cash or
51 manager's/cashier's check payable to the registered domestic "strategic" enterprise.
52

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

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

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

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

19
20 SEC. 21. *Incentives for Registered Domestic Enterprises in the Thirty Poorest Provinces or Less Developed*
21 *Areas (LDAs).* - Registered domestic enterprises located in the thirty (30) poorest provinces as
22 determined by the appropriate agency or in LDAs as defined hereof are entitled to a twenty (20)-year
23 cumulative availment of the following incentives:

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

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

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

37 The BIR shall require a registered domestic enterprise availing of the NOLCO to secure a
38 certificate of eligibility from the appropriate *IPA* before filing an official copy of its ITR with the
39 appropriate *IP A* for validation of the NOLCO claim. Failure to secure a certification and/or to file
40 the NOLCO availment for validation by the BOI or appropriate *IP A* shall cause the forfeiture of
41 the availment for the taxable period.

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

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

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

5 The training expenses incurred shall be deductible from taxable income on the taxable year
6 the said training expenses were incurred. The concerned IP A shall issue the corresponding
7 certificate of entitlement for this incentive upon filing of an application for training expenses credit.
8 Otherwise, the training expense credit shall be deemed waived.

9 (f) Double Deduction for Research and Development or Research and Development Credit.
10 - Expenses incurred for research and development conducted in the Philippines relating to the
11 business shall entitle the registered domestic enterprise to a special deduction from taxable income
12 equivalent to one hundred percent (100%) of the total expenses over and above the allowable
13 ordinary and business deductions for said expenses under the NIRC of 1997, as amended.
14

15 The expenses for research and development shall be deductible from taxable income on the
16 taxable year the said research and development expenses were incurred.

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

20 (g) VAT and Duty Incentives on Importations of Capital Equipment and/or Raw Material. -
21 Importations of capital equipment and/or raw materials by registered domestic enterprises located
22 in the thirty (30) poorest provinces' or LDAs shall be subject to a VAT and customs duty refund
23 mechanism. In order to facilitate the immediate processing, clearance and release of VAT and
24 customs duty refunds as provided in this Act, a trust liability account (TLA) is hereby authorized to
25 be established in the Bureau of the Treasury (BTr). All VAT and customs duty payments pertaining
26 to the importation of registered domestic enterprises located in the thirty (30) poorest provinces or
27 LDAs of capital equipment or raw materials shall be deposited in the TLA for the purpose of
28 funding valid VAT and customs duty refund claims. The claims for VAT and customs duty refunds
29 shall be made by the registered domestic enterprise to the DOF which, in turn, shall process,
30 approve and release the VAT and customs duty refund.

31 The VAT and customs duty paid on imported capital equipment may be refunded: *Provided,*
32 That the capital equipment is being used by the registered domestic enterprise pursuant to its
33 registered activity. The amount of VAT and customs duty refund on a particular shipment of raw
34 materials shall be equivalent to the proportion of raw materials used in the production to the total
35 raw materials imported multiplied by the amount of VAT and customs duty paid on such
36 importation. No claim for refund shall be allowed on VAT and customs duty paid on raw materials
37 which are not or no longer intended to be used in the registered activity. Registered domestic
38 enterprises located in the thirty (30) poorest provinces or LDAs shall file a claim for VAT and
39 customs duty refund within two (2) years after the payment was made. All amounts paid but no
40 longer allowed for refund shall immediately accrue to the general fund of the national government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER III REGISTRATION OF ENTERPRISES

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

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

(b) 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;

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

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

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

CHAPTER IV BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

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.

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

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

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

- (a) Impact of the project on the overall economy;
- (b) Overall viability of the project;
- (c) The extent of employment generation;

- 1 (d) The extent to which technological advances are applied and adopted to local conditions;
2 and
3 (e) Such other criteria as the Board may determine.
4

5 SEC. 34. *Environmental Protection and Corporate Social Responsibility.* - Every registered enterprise
6 shall prepare a Program for Environmental Protection and Corporate Social Responsibility (CSR)
7 covering the period for its entitlement to fiscal incentives. Such Program shall be undertaken on a
8 per registration basis and shall be submitted as an accompanying document to the application for
9 registration to be submitted to the appropriate IPA. The environmental program shall include
10 activities such as, but not limited to, requiring registered firms to plant trees. For the CSR activities,
11 the registered enterprise shall align such activities with the priority programs and projects of the
12 National Anti-Poverty Commission and other special laws such as Republic Act No. 7942 or the
13 Philippine Mining Act of 1995, as amended and DOE Energy Regulation 1-94. The amount spent
14 for the CSR activities shall be reflected in the Notes to the Audited Financial Statements.
15

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

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

24 *Provided, however,* That the IPA may defer action to a specific application not more than twice:
25 *Provided, finally,* That the IPA shall act upon the application within ten (10) working days from
26 compliance with the cause of the last deferment.
27

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

- 32 (a) The name of the registered enterprise;
33 (b) The activity in which the registered enterprise is proposing to engage; and
34 (c) The terms and conditions to be observed by the registered enterprise by virtue of the
35 registration.
36

37 SEC. 37. *Validity of Registration.* - The registration shall be *valid* for a period of twenty (20)
38 years from the date of start of commercial operation except on certain industries as may be
39 determined by the Board and those that are registered with the PEZA.
40

41 SEC. 38. *Extension of Period of Availment of Incentives.* - The availment period of the incentives
42 provided herein may be extended by the concerned IPA in the event that the registered enterprise
43 has suffered operational *force majeure* or losses that have impaired the viability of the registered
44 activity.
45

46 SEC. 39. *Administration, Implementation and Monitoring of Incentives.* - The BOI, the PEZA and
47 the other IPAs shall be responsible for the administration and implementation of incentives granted
48 to their respective registered enterprises. They shall submit to the DOF their respective tax
49 expenditures based on the computed cost in terms of revenue foregone on the tax incentives
50 granted to their registered enterprises, and other data related to the grant of investment incentives,
51 on a quarterly basis and to cover all their registered enterprises including those whose incentives are
52 provided by investment incentive laws prior to the effectivity of this Act. For proper monitoring, the
53 DOF shall create a single database of all incentives provided by all IPAs. The DOF shall monitor

1 and review the incentives granted and submit an annual report to the President and to the Chairman
2 of the Committee on Ways and Means of both Houses of Congress.

3 4 TITLE IV 5 FINAL PROVISIONS 6

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

12
13 SEC. 41. *Authority to Retain Funds.* - Registered enterprises availing of fiscal incentives, except
14 those located in the thirty (30) poorest provinces or LDAs, shall be assessed with a maximum fee of
15 one percent (1%) of the amount of incentives granted. Said amount shall automatically accrue to the
16 Board of Investments to be allotted for investment promotions activities and other special projects
17 to achieve the objectives of this Code, subject to the usual accounting and auditing rules and
18 procedures.

19
20 SEC. 42. *Protection of the Environment.* - The IP As, in coordination with the appropriate
21 agencies, shall take appropriate steps to enact the proper measures for the protection of the
22 environment, and shall coordinate with the Environmental Management Bureau of the Department
23 of Environment and Natural Resources (EMB-DENR) to avoid undue delay in the issuance of the
24 required Environmental Compliance Certificate (ECC): *Provided, however,* That applications for
25 environmental clearances, permits, and/or licenses of registered enterprises shall be acted upon by
26 the appropriate government agency within thirty (30) days from date of official acceptance. In the
27 event that the appropriate government agency failed to act within the aforementioned date, the
28 application for the said environmental requirement shall be deemed complied with for purposes of
29 operation of the registered activity.

30
31 SEC. 43. *Appeals.* - All orders or decisions of the BOI or the IPA in cases involving the
32 provisions of this Code shall immediately be executory. No appeal from the order or decision of the
33 BOI or the IP A by the party adversely affected shall stay such order or decision, unless a *supersedeas*
34 bond equivalent to the amount stated in the order or decision is posted by the appellant.

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

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

47
48 SEC. 44. *Suspension- and Forfeiture of Incentives of Registered Enterprises, Refund and Penalties.* -
49 When there is probable cause to believe that the registered enterprise has violated its registration
50 terms and conditions, the BOI or the IP A may suspend its availment of incentives, until proven
51 otherwise. The BOI or the IPA may impose fines and penalties and/or forfeit the incentives granted
52 to its registered enterprises whenever there are violations of the registration terms and conditions by
53 the latter, without prejudice to the cancellation of the registration of said enterprise.

1 In case of cancellation of the Certificate of Registration granted under this Code, the BOI or
2 the IPA may, in appropriate cases, require the refund of incentives availed of and impose
3 corresponding fines and penalties. Any enterprise which violates any provision of this Code, its
4 implementing rules and regulations, the terms and conditions of its registration, or of any lawful
5 directive of the BOI or the IPA, shall be subject to a fine not to exceed One million pesos
6 (P1,000,000.00), without prejudice to the disapproval of its application for registration or
7 cancellation of its registration: *Provided*, That any willful commission of fraudulent misrepresentation
8 in its application for registration or submission of reports or gross violation of this Code and its
9 implementing rules and regulations, a fine of at least One million pesos (P1,000,000.00) but not to
10 exceed Ten million pesos (P10,000,000) shall be imposed, in addition to other penalties that may be
11 imposed by the BOI or the IPA.

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

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

19 Government officers and employees who participate directly or indirectly in the commission
20 of the foregoing acts shall likewise be liable to a fine of not less than One hundred thousand pesos
21 (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00), in addition to any
22 criminal and administrative penalties imposable under the Civil Service Law, Revised, Penal Code,
23 Republic Act No. 3019, otherwise known as the "Anti-Graft And Corrupt Practices Act", Republic
24 Act No. 6713, otherwise known as the "Code Of Conduct And Ethical Standards For Public
25 Officials", and other applicable laws. If the offender is a foreign national, in addition to the
26 imposable fines and penalties above, the foregoing acts shall be grounds for his summary
27 deportation.

28
29 SEC. 45. *Disposition of Savings from the Implementation of this Act.* - The total amount of savings
30 to be generated from the implementation of this Act shall be allocated annually and used exclusively
31 for the provision of scholarships under the CHED. Such allocations shall be segregated as separate
32 trust funds by the National Treasury and shall be over and above the annual appropriations for
33 similar purposes. The earmarking provided under this provision shall be observed for ten (10) years
34 starting from the effectivity of this Act.

35
36 SEC. 46. *Implementing Rules and Regulations (IRR).* - The DTI, the DOF, the NEDA, the DBM,
37 the BOI, the PEZA, other IPAs and other concerned government agencies, shall promulgate rules
38 and regulations to implement the intent and provisions of this Code within one hundred twenty
39 (120) days from the effectivity of this Code. Such rules and regulations shall take effect fifteen (15)
40 days following its publication in a newspaper of general circulation in the Philippines.

41
42 SEC. 47. *Transitory Provision.* - The incentives under Section 17 of this Act shall be applicable
43 to existing BOI-registered export enterprises, particularly the tax and duty-free importation of
44 equipment and raw materials by the said BOI registered export enterprises. Until the IRR of this Act
45 take effect, the present rules and regulations under the old investments laws shall apply to the extent
46 that they are not inconsistent with the provisions of this Act.

47
48 SEC. 48. *Separability Clause.* - The provisions of this Code are hereby declared to be separable
49 and, in the event any of such provisions is declared unconstitutional, the other provisions which are
50 not affected thereby, shall remain in force and effect.

51
52 SEC. 49. *Repealing Clause.* - The following provisions are hereby repealed:

53 (a) Title I, Chapter III, Article 32(I)(B); Title III, Article 39(a), (b),(d), (e), (g), (i), (j), (k), (l),
54 (m) and (n); Title IV, Article 40(a) and (b); Book III, Chapter II, Articles 61 and 62; Book III,

1 Chapter III, Articles 63, 64, 65,66 and 67; Book IV, Articles 69 and 70; and Book vi, Article 77 of
2 Executive Order No. 226, series of 1987, otherwise known as "The Omnibus Investments Code of
3 1987";

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

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

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

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

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

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

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

27 (i) Section 9 of Republic Act No. 8479, otherwise known as the "Downstream Oil
28 Deregulation Act of 1998";

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

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

35 (l) Section 6 of Proclamation No. 984, otherwise known as "Creating and Designating the
36 Municipality of Morong, Province of Bataan, including the Area of Philippine Refugee Processing
37 Center Complex (PRPCC) as the Morong Special Economic Zone pursuant to Republic Act No.
38 7227 and transferring the land comprising the PRPCC to the Bases Conversion Development
39 Authority (BCDA)";

40 (m) Section 1 and Section 2(a) and (b) and Section 6 of Executive Order No. 528, series of
41 2006, Amending Executive Order No. 31, series of 2004, "Reducing the Rates of Duty on Capital
42 Equipment, Spare Parts and Accessories Imported by BOI-registered new and Expanding
43 Enterprises";

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

46 (o) Sections 4(b) of Republic Act No. 7922 otherwise known as the "Cagayan Special
47 Economic Zone Act of 1995";

48 (p) Section 12(b) of Republic Act No. 7227, otherwise known as the "Bases Conversion and
49 Development Act of 1992";

50 (q) Section J(b), Sections 5, 6 and 7 of Republic Act No. 9400, otherwise known as, "An Act
51 Amending Republic Act No. 7227, as Amended, Otherwise Known as the Bases Conversion and
52 Development Act of 1992, and for Other Purposes"; and

53 (r) Section 1 of Executive Order No. 619, otherwise known as "Creating and Designating
54 Special Economic Zones Pursuant to Republic Act No. 7916, as Amended by Republic Act No.

1 8784, in Relation to Republic Act No. 7227, as Amended by Republic Act No. 9400, Inside the
2 Clark Freeport Zone".

3 All other laws, acts, decrees, orders and issuances or provisions thereof inconsistent with any
4 of the provisions of this Act are hereby repealed or modified accordingly.
5

6 SEC. 50. *Survivor Clause.* - (a) The provisions of this Act to the contrary notwithstanding, the
7 following laws, decrees and orders shall continue to have full force and effect: (1) Book VI, Article
8 78 of Executive Order No. 226, series of 1987, otherwise known as "The Omnibus Investments
9 Code of 1987"; (2) Section 18(f) of Presidential Decree No. 66, otherwise known as "Creating the
10 Export Processing Zone Authority and Revising Republic Act No. 5490"; (3) Section 23 of Republic
11 Act No. 7916, otherwise known as "An Act Providing for the Legal Framework and Mechanisms for
12 the Creation, Operation, Administration and Coordination of Special Economic Zones in the
13 Philippines, Creating for the Purpose the Philippine Economic Zone Authority (PEZA), and for
14 other Purposes (Special Economic Zone Act of 1995)"; and (4) Section 1 of Republic Act No. 9281
15 entitled, "An Act to Strengthen Agriculture and Fisheries Modernization in the Philippines by
16 Extending the Effectivity of Tax Incentives and its Mandated Funding Support, Amending for this
17 Purpose Sections 109 and 112 of Republic Act No. 8435";

18 (b) The provisions of this Act and Republic Act No. 9337 to the contrary notwithstanding,
19 the following laws, decrees and orders shall continue to have full force and effect: (1) Section 10(1)
20 to (6) of Republic Act No. 7156, otherwise known as "An Act Granting Incentives to Mini-Hydro
21 Electric Power Developers and for other Purposes (Mini-Hydroelectric Incentive Act)"; (2) Sections
22 10, 16(a), (b) and (c) and Section 17(a) to (e) of Presidential Decree No. 972, as amended by
23 Presidential Decree No. 1174, otherwise known as "Promulgating an Act to Promote an Accelerated
24 Exploration, Development, Exploitation, Production and Utilization of Coal"; (3) Section 12 of
25 Presidential Decree No. 87, otherwise known as "An Act to Promote the Discovery and Production
26 of Indigenous Petroleum, and Appropriating Funds Therefor"; (4) Section 4(a) and (d) of
27 Presidential Decree No. 1442, as restored by FIRE Resolution 19-87, otherwise known as "An Act
28 to Promote the Exploration and Development of Geothermal Resources"; and (5) Chapter II,
29 Section 4(A), (B), (C) and (D); and Chapter VIII, Section 19(A), (B) and (C) of Republic Act No.
30 9295, Entitled "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding,
31 Ship repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the
32 Philippines and for other Purposes": *Provided*, That grantees or operators under their respective laws,
33 decrees and orders shall have the option to avail of the incentives provided under this Act.
34

35 SEC. 51. *Effectivity.* - This Act shall take effect fifteen (15) days following its publication in
36 the *Official Gazette* or in a newspaper of general circulation, whichever is earlier.
37

38 Approved,