

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

8 MAR 12 1977

S. B. No. 2118

RECEIVED BY \_\_\_\_\_

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Introduced by Senator Loren Legarda

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**EXPLANATORY NOTE**

This bill seeks to convert the Bataan Economic Zone located in the Municipality of Mariveles, Province of Bataan, into the Bataan Special Economic Zone and Freeport.

Mariveles lies in the shadow of the Mariveles Mountain on a fine harbor, Mariveles Bay. It is located in a cove at the southernmost tip of Bataan Peninsula, some 173 kilometers overland from Manila. It is bounded in the east by Manila Bay and the North Channel, which separates the town from Corregidor, in the south and the west by China Sea, in the northwest by Bagac and in the north by Limay. Mariveles has a total land area of 15,920 has. (153 kms), which is 12% of the total land area of Bataan, and with a population of 85,779 (Based on the 2000 census on Population conducted by the National Statistics Office). It also boasts of the country's largest oil refinery and petro-chemical complex, the National Shipyard and Steel Corporation complex, a pulp and paper mill, copper smelter, electronic and assembly plants, garment factories, and an array of other companies.

On June 21, 1969, by virtue of Republic Act No. 5490, Mariveles, Bataan, was made a Port of Entry thereby making it a Foreign Trade Zone. On the 20<sup>th</sup> of November, 1972, then President Ferdinand E. Marcos signed into law Presidential Decree No. 66, Creating the Export Processing Zone Authority and Revising Republic Act No. 5490. On February 24, 1995, Republic Act No. 7916, entitled: "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 this Purpose, the Philippine Economic Zone Authority (PEZA), and for other Purposes", was passed thereby amending, modifying, superseding or repealing laws, acts, presidential decrees, executive orders which were consistent with the provisions of the Act.

The presence of the Bataan Economic Zone helps in boosting the economic conditions not only of the town of Mariveles but the whole province of Bataan as well. In brief, the Bataan Economic Zone has a total land area of 1,733.37 hectares. It has 62 locators engaged in manufacturing and importing of raw materials and exporting of finished products. It has a steady supply of power and water and has telecommunications systems, roads and buildings. Unfortunately, development of the economic zone is very slow due to several factors affecting the smooth operations inside the economic zone. Roads have to be repaired and maintained, buildings have to be restored and remodeled; and other infrastructure should be constructed to be able to fit and adapt to the needs of the changing times. Communications and

telecommunications systems must be developed and widened in scope. In addition, the economic zone is facing a tough competition with other economic zones with freeports especially those that are located nearby.

There is, therefore, a necessity to convert the Bataan Economic Zone into the Bataan Special Economic Zone and Freeport. The addition of a free port to an already existing economic zone will surely help in addressing the government's efforts of creating 2 million jobs per year to be able to neutralize the rate of unemployment in the country. With the proximity of Bataan to Metro Manila, surely more investors from other countries will be attracted to come in. Needless to say, Bataan is one province that has the potential of becoming a busy trade center in Asia once the economic zone is developed to its fullest and a port is successfully put in place that could service both local and international trade. It is strategically located, being adjacent to the Subic Freeport and situated very near the Clark Development Authority, both of which have experienced unprecedented development recently.

In terms of tourism, more visitors will be encouraged to visit the country to see more of Bataan with its colorful history as one of the last stands of both American and Filipino soldiers' bravery before they were overwhelmed by the Japanese forces in World War II. Its pristine shoreline, beautiful beaches and forest reserves ideal for mountaineering and other activities are all tourist attractions just waiting to be appreciated.

In view thereof, and considering that the conversion of the Bataan Economic Zone into Bataan Special Economic Zone and Freeport will redound to the benefit not only of the people of Bataan but of the whole Filipino people, immediate approval of this bill is earnestly sought.



**LOREN LEGARDA**

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**AN ACT**

**CONVERTING THE BATAAN ECONOMIC ZONE LOCATED IN THE MUNICIPALITY OF MARIVELES, PROVINCE OF BATAAN, INTO THE BATAAN SPECIAL ECONOMIC ZONE AND FREEPORT, CREATING FOR THIS PURPOSE THE BATAAN SPECIAL ECONOMIC ZONE AND FREE PORT AUTHORITY, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES**

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

**SECTION 1. Short Title.** - This Act shall be known as the "*Bataan Special Economic Zone and Freeport Act of 2008.*"

**SEC. 2. Declaration of Policy.** - It is hereby declared the policy of the State to actively encourage, promote, induce and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people especially those in the rural areas, increase productivity and individual and family income, and thereby improve the level and quality of living condition through the establishment, among others, of special economic zones in suitable and strategic locations in the country and through measures that will attract legitimate and productive foreign investments.

**SEC. 3. Conversion of the Bataan Economic Zone into the Bataan Special Economic Zone and Freeport.** - The existing Bataan Economic Zone located in the Municipality of Mariveles, Province of Bataan is hereby converted into a special economic zone and freeport to be known as the Bataan Special Economic Zone and Freeport (BSEZFP). The BSEZFP shall cover portions of barangays Maligaya, Malaya, Alas-asin, Baseco and Sisiman, all in the Municipality of Mariveles, Province of Bataan.

**SEC. 4. Governing Principles.** - The BSEZFP shall be managed and operated under the following principles:

(a) Within the framework and limitations of the Constitution and applicable provisions of the Local Government Code, the Bataan ECOZONE shall be developed into and operated as a decentralized, self-reliant and self-sustaining industrial, commercial-trading, agro-industrial, tourist, banking, financial and investment center with suitable residential areas;

(b) The BSEZFP shall continue to be provided with transportation, telecommunications and other facilities needed to attract legitimate and productive investments, generate linkage industries and employment opportunities for the people of the Province of Bataan and its neighboring towns and cities;

(c) The BSEZFP may establish mutually beneficial economic relations with other entities or enterprises within the country or, subject to the administrative guidance of the Department of Foreign Affairs (DFA), the Philippine Economic Zone Authority (PEZA) and the Department of Trade and Industry (DTI), with foreign entities or enterprises;

(d) Foreign citizens and companies owned by non-Filipinos in whatever proportion may set up enterprises in the BSEZFP, either by themselves or in joint venture with Filipinos in any sector of industry, international trade and commerce within the BSEZFP.

(e) The BSEZFP shall be managed and operated as a separate customs territory ensuring free flow or movement of goods and capital within, into and out of its territory;

(f) The BSEZFP may provide incentives such as tax and duty-free importations of raw materials, capital and equipment to registered enterprises located therein. However, exportation or removal of goods from the territory of the BSEZFP to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code (NIRC) of 1997, as amended;

(g) The areas comprising the BSEZFP may be expanded or reduced when necessary. For this purpose, the BSEZFP Authority, which will be created under this Act, in consultation with the local government units (LGUs), shall have the power to acquire either by purchase, negotiation or condemnation proceedings, any private lands within or adjacent to the BSEZFP for the following purposes: (1) consolidation of lands for BSEZFP development; (2) acquisition of right of way to the BSEZFP; and (3) the protection of watershed areas and natural assets valuable to the prosperity of the BSEZFP.

(h) Goods manufactured by the BSEZFP enterprise shall be made available for immediate retail sale in the domestic market, subject to the payment of corresponding taxes on raw materials and other regulations that may be formulated by the BSEZFP Authority, together with the PEZA, the Bangko Sentral ng Pilipinas (BSP), the Department of Finance (DOF), the Bureau of Customs (BoC) and the DTI in accordance with the NIRC of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended. However, in order to protect the domestic industries, a negative list of industries shall be drawn up and regularly updated by PEZA. Enterprises engaged in industries included in such negative list shall not be allowed to sell their products locally; and

(i) The defense of the BSEZFP and the security of its perimeter fence shall be the responsibility of the national government in coordination with the BSEZFP Authority and the LGUs.

**Sec. 5. Incentives To Registered Enterprises.** - The Bataan Special Economic Zone and Free Port Authority (BSEZFPA) shall provide the following incentives to the registered enterprises located therein as follows:

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

(1) Category A - Registered domestic enterprise located in highly developed areas, as determined by the Board of Investments (BOI), shall be entitled to four-year ITH.

(2) Category B - Registered domestic enterprise on the following shall be entitled to six-year ITH:

(a) Located in less developed areas as defined by the BOI, or

(b) Producing new products or rendering services or having strong backward or forward linkages.

(3) Category C - Registered export enterprise shall be entitled to six-year ITH: *Provided, however,* That if the export enterprise complies with the following: (1) Large capital investments or sizeable employment generation, or

(2) Use technology of high level, or (3) Located outside Metro-Manila, it shall be entitled to eight-year ITH.

Registered enterprises embarking on new investments that are listed in the current Investment Priority Plan (IPP) shall be entitled to incentives provided herein pertaining to the new investments and subject to such terms and conditions as the BOI may determine.

Additional investments in the project shall be entitled to the ITH corresponding to such investments as may be determined by the BOI. Additional ITH may be granted for as long as the investment is made on the same project: *Provided*, That the project is listed in the IPP at the same time the additional investment in the project is made: *Provided, further*, That the entitlement period for additional investments shall not exceed three times the period provided under this subsection: *Provided, finally*, That the total ITH period for an export enterprise availing of an eight-year ITH shall not exceed twenty (20) years. Any unused incentives shall therefore be deemed forfeited if not used during the incentive period.

Enterprises registered with BSEZFPA are required to share in the special development fund of the BOI for investment promotion projects of the government equivalent to one percent (1%) of the ITH granted for every application.

The Bureau of Internal Revenue (BIR) shall require a registered enterprise availing of ITH or net operating loss carryover (NOLCO) to secure a certificate of eligibility from the BSEZFPA before submitting its income tax return (ITR) with the BSEZFPA for validation.

Failure to secure certification or to file the ITH or the NOLCO availment for validation by the BSEZFPA within forty-five (45) days from the last day of statutory filing date for ITR shall cause the forfeiture of the availment for the taxable period.

(B) Net Operating Loss Carryover (NOLCO) - Net operating loss of the business or enterprise during the first three years from start of commercial operations which have not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next five

consecutive years immediately following the year of such loss: *Provided, however,* That operating loss resulting from the availment of incentives provided in this Code shall not be entitled to the NOLCO.

Registered enterprises availing of the ITH as herein provided shall not be entitled to avail of the NOLCO.

(C) Imposition of a tax rate of five percent (5%) on Gross Income Earned (GIE) - Except for real property tax on land, no local and national taxes as prescribed under Republic Act No. 8424, also known as the "Tax Reform Act of 1997", such as the income tax, the excise tax and the franchise taxes shall be imposed on business establishments operating within BSEZFP. In lieu thereof, five percent (5%) of the gross income shall be paid as follows:

- (1) Two percent (2%) to the national government;
- (2) One percent (1%) to the Province of Bataan
- (3) One percent (1%) shall be remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located; and
- (4) One percent (1%) to the Bataan Special Economic Zone and Free Port Authority.

All persons and service establishments in the BSEZFP shall be subject to national and local taxes under the National Internal Revenue Code of 1997, as amended, and the Local Government Code of 1991.

(D) 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 allowed 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, and the Local Government Code of 1991.

(E) Capital Equipment Incentives - (1) Importations of capital equipment, spare parts, tools and dye, or those required for pollution abatement

and control, cleaner production and waste reduction including consignment thereof by registered enterprises upon the effectivity of this law, shall be exempted to the extent of one hundred percent (100%) of the taxes and customs duties: *Provided*, That the importation thereof shall be used exclusively by the registered enterprise in its registered activity: *Provided, further*, That the importation of machinery and equipment and accompanying parts shall comply with the following conditions:

- (a) These are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;
- (b) These are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the BSEZFPA 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; and
- (c) Approval of the BSEZFPA was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts.

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

- 1) The same is made to another enterprise enjoying tax and duty exemption on imported capital equipment;
- 2) The same is made to another enterprise, upon payment of the taxes and duties on the net book value of the capital equipment to be sold;
- 3) The exportation of the capital equipment, machinery, spare parts or source documents or those required for pollution abatement and control; and



- 4) Proven technical obsolescence of the said equipment, machinery or spare parts..

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs other than paragraph 2, the registered firm shall not pay the taxes and duties waived on such items: *Provided, further,* That if the registered enterprises sell, transfer or dispose the aforementioned imported items without prior approval within five 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, machinery or spare parts is approved after five years from date of importation, the registered enterprise is still liable to pay the taxes and duties based on the net book value of the capital equipment, machinery or spare parts if it has violated any of its registration terms and conditions. Otherwise, it shall no longer be subject to the payment of the taxes and duties waived thereon.

The purchase of machinery and capital equipment and raw materials, supplies, parts and semi-finished products, used in the fabrication of machinery and capital equipment by a registered export-oriented enterprise from a domestic manufacturer shall be subject to zero percent (0%) value-added tax.

The registered export-oriented enterprise shall be granted a tax credit equivalent to the amount of duties that would have been waived on the machinery; capital equipment; and raw materials, supplies, parts and semi-finished products used in the fabrication of machinery and capital equipment, had these items been imported, upon its submission to the DOF of the bill of materials evidencing the transaction value of such and other pertinent documents, for verification and proper endorsement.

The availment by a registered export enterprise of the incentive provided under the immediately preceding two paragraphs shall be subject to the following conditions: (i) that said capital equipment, machinery and spare parts will be used exclusively by the registered enterprise in its registered activity; (ii) that the capital equipment or machinery where the raw materials, supplies, parts and semi-finished products were used would have qualified for tax and duty-

free importation; and (iii) that the approval of the BSEZFPA is obtained by the registered enterprise. If the registered enterprise sells, transfers or disposes of these machineries, capital equipment and spare parts, the provision in the preceding paragraphs for such disposition shall apply.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of delivery.

(F) The importation of source documents by information technology registered enterprises shall be eligible for tax-and-duty-free importation.

(G.) Raw Materials Incentives - Every registered export-oriented enterprise shall enjoy a tax credit equivalent to the internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products: *Provided*, That the same are not sufficient in quantity, quality or are not competitively priced which are used in the manufacture, processing or production of its export products forming part thereof, exported directly and indirectly by the registered export-oriented enterprise, based on the actual taxes and duties paid for such materials/supplies/semi-manufactured products by the registered enterprise;

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of exportation of the final product.

(H.) Incentives on Breeding Stocks and Genetic Materials. - Importation of breeding stocks and genetic materials within ten (10) years from the date of registration of commercial operation of the enterprise shall be exempt from all taxes and duties: *Provided*, That such breeding stocks and genetic materials are reasonably needed in the registered activity and approved by the BSEZFPA.

The availment of the incentives by a registered enterprise shall be subject to the following: (i) that said breeding stocks and genetic materials would have been qualified for tax-and-duty-free importation under the preceding paragraph; (ii) that the breeding stocks and genetic materials are reasonably needed in the registered activity; (iii) that the approval of the BSEZFPA has been obtained by the registered enterprise; and (iv) that the purchase is made within ten (10) years from the date of registration of commercial operation of the registered enterprise.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of delivery;

(I.) Exemption from Wharfage Dues. - The provisions of law to the contrary notwithstanding, exports by a registered enterprise shall be exempted from wharfage dues;

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

(K) (1) Tax treatment of merchandise in the BSEZFP -

(i) 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 zone 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, any provision of law to the contrary notwithstanding;

(ii) Merchandise purchased by a registered BSEZFP enterprise, from the customs territory and subsequently brought into the export processing zone, shall be considered as export sales and exportation thereof shall be entitled to the benefits allowed by law for such transaction;

(iii) Domestic merchandise sent from the BSEZFP to the customs territory shall, whether or not combined with or made part of other articles likewise of local origin or manufactured in the Philippines while in the export processing zone, be subject to internal revenue

laws of the Philippines as domestic goods sold, transferred or disposed of for local consumption;

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

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

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

(vii) Articles produced or manufactured in the BSEZFP 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;

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

(2). Tax treatment merchandise in free trade/free port zone.

The BSEZFP shall be operated and managed as a separate customs territory ensuring free flow or movement of goods within, into and exported out of the

free trade/free port zone. Importations of raw materials and capital equipment are tax and duty free. However, exportations or removal of goods from the free trade/free port zones to the other parts of the Philippines territory shall be subject to customs and internal revenue regulations.

(3). Tax treatment of services in the BSEZFP -

(i) Sale of service by an entity from the customs territory to a registered ecozone or free trade enterprise, or by a registered ecozone or freeport enterprise to another ecozone or freeport enterprise shall be treated as *indirect export*, and hence, entitled to the benefits allowed by law for such transaction.

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

(L) Registered export oriented enterprise shall have access to the utilization of the bonded warehousing system in accordance with the rules and regulations of the Bureau of Customs;

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

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

without further documentary requirements other than valid passports or other travel documents in the nature of passports. The validity of the multiple-entry visa shall be extendible yearly.

The foreign national admitted herein, as well as their respective spouses and dependents shall be exempt from: (i) Obtaining Alien Certificate of Registration and Emigration Clearance Certificates; and (ii) Securing the Alien Employment Permit (AEP) and all types of clearances, permits, licenses or their equivalents required by any government department or agency.

**Sec. 6. Incentive to Investors.** - Any foreign national covered under subsection (M) of Section 5 of this Act, who invests an amount of One Hundred Fifty Thousand US dollars (US\$150,000.00), either in cash and/or equipment, in a registered enterprise shall be entitled to an investor's visa: *Provided*, That he has the following qualifications:

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

*Provided, further*, That in securing the investor's visa, the alien-applicant shall be entitled to the same privileges provided for under section 5 (M) hereof.

As a holder of 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 investment in the country. Should said alien withdraw his investments from the Philippines, then the investor's visa issued to him shall automatically expire.

**Sec. 7. Administration, Implementation and Monitoring of Incentives.** - The BSEZFPA shall be responsible for the administration and implementation of

the incentives granted to its respective registered enterprises: *Provided*, That any incentive administration policy adopted by the BOI for registered enterprises shall be uniformly applied by BSEZFPA.

The following are the duties and responsibilities of the BSEZFPA in the administration of incentives:

- (A) To adopt consistent procedures of administering incentives in accordance with the guidelines established by the BOI;
- (B) To adopt and implement systems and procedures affecting trade and customs policies in accordance with the requirements established by the DOF and the BOI;
- (C) To submit data and information to the DOF and the BOI as required by any of these agencies to ascertain consistency of investment policies and incentives, including their implementation as provided in Subsection (A), and to ensure proper implementation of systems and procedures affecting trade and customs policies as provided in Subsection (B); and
- (D) To perform all other duties and responsibilities as may be required by the President.

For proper monitoring, the BOI shall create a single database of all incentives provided by all incentives granting agencies, including BSEZFPA, and all information thereto. Double entry accounting shall be done by the BOI in recording all incentives granted by the government for transparency purposes.

**Sec. 8. Extension of Period Of Availment.** - The availment period of the incentives provided herein may be extended by BSEZFPA, in the event that the registered enterprise has suffered operational *force majeure* that has impaired its viability, equivalent thereto.

**Sec. 9. Duration of Incentives.** - Enterprises registered with BSEZFPA may enjoy the ITH or the NOLCO granted by the authority prior to the availment of the five percent (5%) GIE.

Fiscal incentives under this Act shall be terminated after a cumulative

period of twenty (20) years from date of registration or start of commercial operation, whichever is applicable, except that it could be extended with regard to industries deemed indispensable to national development:

The industries exempted from this provision shall be recommended by BOI, with the concurrence of the Secretaries of the DOF and DTI.

**SEC. 10. Creation of the Bataan Special Economic Zone and Free Port Authority (BSEZFPA).** – There is hereby created a body corporate to be known as the Bataan Special Economic Zone and Free Port Authority, herein referred to as the BSEZFPA, which shall manage and operate the BSEZFP, in accordance with the provisions of this Act. This corporate franchise shall expire in fifty (50) years counted from the first year after the effectivity of this Act, unless otherwise extended by Congress. It shall be organized within one hundred eighty (180) days after the effectivity of this Act.

**SEC. 11. Principal Office of the BSEZFPA.** – The BSEZFPA shall maintain its principal office in the Municipality of Mariveles, Province of Bataan, but it may establish branches within the Philippines as may be necessary for the proper conduct of its business.

**SEC. 12. Powers and Functions of the BSEZFPA.** – The BSEZFPA shall have the following functions:

(a) To adopt, alter, use a corporate seal; to contract, lease, buy, sell, acquire, own and dispose properties of whatever nature;

(b) To sue and be sued in order to carry out its duties, responsibilities, privileges, powers and functions as granted and provided for in this Act and to exercise the power of eminent domain for public use and public purpose;

(c) To operate, administer, manage and develop the BSEZFP according to the principles and provisions set forth in this Act and to coordinate with the LGUs for the development plans, activities and operation of the BSEZFP;

(d) To recommend to the President the issuance of a proclamation to fix and delimit the site of the BSEZFP;

(e) To register, regulate and supervise the enterprises in the BSEZFP in an efficient and decentralized manner, subject to existing laws;

(f) To regulate and undertake the establishment, operation and maintenance of utilities, other services and infrastructure in the BSEZFP such as, but not limited to, heat, light and power, water supply, telecommunications, transport, toll roads and bridges, port services, etc. and to fix just, reasonable and competitive rates, fares, charges and prices thereof;



(g) To construct, acquire, own, lease, operate and maintain on its own or through contracts, franchises, licenses, bulk purchase from the private sector or permits under any of the schemes allowed in Republic Act No. 6957 (the Build-Operate-Transfer Law, as amended by Republic Act No. 7718), or under a joint venture with the private sectors, any or all of the public utilities and infrastructure required or needed for the operation and development of the BSEZFP, in coordination with appropriate national and local government authorities and in conformity with applicable laws thereon;

(h) To operate on its own, either directly or through a license to other tourism-related activities, including games, amusements, recreational and sports facilities;

(i) To raise or borrow, within the limitation provided by law, adequate and necessary funds from local or foreign sources, subject to the approval of the President and the Monetary Board of the BSP upon the recommendation of the DOF, to finance its projects and programs under this Act, and for that purpose, to issue bonds, promissory notes, and other forms of securities, and to secure the same by a guarantee, pledge, mortgage, deed of trust, or an assignment of all or part of its property or assets;

(j) To provide security for the BSEZFP in coordination with the national and local governments. For this purpose, the BSEZFPA may establish and maintain its security forces and firefighting capability or hire others to provide the same. In the event that an assistance of the military force is necessary, it shall not interfere in the internal affairs of the BSEZFP except to provide the necessary security and defense, and their expenses shall be borne by the national government;

(k) To protect, preserve, maintain and develop the virgin forests, beaches, coral and coral reefs, and maintain ecological balance within the BSEZFP. For this purpose, the rules and regulations of the Department of Environment and Natural Resources (DENR) and other government agencies involved in the above functions shall be implemented by the BSEZFPA;

(l) To create, operate and/or contract to operate such functional units or offices of the BSEZFPA as it may deem necessary;

(m) To issue certificates of origin for products manufactured or processed in the BSEZFP in accordance with prevailing rules of origin, and the pertinent regulations of the DTI or the DoF;

(n) To issue rules and regulations consistent with the provisions of this Act as may be necessary to implement and accomplish the purposes, objectives and policies provided herein; and

(o) To exercise such powers as may be essential, necessary or incidental to the powers granted to it hereunder as well as those that shall enable it to carry out, implement and accomplish the purposes, objectives and policies of this Act.

**SEC. 13. Board of Directors of the BSEZFP.** - The powers of the BSEZFPA shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of the following:

(a) The chairman who shall, at the same time be the administrator of the BSEZFPA;

(b) A vice chairman who shall come from among the members of the Board;

(c) Members consisting of:

- (1) The Governor of the Province of Bataan
- (2) The Congressional Representative of the district covering the site of the BSEZFP;
- (3) The Mayor of the Municipality of Mariveles, Province of Bataan;
- (4) One (1) representative from the domestic investors;
- (5) One (1) representative from the foreign investors; and
- (6) One (1) representative from the workers working in the BSEZFP.

The Chairman of the Board shall sit as the Administrator of the BSEZFPA. The governor, the congressional representative and the mayor of the Municipality of Mariveles, Province of Bataan, shall serve as *ex officio* members of the Board, whose term in the Board corresponds to their terms as elected officials.

The Chairman and the members of the Board, except the *ex officio* members, shall be appointed by the President of the Philippines to serve for a term of six (6) years, unless sooner separated from service due to death, voluntary resignation or removal for cause. In case of death, resignation or removal for cause, the replacement shall serve only the unused portion of the term.

Except for the representatives of the business and labor sectors, no person shall be appointed by the President of the Philippines as a member of the Board unless he is a Filipino citizen, of good moral character, of proven probity and integrity, and a degree-holder in any of the following fields: economics, business, public administration, law, management or their equivalent, and with at least ten (10) years relevant working experience preferably in the field of management or public administration.

The members of the Board shall each receive *per diem* at rates to be determined by the Department of Budget and Management (DBM) in accordance with existing rules and regulations: *Provided, however,* That the total *per diem* collected each month shall not exceed the equivalent *per diem* for four (4) meetings.

**SEC. 14. Powers and Duties of the Chairman-Administrator.** - The chairman-administrator shall have the following powers and duties:

(a) To direct and manage the affairs of the BSEZFPA in accordance with the policies of the Board;

(b) To establish the internal organization of the BSEZFPA under such conditions that the Board may prescribe;

(c) To submit an annual budget and necessary supplemental budget to the Board for its approval;

(d) To submit within thirty (30) days after the close of each fiscal year an annual report to the Board and such other reports as may be required;

(e) To submit to the Board for its approval policies, systems, procedures, rules and regulations that are essential to the operation of the BSEZFPA;

(f) To create a mechanism in coordination with relevant agencies for the promotion of industrial peace, the protection of the environment, and the advancement of the quality of life in the BSEZFP; and

(g) To perform such other duties as may be assigned to him by the Board or which are necessary or incidental to his office.

**SEC. 15. Organization and Personnel.** - The BSEZFPA Board of Directors shall provide for an organizational structure and appoint employees, subject to the civil service law. Upon the recommendation of the chairman-administrator and with the approval of the Secretary of the DTI, the Board shall appoint and fix the remuneration and other emoluments of its officers and employees in accordance with existing laws on compensation and position classification: *Provided,* That the Board shall exercise administrative supervision on their employees.

The officers and employees of the BSEZFPA, including all members of the Board, shall not engage directly or indirectly in partisan activities nor take part in any election, except to vote.

No officer or employee of the BSEZFPA, subject to Civil Service laws and regulations, shall be removed or suspended except for cause, as provided by law.

**SEC. 16. Resolution of Labor Disputes.** - The right of labor to form unions or associations shall be observed. However, strikes and lockouts shall be prohibited within the economic and Freeport zone, notwithstanding the provisions of the Labor Code and other pertinent laws. Labor disputes shall be resolved through mediation, conciliation and such other modes of dispute resolution authorized by law.

**SEC. 17. Exemptions.** - The BSEZFPA is hereby exempted from the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party.

The foregoing exemptions may, however, be wholly or partially lifted by the President of the Philippines upon the recommendation of the Secretary of Finance, not earlier than five (5) years from the effectivity of this Act, upon reasonable assessment that the BSEZFPA is financially stable to pay such taxes, customs duties, fees and other charges after satisfying debt service requirements of the BSEZFPA and of its projected capital and operating expenditures.

**SEC. 18. Banking Rules and Regulations.** - Existing banking laws and rules/regulations of the BSP shall apply to banks and financial institutions to be established in the BSEZFP.

**SEC. 19. Remittances.** - In the case of foreign investments, a registered enterprise in the Bataan ECOZONE shall have 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.

**SEC. 20. Applicability Clause.** - The provisions of Sections 30-41 of Republic Act No. 7916, otherwise known as "The Special Economic Zone Act of 1995", as amended, shall likewise apply to the BSEZFP.

**SEC. 21. Capitalization.** - The BSEZFPA shall have an authorized capital stock of two billion (2,000,000,000) no par-shares with a minimum issue of Ten pesos (P10.00) each, the majority shares of which shall be subscribed and paid for by the national government and the local government unit (LGU) embracing the BSEZFP. The Board of BSEZFPA with the written concurrence of the Secretary of the DOF may sell shares, representing not more than forty *per centum* (40%) of the capital stock of the BSEZFPA to the general public under such policy as the Board and the Secretary of the DOF may determine. The national government

and the LGU shall, in no case, own less than sixty *per centum* (60%) of the total issued and outstanding capital of the BSEZFPA.

The amount necessary to subscribe and pay for the shares of the national government to the capital stock of the BSEZFPA shall be included in the annual General Appropriations Act. For LGU, the funds shall be taken from its internal revenue allotment and other local funds.

**SEC. 22. Supervision and Control.** – For purposes of policy direction and coordination, the BSEZFPA shall be under the direct control and supervision of the Office of the President of the Philippines.

**SEC. 23. Regional Development Council.** – The BSEZFPA shall determine the development goals for the BSEZFP within the framework of national development plans, policies and goals. The Administrator shall, upon approval by the Board, submit the BSEZFP plans, programs and projects to the Regional Development Council for inclusion and inputs to the overall regional development plan.

**SEC. 24. Relationship with Local Government Units.** – Except as herein provided, the Municipality of Mariveles in the Province of Bataan shall operate and function in accordance with the Local Government Code of 1991. In case of any conflict between the BSEZFPA and the Municipality of Mariveles on matters affecting the BSEZFP other than defense and security matters, the decision of the BSEZFPA shall prevail.

**SEC. 25. Interpretation/Construction.** – The powers, authorities and functions that are vested in the BSEZFPA are intended to establish decentralization of governmental functions and authority and promote an efficient and effective working relationship between the BSEZFPA, the national government and the LGU.

**SEC. 26. Audit.** – The Commission on Audit shall appoint a full time auditor in the BSEZFPA or may assign such number of personnel as may be necessary in the performance of their functions.

**SEC. 27. Implementing Rules and Regulations.** – The DTI, the DOF, and the LGU and the Department of the Interior and Local Government shall formulate the implementing rules and regulations of this Act within ninety (90) days after its approval. Such rules and regulations shall take effect fifteen (15)

days after their publication in a newspaper of general circulation in the Philippines.

**SEC. 28. Separability Clause.** – If any provisions of this Act shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

**SEC. 29. Repealing Clause.** – Republic Act No. 5490 and Presidential Decree No. 66 are hereby amended. All laws, executive orders or issuances or any part thereof which are inconsistent herewith are hereby repealed or amended accordingly.

**SEC. 30. Effectivity Clause.** – This Act shall take effect upon its publication in at least one (1) newspaper of general circulation.

Approved,