

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

House Bill No. **4402**

Introduced by **HONORABLE ALBERT S. GARCIA**

EXPLANATORY NOTE

In the context of an increasingly integrated global marketplace, increasing competition to attract investments, governments, particularly of developing and emerging economies worldwide, are focusing considerable attention and resources to generally enhance their respective countries' investment environment. This has called for an enhanced policy framework for investment, including a strengthened institutional system, and implementation of more effective investment promotion strategies to vigorously market their countries.

The Philippines, while touted as one of the resilient nations in the face of the global economic downturn, has unfortunately lagged behind our ASEAN neighbors in terms of attracting FDI. While a number of investment-enhancing measures are in place, a more effective policy framework that would provide a stable and predictable investment regime for the country, underpins the urgent enactment of the proposed legislative measure, *The Investment and Incentives Code of the Philippines*.

In line with this, it is deemed that the government shall adopt policies that will enhance the competitiveness of the Philippines as an investment site and, at the same time, ensure that the incentives are cost efficient. Specifically,

1. The bill will promote exports equally, whether they are located inside or outside the economic zones, because of the positive benefits they bring into the country in terms of foreign exchange earnings, job generation and technology transfers.
2. It will promote countryside development and job generation by granting Income Tax Holiday incentives depending on whether the investment is located in 1st class to 6th class municipality or 5% tax on Gross Income Earned.

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3. The bill will have the flexibility to accommodate domestic "strategic" projects with the grant of Income Tax Holiday and a reduced income tax regime of 50% from corporate income tax, under certain conditions.
 4. It will introduce institutional reforms by clarifying the mandates and roles, and enhancing the capabilities of key government agencies, and by strengthening the monitoring and reporting processes in the implementation of tax incentives for better fiscal policymaking.
 5. It will eliminate competition among ecozone administrators on account of unequal tax incentive regimes by harmonizing the tax incentives found under existing investment incentive laws.

The rationalization of incentives is necessary in order to streamline regulation, which is considered as a requisite in attracting investments, among other things. This undertaking is also identified as a legislative priority in the 15th Congress as the same will finally bring about the much-needed reform that will improve the investment climate and consequently, attract more investments and generate more employment. In view of the foregoing, the passage of this bill is earnestly sought.



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AN ACT
CREATING THE INVESTMENTS AND INCENTIVES CODE
OF THE PHILIPPINES

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

PRELIMINARY TITLE

CHAPTER I
TITLE AND DECLARATION OF POLICY

SECTION 1. Title. – This Act shall be known as “The Investments and Incentives Code of the Philippines”.

SEC. 2. Declaration of Investment Policies. – The national economy shall be developed so as to enhance its competitiveness in the global economy and geared towards investment and employment generation and countrywide development, through industry development, policy formulation, investment promotion and investor servicing. 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 Act except as otherwise provided therein.

SEC. 4. Relationship of IPAs with the BOI and Other Government Agencies. – IPAs shall maintain their functions as provided for in their respective Charters except to the extent modified by the provisions of this Act.

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

SEC 5. *Governing Provision for IPAs.* – All existing and future IPAs vested with the power to confer and administer incentives shall offer the incentives provided in this Act: *Provided*, however, that IPAs that are not covered by this Act may opt to administer the incentives hereunder; *Provided, further*, that there shall be no double availment of incentives.

SEC. 6. *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 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.

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

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

SEC. 7. *Qualifications of the BOI Board of Governors.* – The governors of the BOI shall be citizens of the Philippines, at least thirty-five (35) years old, with proven probity and integrity, of good moral character and of recognized competence in law, economics, business, marketing, advertising, management or its equivalent.

SEC. 8. *Powers and Functions of the Board.* – The Board shall be responsible for industry development, policy formulation, investment promotion, and investment facilitation and aftercare services. It shall hold meetings at least once a week for the conduct of business or as often as may be necessary upon the instance of the Chairman or the Managing Governor. The notice of regular and special meetings shall be given to all the members of the Board and the presence of five (5) members shall constitute a quorum and the affirmative vote of five (5) members in a meeting validly held shall be necessary to exercise its powers and perform its functions which shall include the following:

- a. Formulate an evolving National Framework for Investment Promotions (NFIP) and promulgate its rules, regulations and policies that will govern all Investments Promotion Agencies (IPAs);
- b. Formulate an evolving National Framework for Industrial Development (NFID) and promulgate its rules, regulations and policies in consultation with the private sector. The NFID shall identify key emerging markets or industries that will substantially enhance the competitiveness of the country, which include among others, research and development, agricultural technology, biomedical devices and systems, renewable energy, logistics and information communications and technologies;
- c. Promulgate rules, regulations and policies on the administration of incentives which the IPAs are mandated to implement;
- d. Plan and implement industrial programs to hasten economic development including those relating to the implementation of international trade, investment and industry-related environmental agreements and protocols;
- e. Prepare the Investments Priorities Plan (IPP) in accordance with Title III, Chapter I of this Act;

- f. 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;
- g. Formulate and negotiate positions for bilateral, multilateral and regional investments and investment-related trade agreements and/or arrangements;
- h. Establish the Investment Promotion Action Center (i-PAC);
- i. Establish and operate regional investment centers in the Philippines, and establish and operate overseas investment offices;
- j. Extend assistance to micro and small enterprises in the preparation of feasibility and other pre-investment project studies;
- k. Process and approve, deny, suspend, revoke applications for registration, imposing terms and conditions as it may deem necessary to promote the purposes of this Act, 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;
- l. Recommend to the President the suspension of the nationality requirement provided for in this Act in appropriate cases such as those involving bilateral, multilateral, or regional investments, or other trading agreements of the Philippines with other countries; or when the existing laws of another country where the investor comes from provides no nationality restrictions for Filipino investors or provides for reciprocal nationality accommodations;
- m. In meritorious cases, waive, condone or reduce fines or penalties imposed on registered enterprises, *provided, that* in case of reduction, the minimum compromise rate shall not be less than 40 % of the basic assessed fines or penalties;
- n. Enter into agreements with other agencies for the simplification of systems and procedures involved in the promotion of investments, operation of zones and registered enterprises, and other activities necessary for the effective implementation of this Act;
- o. Exercise general supervision over the ecozones and freeports according to the principles and provisions set forth in this Act;
- p. Establish domestic industrial zones to be approved by the President;
- q. Set the general policies on the establishment and operations of domestic industrial zones and determine the qualifications, responsibilities and functions of the Administrator of such domestic industrial zones;
- r. Coordinate with local government units and exercise general supervision over the development plans, activities and operations of domestic industrial zones;
- s. Set the policies on the establishment of utilities, other services, and infrastructure in the domestic industrial zones such as heat, light, power, water supply, telecommunications, transport, toll roads and bridges, port services, and others and to fix just, reasonable and competitive rates, charges, and fees therefor. *Provided, that* the appropriate government regulatory agencies shall regulate the operation and maintenance of utilities, such as heat, light, power, water supply, telecommunications, transport, toll roads and bridges, port services, and others based inside the domestic industrial zones insofar as such services are rendered outside the domestic industrial zones;
- t. Approve the construction, acquisition, ownership, lease, through contract, franchise, license, bulk purchase from the private sector and build-operate-transfer scheme or joint venture, or such other scheme as may be determined, adequate facilities and infrastructure, such as light and power systems, water supply and distribution systems, telecommunications and transportation, buildings, structures, warehouses, roads, bridges, ports and other facilities for the operation and development of the domestic industrial zones;

- u. Gather, consolidate and monitor incentives data and information from all IPAs and other concerned government agencies for submission to the President and Congress;
- v. Regulate the implementation of Regional Operating Headquarters, Retail Trade Law, Long-Term Lease and other laws as mandated;
- w. Cancel registration or suspend the availment incentives of a registered enterprise and/or require the refund of incentives, including interests and monetary penalties, when warranted;
- x. Mediate controversies and/or disputes involving investors;
- y. After due hearing, decide controversies that may arise between BOI-registered enterprises therein arising from the implementation of this Act. 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;
- z. Act on investment projects covered by bilateral, multilateral, and regional agreements subject to rules and guidelines to be formulated by the Board;
- aa. Determine the organizational structure of the BOI; and
- bb. Exercise all the powers necessary or incidental to attain the purposes of this Act and other laws vesting additional functions on the Board.

SEC. 9. Powers and Duties of the Managing Governor. – The Managing Governor shall have the following powers and duties:

- a. Preside over the meetings of the Board in the absence of the Chairman;
- b. Prepare the Agenda for the meetings of the Board and submit for its consideration and approval the policies and measures which the Chairman deems necessary and proper to carry out the provisions of this Act;
- c. Recommend to the Board such policies and measures he may deem necessary to carry out the objectives of this Act;
- d. Assist registered enterprises and prospective investors to have their papers processed with dispatch by all government offices, agencies, instrumentalities and financial institutions;
- e. Act as liaison to investors, government, affiliated organizations and other stakeholders;
- f. Coordinate the policies, plans and programs of the BOI. As such, he shall exercise overall supervision and general direction on the operations and affairs of the BOI;
- g. Perform the other duties of the Chairman in the absence of the latter, and such other duties as may be assigned to him by the Board of Governors; and
- h. Generally, to exercise such other powers and perform such other duties as may be directed by the Board from time to time.

SEC 10. BOI Personnel. – 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 other IPAs such as Philippine Economic Zone Authority (PEZA) and shall be subject to periodic review by the Board without prejudice to yearly merit reviews or increases based on productivity. The BOI shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.

For this purpose, the current BOI shall be reorganized in accordance with its mandate provided under this Act. Those who will opt to retire from government service shall be entitled to three (3)

months pay for every year of service and to gratuities and benefits provided for under existing laws. The Department of Budget and Management shall allocate an appropriate budget for the retirement and separation pay.

SEC. 11. *The Investment Promotion Action Center (i-PAC).* – There is hereby created an i-PAC at the BOI that shall serve as the link to all government agencies to facilitate entry, retention, expansion and diversification of investments. The BOI shall serve as the Coordinator of the i-PAC.

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

SEC. 12. *Powers and Functions of the i-PAC.* – The i-PAC shall exercise and perform the following powers and functions:

- a. Provide advice, guidance, information and procedure on various laws, rules and regulations governing investments and the conduct of business in the Philippines.
- b. Ensure that all investment-related requirements are acted upon within ten (10) working days.
- c. Recommend the streamlining of existing procedures to ensure that all frontline agencies, dealing with the operation of business, perform their tasks for identified government to business transactions.
- d. Establish an on-line investment facilitation system.
- e. Act, in coordination with appropriate government offices or agencies, such as the Office of the Ombudsman and the Civil Service Commission (CSC), on complaints filed by any investor or potential investor against any public official or employee or any office, agency or instrumentality, including local government units (LGUs) and officials, as well as any government-owned and -controlled corporation (GOCC), in connection with any act or duty required by law to facilitate the entry of local and foreign investments.
- f. Perform such other functions as may be directed by the Board.

SEC. 13. *Honoraria and Allowances.* – The Board shall provide for reasonable honoraria and allowances for the i-PAC members and its personnel.

CHAPTER III ESTABLISHMENT OF DOMESTIC INDUSTRIAL ZONES

SEC. 14. *Criteria for the Establishment of Domestic Industrial Zones.* — The establishment of domestic industrial zones must conform to the following criteria:

- a. The proposed area must be identified as a regional growth center in the Medium-Term Philippine Development Plan or by the Regional Development Council;
- b. The existence of required infrastructure in the proposed domestic industrial zones, such as roads, railways, telephones, ports, airports, etc., and the suitability and capacity of the proposed site to absorb such improvements;

- c. The availability of water source and electric power supply for use of the domestic industrial zones;
- d. The extent of vacant lands available for industrial and commercial development and future expansion of the domestic industrial zones as well as of lands adjacent to the domestic industrial zones available for development of residential areas for the domestic industrial zones workers;
- e. The availability of skilled, semi-skilled and non-skilled trainable labor force in and around the domestic industrial zones;
- f. The area must have a significant incremental advantage over the existing economic zones and its potential profitability can be established;
- g. The area must be strategically located; and
- h. The area must be situated where controls can easily be established to curtail smuggling activities.

Other areas which do not meet the foregoing criteria may be established as domestic industrial estates: Provided, That the said area shall be developed only through local government and/or private sector initiative under any of the schemes allowed in Republic Act No. 6957 (the build-operate-transfer law), and without any financial exposure on the part of the national government: Provided, further, That the area can be easily secured to curtail smuggling activities: Provided, finally, That after five (5) years the area must have attained a substantial degree of development, the indicators of which shall be formulated by the Board.

TITLE II DEFINITION OF TERMS

SEC. 15. *Definition of Terms.* – As used herein, the following shall mean:

- a. “BOI” or the “Board” shall refer to the Board of Investments created under this Act.
- b. “Investments Promotion Agencies (IPAs)” shall include the BOI, the PEZA, the Bases Conversion Development Authority (BCDA), the Subic Bay Metropolitan Authority (SBMA), the Clark Development Corporation (CDC), the John Hay Management Corporation (JHMC), the Poro Point Management Corporation (PPMC), 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 Act: *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, 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 Act, prepared and determined as priority or preferred activities in accordance with Title III, Chapter 1 of this Act.
- 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 Act shall not be transferable to another registered enterprise under this Act. 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 Act; 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 Act.

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 Act; 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 Act.

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. The export requirement herein provided may be reduced, but shall not be less than fifty (50%), in meritorious cases under such conditions as the Board may determine.

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 the registered enterprise 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. "Domestic Industrial Zones" 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 established under this Act in accordance with the criteria provided in Section 14, Chapter III of the Preliminary Title.
- 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*" or "*Domestic Industrial Zone developer*" shall refer to a business entity duly registered with the PEZA or the BOI, as the case may be, 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 network, administration building, standard factory buildings, and other facilities as may be required by enterprises registered with the PEZA.
- r. "*Export Processing Zone (EPZ)*" or "*Export Zone*" shall refer to a specialized industrial estate located physically and/or administratively outside the customs territory and predominantly oriented to export production.
- s. "*Freeport*" is an isolated and policed area adjacent to a port of entry as defined by Section 3519 of the Tariff and Customs Code, which shall be operated and managed as a separate customs territory to ensure free flow or movement of goods, except those expressly prohibited by law, within, into and exported out in the freeport zone where imported goods may be unloaded for immediate transshipment or stored, repacked, sorted, mixed or otherwise manipulated without being subject to taxes and duties.
- t. "*Tourism estate*" is a tract of land with defined boundaries, suitable for development into an integrated resort complex to render tourism services for both local and foreign tourists, travelers and investors, with prescribed carrying capacities, of tourist facilities and activities such as, but not limited to, sport, gaming and recreation centers, accommodations including hotels, apartelles, tourist inns/villas, pension houses, convention and cultural facilities, food and beverage outlets, commercial establishments and other special interest and attraction activities/establishments, and provided with roads, water supply facilities, power distribution facilities, drainage and sewage systems, and other necessary infrastructures and facilities. A tourism estate shall be under unified and continuous management, and can either be a component of an ecozone or the whole ecozone itself.
- u. "*Information and Communications Technology (ICT) park*" or "*ICT park*" shall refer to an area which has been developed into an integrated development complex capable of providing infrastructure and other support facilities required by ICT enterprises, as well as amenities required by professionals and workers involved in ICT enterprises, or easy access to such amenities.
- v. "*ICT center*" shall refer to a building which has been developed by public or private corporate entities to provide infrastructure and other support facilities required by ICT enterprises, as well as amenities required by professionals and workers involved in ICT enterprises, or easy access to such amenities.
- w. "*Capital equipment*" refers to machinery, equipment, major components thereof, spare parts, accessories, tools, devices, apparatus, fixtures, fittings and accompaniments which are directly and/or reasonably needed in the registered activity of the enterprise and those required for pollution abatement and control, cleaner production and water reduction/conservation.

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

TITLE III INVESTMENTS WITH INCENTIVES

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CHAPTER I QUALIFIED ACTIVITIES

SEC. 16. *Investments Priorities Plan (IPP)*. – The BOI, upon consultation with the Office of the President, concerned IPAs and appropriate government agencies and the private sector, shall formulate the IPP to be submitted to the President for his/her approval.

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

- a. The activity shall be covered by the current Medium Term Philippine Development Plan (MTPDP) and Medium Term Philippine Investment Plan (MTPIP) or its equivalent;
- b. The activity shall satisfy the following conditions:
 - 1) Substantial amount of investments;
 - 2) Considerable generation of employment;
 - 3) Use of modern or new technology; or
 - 4) Installation of adequate environmental protection systems;

Provided, That items b(1) and b(4) above shall be present in all activities, and the threshold amount of investments and employment generation required for a specific activity shall be subject to a periodic review every three (3) years taking into consideration international standards and other indicators.

- c. The activity must comply with the specific qualification requirements and/or conditions for a particular sector or industry as set by the appropriate government agency and such other conditions as may be determined.

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

SEC. 18. *Publication*. – Upon approval of the IPP, in whole or in part, or upon approval of an amendment thereof, the IPP or the amendment, specifying and declaring the areas of investment shall be published in at least one (1) newspaper of general circulation and all such areas shall be open for application until publication of an amendment or deletion thereof.

SEC. 19. *Strategic Projects*. – The President, upon recommendation of the Board, may allow registration of a strategic project that may not be listed in the IPP, but will locate in the country as a result of stiff competition with other countries.

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

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

CHAPTER II INCENTIVES TO REGISTERED ENTERPRISES

SEC. 20. General Incentive Provision.— The incentives provided in this Act may be availed of by the registered enterprise to the extent of their registered activity upon election at the time of application for registration; *Provided that*, such election, once made, shall be final; *Provided further*, that the reckoning period for availment of incentives shall be at the start of commercial operation.

SEC. 21. Incentives to Registered Export Enterprises. — Registered Export Enterprises shall have the following incentives; *Provided that*, they meet the minimum export requirement:

- a. *Income tax-based incentive options for registered export enterprises located inside or outside ecozones or free ports.* -
 - 1) Income Tax Holiday (ITH) for a period of six years (6) years and thereafter, five percent (5%) tax on Gross Income Earned (GIE), in lieu of all national and local taxes except real property tax (RPT) on land owned by private developers, for a period of nineteen (19) years; or
 - 2) Five Percent (5%) Tax on GIE, in lieu of all national and local taxes except RPT on land owned by private developers, for a period of twenty five years (25) years; or
 - 3) Fifty Percent (50%) reduction from corporate income tax for a period of twenty-five (25) years.
- b. *Value-added Tax (VAT) and Customs Duty treatment on Importation of Capital Equipment and Raw Materials.* -
 - 1) Located Inside an Economic Zone and/or Freeport Zone
 - i. Exemption from VAT and customs duty on importation of capital equipment, including consignment thereof subject to Section 31 of this Act;
 - ii. Exemption from VAT and customs duty on importation of raw materials, supplies, spare parts and semi-finished products used exclusively by the registered export enterprise in its registered activity;
 - 2) Located Outside Economic and/or Freeport Zones
 - i. Exemption from VAT and customs duty on importation of capital equipment, including consignment thereof subject to Section 31 of this Act.
 - ii. Exemption from VAT and customs duty on importation of raw materials, supplies, spare parts and semi-finished products used exclusively by the registered export enterprise in its registered activity provided that such registered export enterprise is operating a Customs Bonded Manufacturing Warehouse (CBMW) or an accredited user of a Customs Common Bonded Manufacturing Warehouse (CCBMW).

iii. Refund of VAT and customs duty on importation of raw materials, supplies, spare parts and semi-finished products used exclusively by the registered export enterprise in its registered activity if the registered export enterprise is not operating a CBMW or an accredited user of a CCBMW.

- c. *Tax and Duty Free Importation of Source Documents.* – The importation of source documents by registered export enterprises shall be eligible for VAT and customs duty exemption. The tax incentive may be granted to the registered export enterprise for a period of ten (10) years.
- d. *Zero Percent (0%) Rate of VAT on the Sale by a Domestic Enterprise to a Registered Export Enterprise.* – The provisions of law to the contrary notwithstanding, the sale by a domestic enterprise of goods and/or services to a registered export enterprise, regardless of the latter's location and whether enjoying the ITH, the Reduced Income Tax or the five percent (5%) tax on GIE shall be subject to zero percent (0%) VAT rate: *Provided*, That such goods and/or services are required by registered export enterprise's activity.
- e. *Exemption from Wharfage Dues.* – The provisions of law to the contrary notwithstanding, exports by a registered export enterprise shall be exempted from wharfage dues and export taxes.
- f. *Employment of Foreign Nationals.* – Subject to the provisions of Commonwealth Act No. 613, as amended, a registered export enterprise may employ foreign nationals in managerial, technical or advisory positions.

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

Notwithstanding any provision of the law to the contrary, the practice of profession shall be allowed inside an Ecozone by foreign nationals, subject to the following conditions:

- 1) The foreign national shall secure the required permit from the Professional Regulatory Commission to practice his profession;
- 2) The law of the country of that foreign national allows genuine reciprocity for Filipinos to practice their profession thereto;
- 3) There is no competent, able and willing at the time of application to perform the profession for which the foreign national is desired;
- 4) The foreign national shall train two Filipino understudies;
- 5) The ratio of foreign nationals *viz-a-viz* Filipinos practicing the same profession in a registered enterprise shall not exceed 1:5 and shall not in any case exceed 5% of the total workforce of the said registered enterprise;
- 6) The foreign national meets the conditions set forth under Section 29 (b), (c) and (d); and
- 7) The practice of profession of the foreign national in the Philippines shall not exceed a total five years extendible for a limited period as determined by the Board.

SEC. 22. Tax Treatment and Other Incentives for Registered Enterprises in Ecozones and Freeport Zones. – In addition to the applicable incentives provided under the preceding section on export incentives, registered enterprises locating in the Special Economic Zones and Freeport Zones shall be entitled to the following incentives:

a. *Tax Treatment of Merchandise in Ecozones or Freeports. -*

- 1) Except as otherwise provided in this Act, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the ecozones or freeports to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.
- 2) Merchandise purchased by a registered enterprise located in the ecozones or freeports from the customs territory, and subsequently brought into the ecozones or freeports, shall be considered as export sales and exportation thereof shall be entitled to the benefits allowed by law for such transaction.
- 3) Merchandise sent from the ecozones or freeports to the customs territory shall, whether or not combined with or made part of other articles likewise of local origin or manufactured in the Philippines while in the ecozones or freeports, be subject to internal revenue and customs laws of the Philippines as domestic goods sold, transferred or disposed of for local consumption. If the finished goods have imported components, the duties shall be based on the value of said imported materials, except when the final product is exempt.
- 4) Qualified merchandise or articles manufactured by registered ecozone or freeport locators, which are made available for sale in the domestic market shall be imposed the applicable ASEAN Common Effective Preferential Tariff (CEPT) rate, if qualified, or applicable tariff rates under bilateral or regional trade agreements, if qualified, or Most Favoured Nation (MFN) rate on imported raw materials and MFN rates on non-qualified raw materials used in the manufacture of the qualified merchandise or articles. In case of bilateral agreements, the applicable rate shall be the agreed rate.
- 5) Domestic merchandise on which all internal revenue taxes have been paid, if subject thereto, and foreign merchandise previously imported on which duty or tax has been paid, or which have been admitted free of duty and tax, may be taken into the ecozones or freeports from the customs territory of the Philippines and be brought back thereto free of quotas, duty or tax.
- 6) Subject to such regulations respecting identity and safeguarding of the revenue as the concerned IPA may deem necessary when the identity of an article entered into the ecozones or freeports under the immediately preceding paragraph has been lost, such article when removed from the ecozones or freeports and taken to the customs territory shall be treated as foreign merchandise entering the country for the first time, under the provisions of the Tariff and Customs Code of the Philippines, as amended.
- 7) Articles produced or manufactured in the ecozones or freeports and exported therefrom shall, on subsequent importation into the customs territory, be subject to the import laws applicable to like articles manufactured in a foreign country.
- 8) Articles regulated by law for sale to the domestic market shall only be allowed to be used or consumed within the ecozones or freeports.
- 9) Unless the contrary is shown, merchandise taken out of the ecozones or freeports shall be considered, for tax purposes, to have been sent to customs territory.

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

b. *Tax Treatment of Services in the Ecozones or Freeports. -*

- 1) Sale of service by an entity from the customs territory to a registered ecozone or freeport enterprise or by a registered ecozone or freeport enterprise to another ecozone or freeport enterprise shall be treated as indirect export, and hence, shall not be subjected to internal revenue taxes for such transaction.
 - 2) Sale of service by a registered ecozone or freeport enterprise to the customs territory shall be subject to the applicable internal revenue laws and regulations.
- c. *Exemption from Local Taxes and Licenses.* — Notwithstanding the provisions of law to the contrary, zone and freeport registered enterprises shall, to the extent of their construction, operation or production inside the zone or freeport be exempt from the payment of any and all local government imposts, fees, licenses or taxes except real estate taxes which shall be collected by the Province/City/Municipality responsible for the collection thereof under the provisions of the Real Property Tax Code: Provided, That machineries owned by zone and freeport registered enterprises which are actually installed and operated in the Zone for manufacturing, processing or for industrial purposes shall not be subject to the payment of real estate taxes for the first three (3) years of operation of such machineries: Provided, further, That fifty percent (50%) of the proceeds of the real estate taxes collected from all real properties located in the Zone and such other areas owned or administered by the Authority shall be remitted to the Authority by the province/city/municipality responsible for the collection of such taxes under the provisions of the Real Property Tax Code. All real estate taxes accruing to the Authority as herein provided shall be expended for such community facilities, utilities and/or services as the Authority may determine.

SEC. 23. *Incentives for Registered Domestic Enterprises.* — Registered domestic enterprises shall be qualified to the following incentives to the extent of their registered activity:

- a. *Income tax-based incentive options*
 - 1) Income Tax Holiday (ITH) for a period of four (4) years; or
 - 2) Fifty Percent (50%) reduction from corporate income tax for a period of fifteen (15) years.
- b. *Value-added Tax (VAT) and Customs Duty Treatment on Importation of Capital Equipment*
 - 1) Exemption from customs duty on importation of capital equipment, including consignment subject to Section 31 of this Act; and
 - 2) Refund of VAT on importation of capital equipment.
- c. *Preferential Access to Financing and Acceptable Form of Collaterals.* — Registered SMEs shall be accorded access to financing from government financial institutions at preferential rates below the market rates. Further, capital goods acquired from loans secured from government financial institutions shall be an acceptable form of collateral for the same loan.
- d. *Assistance in the Preparation of Project Study.* — Registered SMEs may be provided assistance in the preparation of project study for purposes of registration under this Act.
- e. *Employment of Foreign Nationals.* — Subject to the provisions of Section 25 of Commonwealth Act No. 613, as amended, a registered domestic "strategic" enterprise may employ foreign nationals in managerial, technical or advisory positions.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted

to enter and reside in the Philippines during the period of employment of such foreign nationals.

SEC. 24. Incentives for Domestic "Strategic" Enterprises. – Registered domestic enterprises engaged in strategic projects, as defined under Section 15 of this Act may avail of the following incentives, whenever applicable, to the extent of their registered activity:

- a. Income Tax Holiday (ITH) for a period of eight (8) years. Thereafter, fifty percent (50%) reduction from corporate income tax for a period of seventeen (17) years.
- b. Value-added Tax (VAT) and Customs Duty Treatment on Importation of Capital Equipment. –
 - 1) Exemption from customs duty on importation of capital equipment, including consignment thereof subject to Section 31 of this Act; and
 - 2) Refund of VAT on importation of capital equipment.

SEC. 25. Incentives for Registered Domestic Enterprises in the Thirty Poorest Provinces or Less Developed Areas (LDAs). – Registered domestic enterprises located in LDAs shall have the following incentives:

- a. *Income based incentive options.* –
 - 1) Income Tax Holiday (ITH) for a period of six (6) years; then ten percent (10%) Corporate Income Tax (CIT) rate for ten (10) years if located in 1st to 3rd class municipalities; twelve (12) years if located in 4th to 6th class municipalities; or
 - 2) Five Percent (5%) Tax on Gross Income Earned (GIE) in lieu of all national and local taxes, except RPT on land owned by private developers, for a period of twenty five (25) years;
- b. *Value-added Tax and Customs Duty Treatment on Importation of Capital Equipment.* –
 - 1) Exemption from VAT and customs duty on importation of capital equipment, including consignment thereof subject to Section 31 of this Act; and
 - 2) Refund of VAT on importation of capital equipment
- c. *Special Realty Tax Rates on Equipment and Machinery.* – Realty and other taxes on civil works, equipment, machinery, and other improvements by a registered enterprises actually and exclusively used shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value.

SEC. 26. Incentives for Private Ecozone and Domestic Industrial Zone Developers. – Private ecozone developers may avail of the incentives provided herein as conferred by the PEZA.

SEC. 27. 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.
- d. *Employment of Foreign Nationals.* Subject to the provisions of Section 25 of Commonwealth Act No. 613, as amended, a registered domestic "strategic" enterprise may employ foreign nationals in managerial, technical or advisory positions.

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

SEC. 28. 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 Act shall be made applicable to visas granted to investors by the BOI, the PEZA, the SBMA, the CDC, the JHMC, the PPMC, 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.

CHAPTER III AVAILMENT OF INCENTIVES

SEC. 29. Income Tax-Based Incentives. On availing the income tax-related incentives, the BIR shall require a registered enterprise to secure a Certificate of Eligibility from the appropriate IPA and attach the same to its Income Tax Return (ITR) or Annual Information Return (AIR), whichever is applicable. Thereafter, the registered enterprise shall file its claim with the appropriate IPA for validation. The IPA shall endorse the result of its validation to the BIR after one year from the filing of a claim for ITH by the registered enterprise.

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

Within six (6) months from the effectivity of this law, the BIR shall review its regulations on the computation of GIE to ensure that only direct costs, or cost of goods sold and/or services rendered, shall be deductible from gross revenues, and recommend stricter rules to the Secretary of Finance if warranted.

SEC 30. Fifty Percent (50%) Reduction from Corporate Income Tax. - In computing the net taxable income for this incentive, the enterprise may be entitled to deduct the following expenses, in addition to ordinary and necessary business expenses allowed under the NIRC of 1997, as amended:

- a. *Enhanced Net Operating Loss Carry-over (NOLCO)* - The net operating loss of the registered activity during the first five (5) years from the start of commercial operation which had not been previously offset as deduction from gross income may be carried over as deduction from gross income for the next five (5) consecutive taxable years immediately following the year of such loss.
- b. *Accelerated Depreciation* - 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.
- c. *Double Deduction for Training Expenses* - Expenses incurred for local training given to employees for the development of skills, identified as necessary by the appropriate government agencies and approved by the concerned IPA, may be claimed as deduction from gross income to the extent of two hundred (200%) percent of the actual amount of expenses incurred: *Provided*, that the training expense shall be deductible on the taxable year the said training expenses were incurred: *Provided further*, that the concerned IPA shall issue the corresponding certificate of entitlement for its incentive upon filing of an application, otherwise, the training incentive shall be deemed waived.
- d. *Double Deduction for Research and Development* - Expenses incurred for research and development conducted in the Philippines relating to the business shall entitle the registered enterprise to a special deduction from taxable income equivalent to two hundred (200%) percent of the total expenses over and above the allowable ordinary and business deductions for said expenses under the NIRC of 1997, as amended. *Provided*, that the expenses for research and development shall be deductible from gross income on the taxable year the said research and development expenses were incurred. *Provided further*, that the concerned IPA shall issue the corresponding certificate of entitlement for this incentive upon filing of an application, otherwise, the research and development incentive shall be deemed waived.

SEC. 31. VAT and Customs Duties Exemption on Capital Equipment. - Importation of capital equipment, including consignment thereof, by registered enterprises may be exempted to the extent of one hundred percent (100%) of the VAT and customs duties provided that the following conditions are complied with:

- a. The capital equipment is directly and/or reasonably needed and will be used exclusively in the registered activity of the registered enterprise unless prior approval of the IPA is

secured for the part time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on a specific equipment and machinery being permanently used for non-registered activities; They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices; and

- b. The approval of the IPA was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts.

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

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

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

SEC. 32. VAT Refund Mechanism on Importation of Capital Equipment and/or raw materials. - The VAT paid on imported capital equipment and/or raw materials may be refunded provided that the imported items are used exclusively by the registered enterprise pursuant to its registered activity.

In order to facilitate the immediate processing, clearance and release of VAT refund as provided in this Act, a Trust Liability Account (TLA) is hereby authorized to be established in the Bureau of Treasury (BTr). All VAT payments pertaining to the importation of registered enterprises of capital equipment or raw materials shall be deposited in the TLA for the purpose of funding valid VAT refund claims. The claims for VAT refund shall be made by the registered enterprise to the DOF - One Stop Shop Tax Credit and Duty Drawback Center (DOF-OSS) which, in turn, will process, approve and release the VAT refund.

A registered enterprise shall file a claim for VAT refund within one (1) year from the date of actual exportation. All amounts paid but no longer allowed for refund shall immediately accrue to the general fund of the National Government.

All applications for VAT refund shall be processed and acted upon within thirty (30) days after submission of complete documents. The refund shall be in a form of cash or managers/cashiers check payable to the registered export enterprise.

In cases of dispute under the VAT refund mechanism provided in this section, the pertinent provisions of the National Internal Revenue Code of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended, shall apply.

SEC. 33. *Allocation of the Five Percent (5%) tax on GIE.* – The 5% tax on GIE shall be paid and remitted by registered enterprises located inside the ecozone or freeport in accordance with the existing sharing allocations provided in the IPAs respective charters. For registered enterprises located outside the ecozones or free ports, the tax on GIE shall be paid and remitted as follows:

- 2% to the National Government
- 2% to the Province or City where the project is located
- 1% to the Municipality or City where the project is located

CHAPTER IV REGISTRATION OF ENTERPRISES

SEC. 34. *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 Act: *Provided, however,* That for purposes of this Act and any law to the contrary notwithstanding, a natural-born ASEAN citizen or a corporation effectively controlled by ASEAN citizens, or a corporation organized in any ASEAN country shall be considered as a Philippine investor: *Provided, further,* That the investment is made in an activity where the Constitution does not specifically require Filipino participation;
- 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; 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 Act.

CHAPTER V BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

SEC. 35. *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. 36. *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 Act 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. 37. *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) IPA. 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.

SEC. 38. *Criteria for Evaluation of Application.* – The following criteria shall be considered in the evaluation of applications for registration under a preferred Act area:

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

SEC. 39. *Environmental Protection and Corporate Social Responsibility.* – Every registered enterprise shall prepare a Program for Environmental Protection and Corporate Social Responsibility (CSR) covering the period for its entitlement to fiscal incentives. Such Program shall be undertaken on a per registration basis and shall be submitted as an accompanying document to the application for registration to be submitted to the appropriate IPA.

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

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

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

SEC. 40. *Approval and Registration Procedures.* – The IPA is authorized to adopt rules and regulations to facilitate action on applications filed with it; prescribe criteria for the evaluation of applications; devise standard forms for the use of applicants and delegate to the regional offices of the DTI the authority to receive and process applications for enterprises located in their respective regions.

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

SEC. 41. *Certificate of Registration.* – A registered enterprise under this Act shall be issued a Certificate of Registration under the seal of the IPA and the signature of its Chairman and/or such other official or officer of the IPA as it may empower and designate for the purpose. The

certificate shall be in such form and style as the IPA may determine and shall state, among other matters:

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

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

SEC. 43. *Administration of Incentives.* - The BOI, the PEZA and the other IPAs shall be responsible for the administration of incentives granted to their respective registered enterprises.

TITLE IV FINAL PROVISIONS

SEC. 44. *Vested Right.* - Registration of enterprises under existing investment laws shall continue to be legally binding in accordance with the terms and conditions stated in their respective certificates of registration. The registered enterprise may opt to be governed by the provisions of this Act, provided that, only the remaining unutilized incentives shall be granted to the said enterprise. In such case, said enterprise shall be required to surrender its certificate of registration, which shall be deemed as an express waiver of their privilege to apply for and avail of incentives under the incentives law under which they were previously registered.

SEC. 45. *Authority to Retain Funds.* - Registered enterprises availing of fiscal incentives, except those located in the thirty (30) poorest provinces or LDAs, shall be assessed with a maximum fee of one percent (1%) of the amount of incentives granted. Said amount shall automatically accrue to the BOI to be allotted for investment promotions activities and other special projects to achieve the objectives of this Act, subject to the usual accounting and auditing rules and procedures.

SEC. 46. *Protection of the Environment.* - The IPAs, in coordination with the appropriate agencies, shall take appropriate steps to enact the proper measures for the protection of the environment, and shall coordinate with the Environmental Management Bureau of the Department of Environment and Natural Resources (EMB-DENR) to avoid undue delay in the issuance of the required Environmental Compliance Certificate (ECC): *Provided, however,* That applications for environmental clearances, permits, and/or licenses of registered enterprises shall be acted upon by the appropriate government agency within thirty (30) days from date of official acceptance. In the event that the appropriate government agency failed to act within the aforementioned date, the application for the said environmental requirement shall be deemed complied with for purposes of operation of the registered activity.

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

All appeals involving cases decided by the IPA, except as provided in the next succeeding paragraph, shall be filed with the Court of Appeals within fifteen (15) days from receipt of notice of the order or decision or of the denial of the appellant's motion for new trial or reconsideration. Within the same period, the aggrieved party may file a motion for reinvestigation or reconsideration. Only one (1) motion for reconsideration shall be allowed, subject to the posting

of the aforementioned *supersedeas* bond which shall be limited to cash and/or surety bond from a BOI-accredited bonding company.

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

SEC. 48. *Suspension and Forfeiture of Incentives of Registered Enterprises. Refund and Penalties.* - When there is probable cause to believe that the registered enterprise has violated its registration terms and conditions, the BOI or the IPA may suspend its availment of incentives, until proven otherwise.

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

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

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

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

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

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

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

SEC. 49. *Disposition of Savings from the Implementation of this Act.* – The total amount of savings to be generated from the implementation of this Act shall be allocated annually and used exclusively for the provision of scholarships under the CHED.

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

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

SEC. 50. *Implementing Rules and Regulations (IRR).* – The BOI in coordination with DOF, NEDA, the DBM, PEZA, other IPAs and other concerned government agencies, shall promulgate rules and regulations to implement the intent and provisions of this Act within one hundred twenty (120) days from the effectivity of this Act. Such rules and regulations shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

SEC. 51. *Transitory Provision.* – Until the IRR of this Act take effect, the present rules and regulations under the old investments laws shall apply to the extent that they are not inconsistent with the provisions of this Act.

SEC. 52. *Separability Clause.* – The provisions of this Act are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby, shall remain in force and effect.

SEC. 53. *Repealing Clause.* The following provisions are hereby repealed:

- a. Books I, V and VI of Executive Order No. 226, series of 1987, otherwise known as “The Omnibus Investments Code of 1987”;
- b. Section 24 of Republic Act No. 7916, otherwise known as “An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration and Coordination of Special Economic Zones in the Philippines, Creating for the Purpose the Philippine Economic Zone Authority (PEZA), and for other Purposes (Special Economic Zone Act of 1995)”;
- c. Section 17(1), (2), (3), (4), (5), (6), (7), (8) and Section 18 (a), (b) and (c) of Presidential Decree No. 66, otherwise known as “Creating the Export Processing Zone Authority and Revising Republic Act No. 5490”;
- d. Fourth paragraph of Presidential Decree No. 529 (restored by FIRB Resolution 19-87), otherwise known as “Granting to Petroleum Exploration Concessionaires under the Petroleum Act of 1949 Exemption from Customs Duty and Compensating Tax on Importations of Machinery and Equipment, Spare Parts and Materials Required for Their Exploration Operations”;
- e. Sections 8, 9 and the second sentence of the first paragraph and second paragraph of Section 10 of Presidential Decree No. 538, otherwise known as “Creating and Establishing the PHIVIDEC Industrial Authority and Making Its Subsidiary Agency of the Philippine Veterans Investment Development Corporation Defining Its Powers, Functions and Responsibilities, and for Other Purposes”;
- f. Section 36(e) and (f) (1) and (2) of Presidential Decree No. 705, otherwise known as the “Revised Forestry Code”;
- g. Section 16 (c) and (d), and Section 17 of Republic Act No. 7844, otherwise known as “An Act to Develop Exports as a Key Towards the Achievement of the National Goals Towards the Year 2000 (Export Development Act of 1994)”;
- h. Chapter XVI, Sections 90, 92, 93(a) and (b) of Republic Act No. 7492, otherwise known as the “Philippine Mining Act of 1995”;

- i. Section 9 of Republic Act No. 8479, otherwise known as the "Downstream Oil Deregulation Act of 1998";
- j. Chapter II, Article II, Section 35(b), (c) and (d) of Republic Act No. 8550, otherwise known as "The Philippine Fisheries Code of 1998";
- k. Section 5 of Proclamation No. 216, otherwise known as "Creating and Designating the Area Covered by the Former Wallace Air Station and Contiguous Areas in Poro Point as the Poro Point Special Economic and Freeport Zone and Transferring Lands to the Bases Conversion Development Authority pursuant to Republic Act No. 7227";
- l. Section 6 of Proclamation No. 984, otherwise known as "Creating and Designating the Municipality of Morong, Province of Bataan, including the Area of Philippine Refugee Processing Center Complex (PRPCC) as the Morong Special Economic Zone pursuant to Republic Act No. 7227 and transferring the land comprising the PRPCC to the Bases Conversion Development Authority (BCDA)";
- m. Executive Order No. 528, series of 2006, Amending Executive Order No. 31, series of 2004, "Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by BOI-registered new and Expanding Enterprises";
- n. Section 4(e) of Republic Act No. 7903, otherwise known as "Zamboanga City Special Economic Zone Act of 1995"; and
- o. Section 1 of Executive Order No. 619, otherwise known as "Creating and Designating Special Economic Zones Pursuant to Republic Act No. 7916, as Amended by Republic Act No. 8784, in Relation to Republic Act No. 7227, as Amended by Republic Act No. 9400, Inside the Clark Freeport Zone".
- p. All other laws, acts, decrees, orders and issuances or provisions thereof inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

SEC. 54. *Survivor Clause.* – (a) The provisions of this Act to the contrary notwithstanding, the following laws, decrees and orders shall continue to have full force and effect:

- a. Section 18(f) of Presidential Decree No. 66, otherwise known as "Creating the Export Processing Zone Authority and Revising Republic Act No. 5490";
- b. Section 1 of Republic Act No. 9281 entitled, "An Act to Strengthen Agriculture and Fisheries Modernization in the Philippines by Extending the Effectivity of Tax Incentives and its Mandated Funding Support, Amending for this Purpose Sections 109 and 112 of Republic Act No. 8435";
- c. The provisions of this Act and Republic Act No. 9337 to the contrary notwithstanding, the following laws, decrees and orders shall continue to have full force and effect:
- d. Section 10(1) to (6) of Republic Act No. 7156, otherwise known as "An Act Granting Incentives to Mini-Hydro Electric Power Developers and for other Purposes (Mini-Hydroelectric Incentive Act)";
- e. Sections 10, 16(a), (b) and (c) and Section 17(a) to (c) of Presidential Decree No. 972, as amended by Presidential Decree No. 1174, otherwise known as "Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal";
- f. Section 12 of Presidential Decree No. 87, otherwise known as "An Act to Promote the Discovery and Production of Indigenous Petroleum, and Appropriating Funds Therefor";
- g. Section 4(a) and (d) of Presidential Decree No. 1442, as restored by FIRB Resolution 19-87, otherwise known as "An Act to Promote the Exploration and Development of Geothermal Resources"; and
- h. Chapter II, Section 4(A), (B), (C) and (D); and Chapter VIII, Section 19(A), (B) and (C) of Republic Act No. 9295, Entitled "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Shiprepair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and for other Purposes";

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

SEC. 55. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in a newspaper of general circulation, whichever is earlier.

Approved,