

## HOUSE OF REPRESENTATIVES

H. No. 3295

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THE CONSOLIDATED INVESTMENTS AND INCENTIVES CODE OF  
THE PHILIPPINES

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

1 PRELIMINARY TITLE

2 TITLE AND DECLARATION OF POLICY

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

5 SEC. 2. *Declaration of Investment Policies.* – The national  
6 economy shall be developed so as to enhance its competitiveness in the  
7 global economy and encourage investments that promote countrywide  
8 development and generate employment. Accordingly, the following are  
9 declared policies of the State:

10 (1) The State shall pursue a market responsive investment regime  
11 and to that end shall ensure that the incentives it provides do not cause  
12 market distortion.

13 (2) The State shall grant incentives that are simple to administer,  
14 time bound and performance based.

15 (3) The State shall vigorously promote investments in basic  
16 infrastructure such as, but not limited to, power, roads, water and housing.

17 (4) The State recognizes that industrial peace is essential to  
18 attracting investments.

19 (5) The State shall undertake investment promotion activities.

20 TITLE I

21 ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS

22 SEC. 3. *The Board of Investments (BOI).* – The Board of  
23 Investments hereinafter referred to as the “BOI” shall implement the  
24 provisions of this Code except as otherwise provided herein.

1           SEC. 4. *The Board of Governors.* – The BOI Board of Governors  
2 shall be composed of seven governors: the Secretary of the Department of  
3 Trade and Industry (DTI); three Undersecretaries of Trade and Industry;  
4 and three representatives from the private sector to be appointed by the  
5 President. The Secretary of Trade and Industry shall concurrently be the  
6 Chairman of the Board and the Undersecretary of the Department of Trade  
7 and Industry for Industry and Investments shall be the *ex officio* Vice  
8 Chairman of the Board and its Managing Governor. The other two  
9 Undersecretaries of Trade and Industry may designate their representatives  
10 in cases of absence. The three representatives from the private sector shall  
11 be appointed by the President for a term not exceeding four years:  
12 *Provided,* That a governor shall serve as such until his successor shall have  
13 been appointed and qualified.

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

19           SEC. 6. *Appointment of Board Personnel.* – The Board shall  
20 appoint its technical staff and other personnel subject to civil service laws,  
21 rules and regulations.

22           SEC. 7. *Powers and Duties of the Board.* – The Board shall be  
23 responsible for the regulation and promotion of investments. It shall meet  
24 as often as necessary. Notice of regular and special meetings shall be  
25 given to all members of the Board. The presence of four members of the  
26 Board shall constitute a quorum and the affirmative vote of four members  
27 of the Board in a meeting validly held shall be necessary to exercise its  
28 powers and perform its duties, which shall include but not be limited to the  
29 following:

1           (1) Promulgate rules and regulations to implement the purposes of  
2 this Act and such other laws as the Board is mandated to implement;

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

10          (3) Delegate <sup>to</sup> when appropriate some of its functions to the BOI  
11 Management Committee, or to any official of the Board with the rank  
12 equivalent to not less than a Department Director;

13          (4) After due hearing, decide controversies arising from the  
14 implementation of this Act that may arise between BOI-registered  
15 enterprises or investors therein and government agencies, within thirty  
16 (30) days after the controversy has been submitted for decision: *Provided,*  
17 *That the investor or the registered enterprise may appeal the decision for*  
18 *registration by the Board within thirty (30) days from receipt thereof to the*  
19 *President. The Board shall have the power to subpoena witnesses,*  
20 *administer oaths, and compel the production of books, papers, and other*  
21 *evidence, and to cite for contempt any person/organization that fails to*  
22 *comply with the aforesaid processes: <sup>and</sup> *Provided, further,* That the Board*  
23 *may grant immunity from prosecution to any person whose testimony or*  
24 *documents or other evidence is necessary or relevant to the case;*

25          (5) Recommend to the Commissioner of Immigration the  
26 employment of foreign nationals in registered enterprises;

27          (6) Ascertain semi-annually, by inspection or verified reports, the  
28 proportion of the participation of Philippine nationals in a registered

1 enterprise to ensure compliance with its qualification to retain its  
2 registration under this Code;

3 (7) Verify annually the compliance by registered enterprises with  
4 the terms and conditions of its registration;

5 (8) After due notice and hearing, cancel the registration or suspend  
6 the incentives of a registered enterprise and/or require refund of incentives  
7 including interests and monetary penalties. The Board shall recommend to  
8 the appropriate bureau of the Department of Finance to levy penalties of  
9 the registered enterprise for grave failure to comply with the substantive  
10 terms and conditions of registration: *Provided*, That the registration of an  
11 enterprise whose project timetable for implementation, as approved by the  
12 Board, shall be considered automatically cancelled if it is delayed by one  
13 year, unless otherwise reinstated as a registered enterprise by the Board;

14 (9) Determine the organizational structure of the BOI taking into  
15 account Section 6 of this Act; appoint, discipline or remove its personnel  
16 consistent with the provisions of civil service laws, rules and regulations;

17 (10) Prepare feasibility and other pre-investment studies, on its  
18 own initiatives or on the request of an investor under terms and conditions  
19 mutually agreed upon;

20 (11) Grant, as specified under Section 16, the special incentives  
21 therein provided to registered enterprises that list their shares of stock in  
22 the Philippine Stock Exchange or directly offer a portion of their capital  
23 stock to the public and/or their employees;

24 (12) The Board as the national authority on investments shall have  
25 monitoring functions and shall coordinate investment promotion activities  
26 of all Investment Promotion Agencies (IPAs);

27 (13) Formulate and implement industrial programs to hasten  
28 economic development including those relating to the implementation of

1 international trade, investments and environmental agreements and  
2 protocols;

3 (14) Recommend to the President the restriction of imported goods  
4 covered by rationalization programs;

5 (15) Recommend to the President, subject to constitutional  
6 limitations and other nationalization laws, the suspension of the nationality  
7 requirement provided for in this Act in cases involving bilateral or  
8 regional investments or trading agreements of the Philippines with other  
9 countries or when the existing laws of another country where the investor  
10 comes from provides no nationality restrictions for Filipino investors or  
11 provides for reciprocal<sup>3</sup> nationality accommodations;

12 (16) The Board may establish offices in the Philippines and abroad;

13 (17) Prepare industry and sectoral development programs, the  
14 National Plan for Investment Promotions (NPIP) and gather and compile  
15 data required for the effective implementation of this Act;

16 (18) *Within four months after the close of the fiscal year, submit an*  
17 *annual report to the President on the Board's administration of this Act,*  
18 *including recommendations on investment policies;*

19 (19) Prepare the Investment Priorities Plan;

20 (20) Enter into agreements with other agencies for the  
21 simplification of systems and procedures involved in the promotion of  
22 investments, operation of economic zones and registered enterprises, and  
23 other activities necessary<sup>4</sup> for the effective implementation of this Act;

24 (21) The Board of Investments, in consultation with the National  
25 Economic and Development Authority (NEDA), shall prepare an annual  
26 list of products/services that are not sufficiently manufactured/rendered  
27 locally; and

1           (22) Generally, exercise all powers necessary or incidental to attain  
2 the purposes of this Act and other laws vesting additional functions on the  
3 Board.

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

6           (1) Preside over the meetings of the Board of Governors;

7           (2) Sign annual and special reports to the President;

8           (3) Act as liaison between investors seeking joint venture  
9 arrangements in preferred areas of investments;

10          (4) Recommend to the Board of Governors policies and measures  
11 necessary to carry out the objectives of this Act; and

12          (5) Generally exercise other powers and perform other duties as  
13 may be directed by the Board of Governors.

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

16          (1) Act as Managing Governor of the Board, thereby executing all  
17 acts of administration;

18          (2) Preside over the meetings of the Board of Governors in the  
19 absence of the Chairman;

20          (3) Prepare the Agenda for the meetings of the Board of Governors  
21 and submit for its consideration and approval the policies and measures  
22 which the Chairman deems necessary and proper to carry out the  
23 provisions of this Act;

24          (4) Assist registered enterprises and prospective investors to have  
25 their papers processed quickly by all government offices, agencies,  
26 instrumentalities and financial institutions; and

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

## TITLE II

## DEFINITION OF TERMS

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

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

7 (b) “Investment Promotion Agencies (IPAs)” shall include BOI,  
8 Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan  
9 Authority (SBMA), Clark Development Corporation (CDC), John Hay  
10 Management Corporation (JHMC), Poro Point Management Corporation  
11 (PPMC), Bataan Technology Park Inc. (BTPI), Cagayan Economic Zone  
12 Authority (CEZA), Zamboanga City Special Economic Zone Authority  
13 (ZCSEZA), PHIVIDEC Industrial Authority (PIA) and all other  
14 government agencies administering incentives to specific sectors under  
15 special laws.

16 (c) “Registered enterprise” shall mean any individual, partnership,  
17 corporation, Philippine branch of a foreign corporation or other entity  
18 incorporated and/or organized and existing under Philippine laws engaged  
19 in any of the activities listed in the IPP as hereinafter defined; and  
20 registered for such activity with the Board or with other investment  
21 promotion agencies, in accordance with this Act: *Provided, however,* That  
22 the term “registered enterprise” shall not include commercial banks,  
23 savings and mortgage banks, rural banks, savings and loan associations,  
24 building and loan associations, developmental banks, trust companies,  
25 investment banks, finance companies, brokers and dealers in securities,  
26 consumers cooperatives and credit unions, and other business  
27 organizations whose principal purpose or principal source of income is to  
28 receive deposits, lend or borrow money, buy and sell or otherwise deal,  
29 trade or invest in common or preferred stocks, debentures, bonds or other



1 marketable instruments generally recognized as securities, or discharge  
2 other similar intermediary, trust or fiduciary functions. The cessation or  
3 substantial reduction by the registered enterprise of the activity for which  
4 it was registered shall cause the loss of its registered status upon  
5 declaration of the Board.

6 (d) "Investment Priorities Plan (IPP)" shall refer to the list of  
7 industries, services and other activities, which will be eligible for  
8 incentives under this Act, prepared and determined as priority activities by  
9 the BOI, in consultation with the Department of Finance, National  
10 Economic and Development Authority, the Office of the President and  
11 other appropriate government agencies and the private sector and is  
12 certified in writing by NEDA and DOF in accordance with Title III,  
13 Chapter 1 of this Act.

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

17 (f) "Gross income earned" refers to gross sales or gross revenues  
18 less sales returns, discounts and allowances and cost of goods and/or cost  
19 of services rendered as defined under Section 27 (E) (4) of the National  
20 Internal Revenue Code of 1997.

21 (g) "Tax credit" shall mean any credits against taxes and/or duties  
22 equal to those actually paid or would have been paid, to evidence which a  
23 tax credit certificate shall be issued by the Secretary of Finance or his  
24 representative, or by the Board or concerned IPA, if so delegated by the  
25 Secretary of Finance. The tax credit certificate issued pursuant to this  
26 Code shall not be transferable and shall be valid only for a period of ten  
27 (10) years from date of issuance.

28 The tax credit certificate shall be used to pay taxes, duties, charges  
29 and fees due to the national government.

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

19 The foregoing notwithstanding, services rendered locally by  
20 registered enterprises engaged in environmental and exploratory  
21 development projects that are paid for in freely convertible foreign  
22 currency shall be considered as "export sales".

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

26 (i) An "export enterprise" shall mean a registered enterprise which  
27 is a manufacturer, processor or service provider that exports or supplies to  
28 exporters fifty percent (50%) or more of its output and its activity is listed  
29 in the Investments Priorities Plan.

1           The Information Technology (IT) industry shall be considered an  
2 export enterprise if at least fifty percent (50%) of its services are paid for  
3 in freely convertible foreign currency.

4           An export trader which is a registered enterprise that buys and sells  
5 on its account products of micro-enterprises and small and medium  
6 enterprises and earns one hundred percent (100%) of its annual sales from  
7 exports of the same shall be deemed to be an export enterprise.

8           (j) A "domestic enterprise" shall mean a registered enterprise  
9 which produces goods for sale or renders services exclusively to the  
10 domestic market or does not export fifty percent (50%) or more of its  
11 output.

12           (k) "Service provider" is a registered enterprise engaged or  
13 proposing to engage in rendering technical, professional or other services  
14 listed by the Board.

15           (l) "Source documents" are input materials and documents  
16 reasonably needed by information technology (IT) and IT-enabled  
17 industries such as, but not limited to, books, directories, magazines,  
18 newspapers, brochures, pamphlets, medical records/files, legal  
19 records/files, instruction materials, drawings/blueprints/outlines.

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

26           (n) "Industrial Estate (IE)" refers to a tract of land subdivided and  
27 developed according to a comprehensive plan under a unified continuous  
28 management and with provisions for basic infrastructure and utilities, with

1 or without pre-built standard factory buildings and community facilities  
2 for the use of a community of industries.

3 (o) "Export Processing Zone (EPZ)" refers to a specialized  
4 industrial estate located physically and/or administratively outside the  
5 customs territory and predominantly oriented to export production.  
6 Enterprises located in export processing zones are allowed to import  
7 capital equipment and raw materials free from duties, taxes and other  
8 import restrictions.

9 (p) "Special Economic Zones (SEZ)" are ecozones or industrial  
10 estates devoted to exports whose metes and bounds are fixed or delimited  
11 by presidential proclamations for the purpose of applying incentives as  
12 provided in this Act.

13 (q) "Free Trade/Freeport Zone" is an isolated and policed area  
14 adjacent to a port of entry as defined by Section 3519 of the Tariff and  
15 Customs Code, where imported goods may be unloaded for immediate  
16 transshipment or stored, repacked, sorted, mixed, or otherwise  
17 manipulated without being subject to import duties. However, movement  
18 of these imported goods from the free-trade area to a non-free-trade area in  
19 the country shall be subject to import duties.

20 (r) "IT Park" is an area which has been developed into a complex  
21 capable of providing infrastructure and other support facilities required by  
22 IT enterprises, as well as amenities required by professionals and workers  
23 involved in IT enterprises, or easy access to such amenities.

24 (s) "IT Building" is a building, the whole or part of which has been  
25 developed by public or private corporate entities to provide infrastructure  
26 and other support facilities required by IT enterprises, as well as amenities  
27 required by professionals and workers involved in IT enterprises, or easy  
28 access to such amenities.

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### TITLE III

## INVESTMENTS WITH INCENTIVES

### CHAPTER I

#### QUALIFIED ACTIVITIES

SEC. 11. *Investment Priorities Plan (IPP)*. – Not later than the end of June of every third year, the Board of Investments, after consultation with the Department of Finance (DOF), National Economic and Development Authority (NEDA), investment promotion agencies and other appropriate government agencies and the private sector and concurred in writing by the NEDA and DOF shall submit to the President the IPP for his approval: *Provided, however,* That the deadline for submission, may be extended by the President within a reasonable period.

Upon approval of this Code, the IPP shall be prepared within one hundred twenty (120) days by the BOI, in consultation with the DOF, NEDA, the Office of the President, the IPAs, other appropriate government agencies and the private sector and certified in writing by NEDA and DOF and in accordance with the criteria for determining the list of industries eligible for incentives under Sections 15 and 16 of this Code.

The IPP shall be prepared once every three years by the BOI, in consultation with and certified in writing by the agencies enumerated in the preceding paragraph, to be submitted to the President for his approval not later than the end of June of the year immediately preceding the three-year period to be covered by the IPP.

The IPP shall contain the industries, services or activities with high comparative advantage or significant competitive edge. It shall also include those that will engage in the (i) production or manufacture of new product/service or (ii) export product/service or (iii) stimulation of both forward and backward linkages or creation of value added activities or (iv)

1 socially relevant, environment-friendly and economically viable  
2 undertaking.

3 SEC. 12. *Amendments.* – Subject to publication requirements and  
4 the criteria for investment priority determination, the Board of  
5 Investments, in a recorded consultation with and certified in writing by the  
6 aforementioned government agencies may, at any time, recommend to the  
7 President to add additional areas in the IPP, alter any of the terms of the  
8 declaration of an investment area or terminate the status of preference. In  
9 the case of activities under Section 16, such amendment shall be upon the  
10 recommendation of the Board with the concurrence of the Secretaries of  
11 Finance and Trade and Industry. In no case, however, shall any  
12 amendment of the IPP impair the incentives conferred on a registered  
13 enterprise. The Board shall not accept applications in an area of  
14 investment prior to the approval of the same as a preferred area nor after  
15 approval of its deletion as a preferred area of investment.

16 SEC. 13. *Publication.* – Upon approval of the IPP, in whole or in  
17 part, or upon approval of an amendment thereof, the IPP or the  
18 amendment, specifying and declaring the areas of investment shall be  
19 published in at least one newspaper of general circulation and all such  
20 areas shall be open for application until publication of an amendment or  
21 deletion thereof, or until the Board approves registration of enterprises.

## 22 CHAPTER II

### 23 INCENTIVES TO REGISTERED ENTERPRISES

24 SEC. 14. *Governing Incentive Provision for Investment Promotion*  
25 *Agencies.* – All existing and future Investment Promotion Agencies (IPAs)  
26 vested with the power to confer and administer incentives, including but  
27 not limited to the Philippine Economic Zone Authority (PEZA), Subic Bay  
28 Metropolitan Authority (SBMA), Clark Development Corporation (CDC),  
29 John Hay Management Corporation (JHMC), Poro Point Management

1 Corporation (PPMC), Bataan Technology Park, Inc. (BTPI), Cagayan  
2 Economic Zone Authority (CEZA) and Zamboanga City Special  
3 Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority  
4 (PIA), shall offer only incentives provided in this Act. For this purpose,  
5 IPAs that were previously declared as special economic zones by virtue of  
6 presidential issuances shall be vested with the authority to confer and  
7 administer incentives provided herein.

8 SEC. 15. *Incentives to Registered Enterprises.* – All investment  
9 promotion agencies may administer the following incentives to their  
10 respective registered enterprises to the extent of the activity/project:

11 (a) Income Tax Holiday

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

15 Category A – A registered domestic enterprise located in highly  
16 developed areas, as determined by the Board, shall be entitled to four years  
17 income tax holiday.

18 Category B – A registered domestic enterprise on the following  
19 shall be entitled to six years income tax holiday:

20 (i) located in less developed areas as defined by the Board; or

21 (ii) producing/rendering new products/services or having strong  
22 backward or forward linkages.

23 Category C – A registered export enterprise shall be entitled to six  
24 years income tax holiday: *Provided, however,* That if the export enterprise  
25 complies with the following: (1) large capital investments or sizeable  
26 employment generation, or (2) use high level of technology or (3) located  
27 outside Metro Manila , it shall be entitled to eight years income tax  
28 holiday.

1 Registered enterprises embarking on new investments that are listed  
2 in the current IPP shall be entitled to incentives provided herein pertaining  
3 to the new investments and subject to such terms and conditions as the  
4 Board may determine.

5 Additional investments in the project shall be entitled to income tax  
6 holiday equivalent to such investments and may be entitled to additional  
7 income tax holiday for as long as investment is made in the same project,  
8 as the Board may decide: *Provided*, That the project is listed in the IPP at  
9 the time the additional investment in the project is made: *Provided*,  
10 *further*, That the entitlement period for additional investments shall not  
11 exceed three times the period provided under Subsection (a) of Section 15:  
12 *Provided, however*, That the total ITH period for an export enterprise  
13 availing of an eight year ITH shall not exceed twenty (20) years. Any  
14 unused incentives shall be deemed forfeited if not used during the  
15 incentive period.

16 The Bureau of Internal Revenue (BIR) shall require a registered  
17 enterprise availing of ITH or NOLCO to secure a certificate of eligibility  
18 from the appropriate IPA before filing an official copy of its Income Tax  
19 Return (ITR) with BOI or appropriate IPA for validation.

20 Failure to secure certification and/or to file the ITH or NOLCO  
21 availment for validation by the BOI or appropriate investment promotion  
22 agency within forty-five (45) days from the last day of statutory filing date  
23 for ITR shall cause the forfeiture of the availment for the taxable period.

24 (b) Net Operating Loss Carryover (NOLCO) – The net operating  
25 loss of the business or enterprise during the first three years from start of  
26 commercial operation which had not been previously offset as deduction  
27 from gross income shall be carried over as a deduction from gross income  
28 for the next five consecutive taxable years immediately following the year  
29 of such loss: *Provided, however*, That operating loss resulting from



1     availment of incentives provided in this Code shall not be entitled to  
2     NOLCO.

3             Registered enterprises availing of the ITH as herein provided shall  
4     not be entitled to avail of the Net Operating Loss Carry Over (NOLCO).

5             (c) Imposition of a Tax Rate of Five Percent (5%) On Gross  
6     Income Earned (GIE) – Except for real property tax on land, no local and  
7     national taxes as prescribed under Republic Act No. 8424, also known as  
8     “The National Internal Revenue Code of 1997 as amended”, such as  
9     income tax, excise tax, franchise taxes, shall be imposed on business  
10    establishments operating within a special economic zone, PIA or freeport.  
11    In lieu thereof, five percent (5%) of the gross income earned shall be paid.  
12    The allocation of the five percent (5%) GIE pertaining to the local  
13    government unit foregoing taxes hereunder shall be governed by the  
14    charter or governing law of the IPA.

15            The incentive of five percent (5%) tax rate on gross income earned  
16    shall not be available to BOI registered enterprises.

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

24            (e) Capital Equipment Incentives. – (1) Importations of capital  
25    equipment, spare parts, tools and die, or those required for pollution  
26    abatement and control, cleaner production and waste reduction including  
27    consignment thereof by registered export-oriented enterprises upon the  
28    effectivity of this law, shall be exempted to the extent of one hundred  
29    percent (100%) of the taxes and customs duties: *Provided, That the*

1 importation thereof shall be used exclusively by the registered enterprise  
2 in its registered activity: *Provided, further,* That the importation of  
3 machinery and equipment and accompanying parts shall comply with the  
4 following conditions:

5 (i) They are not manufactured domestically in sufficient quantity,  
6 of comparable quality and at reasonable prices;

7 (ii) They are reasonably needed and will be used exclusively by the  
8 registered enterprise in the manufacture of its products, unless prior  
9 approval of the Board or the concerned IPA is secured for the part time  
10 utilization of said equipment in a non-registered activity to maximize  
11 usage thereof or the proportionate taxes and duties are paid on a specific  
12 equipment and machinery being permanently used for non-registered  
13 activities; and

14 (iii) The approval of the Board or the concerned IPA was obtained  
15 by the registered enterprise for the importation of such machinery,  
16 equipment and spare parts.

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

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

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

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

29 (4) For reasons of proven technical obsolescence.

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

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

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

28           The registered export enterprise availing of the incentives provided  
29 under the immediately preceding two paragraphs shall be subject to the

1 following: (a) that said capital equipment, machinery and spare parts will  
2 be used exclusively by the registered enterprise in its registered activity;  
3 (b) that the capital equipment or machinery where the raw materials,  
4 supplies, parts and semi-finished products were used would have qualified  
5 for tax and duty-free importation; and (c) that the approval of the Board or  
6 the concerned IPA is obtained by the registered enterprise. If the  
7 registered enterprise sells, transfers or disposes of these machineries,  
8 capital equipment and spare parts, the provision in the preceding  
9 paragraphs for such disposition shall apply.

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

12 (f) The importation of source documents by information  
13 technology registered enterprises shall be eligible for tax and duty free  
14 importation.

15 (g) Raw Material Incentives. – Every registered export-oriented  
16 enterprise shall enjoy a tax credit equivalent to the internal revenue taxes  
17 and customs duties paid on the supplies, raw materials and semi-  
18 manufactured products provided the same are not sufficient in quantity,  
19 quality or are not competitively priced which are used in the manufacture,  
20 processing or production of its export products forming part thereof,  
21 exported directly and indirectly by the registered export-oriented  
22 enterprise, based on the actual taxes and duties paid for such  
23 materials/supplies/semi-manufactured products by the registered  
24 enterprise.

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

28 (h) Incentives on Breeding Stocks and Genetic Materials. –  
29 Importation of breeding stocks and genetic materials within ten (10) years

1 from the date of registration of commercial operation of the enterprise  
2 shall be exempt from all taxes and duties: *Provided*, That such breeding  
3 stocks and genetic materials are (a) reasonably needed in the registered  
4 activity; and (b) approved by the Board or the concerned IPA.

5 The registered enterprise availing of the incentives shall be subject  
6 to the following: (a) that said breeding stocks and genetic materials would  
7 have been qualified for tax and duty-free importation under the preceding  
8 paragraph; (b) that the breeding stocks and genetic materials are  
9 reasonably needed in the registered activity; (c) that approval of the Board  
10 or the concerned IPA has been obtained by the registered enterprise; and  
11 (d) that the purchase is made within ten (10) years from the date of  
12 registration of commercial operation of the registered enterprise.

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

15 (i) Exemption from wharfage dues. – The provisions of law to the  
16 contrary notwithstanding, exports by a registered enterprise shall be  
17 exempted from wharfage dues.

18 (j) Deferred Imposition of the Minimum Corporate Income Tax  
19 (MCIT). – The Minimum Corporate Income Tax (MCIT) of two percent  
20 (2%) of the gross income as of the end of the taxable year shall be  
21 imposed when the minimum corporate income tax is greater than the  
22 income tax computed under the NIRC of 1997, as amended, for the taxable  
23 year: *Provided, however*, That said MCIT shall be imposed only after the  
24 enterprise' entitlement period to the income tax-based incentives.

25 (k) (1) Tax Treatment of Merchandise in the Export Processing  
26 Zones. – (a) Except as otherwise provided in this Code, foreign and  
27 domestic merchandise, raw materials, supplies, articles, equipment,  
28 machineries, spare parts and wares of every description, except those  
29 prohibited by law, brought into the zone to be sold, stored, broken up,

1 repacked, assembled, installed, sorted, cleaned, graded, or otherwise  
2 processed, manufactured, mixed with foreign or domestic merchandise  
3 whether directly or indirectly related in such activity, shall not be subject  
4 to customs and internal revenue laws and regulations nor to local tax  
5 ordinances, the provisions of law to the contrary notwithstanding.

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

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

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

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

28 (f) Subject to such regulations respecting identity and safeguarding  
29 of the revenue as the concerned IPA may deem necessary when the

1 identity of an article entered into the export processing zone under the  
2 immediately preceding paragraph has been lost, such article when  
3 removed from the zone and taken to the customs territory shall be treated  
4 as foreign merchandise entering the country for the first time, under the  
5 provisions of the Tariff and Customs Code of the Philippines, as amended.

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

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

13 Special Economic Zones declared by Presidential Proclamations or  
14 created by law may avail the incentives provided herein as conferred by  
15 the appropriate IPA subject to such terms and conditions as may be  
16 provided by law.

17 (2) Tax Treatment of Merchandise in Free Trade/Freeport Zones. --  
18 The free trade/freeport zone shall be operated and managed as a separate  
19 customs territory ensuring free flow or movement of goods within, into  
20 and exported out of the free trade/freeport zone. Importations of raw  
21 materials, and capital equipment are tax and duty free. However,  
22 exportation or removal of goods from the free trade/freeport zones to the  
23 other parts of the Philippine territory shall be subject to customs and  
24 internal revenue laws and regulations.

25 (3) Tax Treatment of Services in the Special Economic Zones. --  
26 (a) Sale of service by an entity from the customs territory to a registered  
27 ecozone or free trade enterprise, or by a registered ecozone or freeport  
28 enterprise, or by a registered ecozone or freeport enterprise to another

1 ecozone or freeport enterprise shall be treated as indirect export, and  
2 hence, entitled to the benefits allowed by law for such transaction.

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

6 (l) Registered export oriented enterprises shall have access to the  
7 utilization of the bonded warehousing system in accordance with the rules  
8 and regulations of the Bureau of Customs.

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

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



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

7           SEC. 16. *Other Incentives.* – Upon recommendation of the Board,  
8 the Secretaries of Trade and Industry and Finance may jointly grant other  
9 incentives subject to approval by the President to activities listed in the IPP  
10 that exhibit high social economic returns on the part of capital or labor  
11 intensive activities. In the exercise of this authority, the following criteria  
12 shall be taken into account: (1) large capital investments or sizeable  
13 employment generation or (2) use of high level technology.

14           The incentives may include, as determined by the Board to be  
15 appropriate in a particular industry or enterprise, any or all of the  
16 following:

17           (1) Investment Tax Allowance

18           An investment allowance to the extent of its actual investment, paid  
19 in cash or property, shall be allowed as a deduction from its taxable  
20 income but not to exceed thirty percent (30%) spread within three years to  
21 be availed after the income tax holiday: *Provided*, (1) That the investment  
22 is made in a subscription of shares in the original and/or increased capital  
23 stock of an enterprise; (2) That the shares are held for a period of not less  
24 than three years; and (3) That the investment is approved with the Board.  
25 If the shares are disposed within the three-year period, the enterprise shall  
26 lose the benefit of this deduction, its income tax liability will be  
27 recomputed and he shall pay whatever additional sum be due plus interest  
28 thereon, within thirty (30) days from the date of disposition.

29           (2) Double Deduction for Training Expenses

1 Expenses incurred for local training given to employees for the  
2 development of skills identified as necessary by the appropriate  
3 government agencies, upon approval by the Board, shall entitle the  
4 registered enterprise to a special deduction from the taxable income  
5 equivalent to one hundred percent (100%) of the total expenses over and  
6 above the allowable ordinary and necessary business deductions for said  
7 expenses under the National Internal Revenue Code, as amended, for a  
8 period of five years after entitlement of other income tax based incentives.

9 (3) *Double Deduction for Research and Development*

10 Expenses incurred for research and development conducted in the  
11 Philippines relating to the business shall entitle the registered enterprise to  
12 a special deduction from taxable income equivalent to one hundred percent  
13 (100%) of the total expenses over and above the allowable ordinary and  
14 business deductions for said expenses under the National Internal Revenue  
15 Code, as amended, for a period of five years after entitlement of other  
16 income tax based incentives.

17 To raise the quality of basic education, a domestic enterprise that  
18 produces quality educational materials for the public school system shall  
19 be entitled to the incentive herein provided.

20 SEC. 17. *Non-Fiscal Incentive for Eco-Tourism Sites.* – Airline  
21 companies that will be accredited to serve eco-tourism sites duly  
22 designated by the President may enjoy landing privileges directly in those  
23 sites: *Provided*, That the airline company shall bring in a large number of  
24 tourists and subject to such rules and regulations as the Board, in  
25 consultation with the Civil Aeronautics Board (CAB), the Department of  
26 Tourism (DOT) and other appropriate government agencies may  
27 determine.

28 SEC. 18. *Incentive to Investors.* – A foreign national covered under  
29 Subsection (m) of Section 15 of this Act, who invests an amount of at least

1 US\$150,000.00, either in cash and/or equipment, in a registered enterprise  
2 shall be entitled to an Investor's Visa: *Provided, That,*

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

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

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

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

10 *Provided, further, That* in securing the investor's visa, the alien-applicant  
11 shall be entitled to the same privileges provided for under Section 16 (M),  
12 last paragraph.

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

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

### 23 CHAPTER III

#### 24 REGISTRATION OF ENTERPRISES

25 SEC. 19. *Qualifications of a Registered Enterprise.* – To be entitled  
26 to register to avail of incentives, an applicant must satisfy the following  
27 conditions:

28 (a) He is a citizen of the Philippines, in case the applicant is a  
29 natural person, or in case of a corporation or partnership or any other

1 association, regardless of nationality, it must be organized and/or  
2 registered and existing under Philippine laws and that it must comply with  
3 all the qualifications provided under this Act: *Provided, however*, That for  
4 purposes of this Act and any law to the contrary notwithstanding, a  
5 natural-born ASEAN citizen or a corporation effectively controlled by  
6 ASEAN citizens shall be considered as a Philippine investor: *Provided,*  
7 *further*, That the investment is made in an activity where the Constitution  
8 does not specifically require Filipino participation;

9 (b) That it will engage in an activity included in the Investment  
10 Priorities Plan (IPP) or in an industry servicing eco-tourism sites duly  
11 designated by the President as provided under Section 17 of this Act;

12 (c) That the activity it will engage in is not within the activities  
13 reserved by the Constitution to Philippine citizens or corporations owned  
14 and controlled by Philippine citizens; and

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

#### 23 CHAPTER IV

#### 24 BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

25 SEC. 20. *Protection of Investments.* – All investors and registered  
26 enterprises are entitled to the basic rights and guarantees provided in the  
27 Constitution. Among other rights recognized by the Government of the  
28 Philippines are the following:

1 (a) Repatriation of Investments. — In the case of foreign  
2 investments, the right to repatriate the entire proceeds of the liquidation of  
3 the investment in the currency in which the investment was originally  
4 made and at the exchange rate prevailing at the time of repatriation,  
5 subject to the provisions of Section 74 of Republic Act No. 265, as  
6 amended;

7 For investments made pursuant to Executive Order No. 32 and its  
8 implementing rules and regulations, remittability shall be as provided  
9 therein.

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

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

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

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

## 11 CHAPTER V

### 12 ADMINISTRATION OF INCENTIVES

13 SEC. 21. *Duties and Responsibilities of other IPAs.* – The  
14 following are the duties and responsibilities of other IPAs under this Act:

15 (a) to adopt consistent procedures of administering incentives in  
16 accordance with the guidelines established by the Board;

17 (b) to adopt and implement systems and procedures affecting trade  
18 and customs policies in accordance with the requirements established by  
19 the DOF and the Board;

20 (c) to submit data and information to the DOF and the Board as  
21 required by any of these agencies to ascertain consistency of investments  
22 policies and incentives, including their implementation as provided in (a),  
23 and to ensure the proper implementation of systems and procedures  
24 affecting trade and customs policies as provided in (b); and

25 (d) to perform all other duties and responsibilities, as may be  
26 required by the President.

27 SEC. 22. *Administration, Implementation and Monitoring of*  
28 *Incentives.* – The investment promotion agencies shall be responsible for  
29 the administration and implementation of the incentives granted to their

1    respective registered enterprises: *Provided*, That any incentive  
2    administration policy adopted by the Board for incentives common to all  
3    registered enterprises shall be uniformly applied by all incentive  
4    administering agencies.

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

9           The Board, NEDA and DOF shall meet regularly to monitor and  
10   review the investments and incentives granted and a report shall be  
11   annually submitted to the Congressional Oversight Committee referred to  
12   under Section 37.

13           SEC. 23. *Application.* – Applications shall be filed with the IPAs or  
14   any other government office authorized by the Board to accept  
15   applications, recorded in a registration book and the date appearing therein  
16   and stamped on the application shall be considered the date of official  
17   acceptance. In no case shall double registration be allowed. In the event  
18   that an enterprise shall transfer to another investment promotion agency or  
19   government assets enjoying incentives will be privatized, only the  
20   remaining unutilized incentives shall be enjoyed by the enterprise or the  
21   transferee, vendee or assignee of the government corporation.

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

26           SEC. 24. *Criteria Evaluation of Application.* – The following  
27   criteria will be considered in the evaluation of applications for registration  
28   under a preferred area:

29           (a) Impact of the project on the overall economy;

- 1 (b) Overall viability of the project;
- 2 (c) The extent of employment generation;
- 3 (d) The extent to which technological advances are applied and
- 4 adopted to local conditions; and
- 5 (e) Such other criteria as the Board may determine.

6 SEC. 25. *Approval and Registration Procedures.* – The Board is  
7 authorized to adopt rules and regulations to facilitate action on  
8 applications filed with it; prescribe criteria for the evaluation of several  
9 applications; devise standard forms for the use of applicants and delegate  
10 to the regional offices of the Department of Trade and Industry the  
11 authority to receive and process applications for enterprises to be located  
12 in their respective regions.

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

20 SEC. 26. *Certificate of Registration.* – A BOI-registered enterprise  
21 under this Code shall be issued a Certificate of Registration under the seal  
22 of the Board of Investments and the signature of its Chairman and/or such  
23 other officer or employee of the Board as it may empower and designate  
24 for the purpose. The certificate shall be in such form and style as the  
25 Board may determine and shall state, among other matters:

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



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

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

5 SEC. 27. *Validity of BOI Registration.* – An enterprise' registered  
6 activity with the Board shall be valid for a period of twenty (20) years  
7 from the start of commercial operation except on certain industries as may  
8 be determined by the Board.

9 SEC. 28. *Extension of Period of Availment.* – The availment period  
10 of the incentives provided herein may be extended by the concerned  
11 investment promotion agency, in the event that the registered enterprise  
12 has suffered operational *force majeure* that has impaired its viability,  
13 equivalent thereto.

14 SEC. 29. *Duration of Incentives.* – Enterprises registered with  
15 PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA and ZCSEZA, and PIA  
16 may enjoy the ITH or NOLCO granted by the concerned IPA, prior to  
17 availment of the five percent (5%) GIE.

18 Fiscal incentives under this Code shall be terminated after a  
19 cumulative period of twenty (20) years from date of registration or start of  
20 commercial operation, whichever is applicable, except that it could be  
21 extended with regard to industries deemed indispensable to national  
22 development: *Provided, further,* That the duration of incentives shall not  
23 be applicable to tax and duty free importation of capital equipment, raw  
24 materials, supplies and spare parts of enterprises registered with PEZA,  
25 SBMA, CDC, JHMC, PPMC, BTPI, CEZA, ZCSEZA, PIA and freeport  
26 zones.

27 The industries exempted from this provision shall be recommended  
28 by the Board, with the concurrence of the Secretaries of the Department of  
29 Finance and Trade and Industry.



1 other enterprises registered under other laws shall be governed exclusively  
2 by this Act: *Provided*, That incentives arising from contracts or  
3 agreements entered into by an enterprise with the government, its  
4 instrumentalities and agencies shall continue in force and effect according  
5 to the terms thereof: *Provided, further*, That existing enterprises may opt  
6 to register and be governed by the provisions of this Act.

7 SEC. 34. *Protection of the Environment.* – The BOI, in  
8 coordination with the appropriate agencies, shall take concrete and  
9 appropriate steps to enact the proper measures for the protection of the  
10 environment, and shall coordinate with the Environmental Management  
11 Bureau of the Department of Environment and Natural Resources to  
12 avoid undue delay in the issuance of the required Environmental  
13 Compliance Certificate (ECC): *Provided, however*, That applications for  
14 environmental clearances, permits, and/or licenses of registered enterprises  
15 shall be acted upon by the appropriate government agency within one  
16 hundred twenty (120) days from date of official acceptance. In the event  
17 that the appropriate government agency failed to act within the  
18 aforementioned date, the application for the said environmental  
19 requirement shall be deemed complied with for purposes of operation of  
20 the registered activity: *Provided, finally*, That the Board may withdraw  
21 the certificate of registration issued to the enterprise should the appropriate  
22 government agency eventually deny the application.

23 SEC. 35. *Suspension and Forfeiture of Incentives of BOI-registered*  
24 *Enterprises; Refund and Penalties.* – When there is probable cause to  
25 believe that the registered enterprise has violated its registration terms and  
26 conditions, the Board may suspend its availment of incentives, until  
27 proven otherwise.

28 The Board may impose fines and penalties and/or forfeit the  
29 incentives granted to its registered enterprises whenever there are

1 violations of the registration terms and conditions by the latter, without  
2 prejudice to the cancellation of the registration of said enterprise:  
3 *Provided, however,* That the Board may cancel or abate only the  
4 imposition of fines, in meritorious cases.

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

8 Any enterprise which violates any provision of this Code, its  
9 implementing rules and regulations, the terms and conditions of its  
10 registration or any lawful directive of the Board, or in the availment of  
11 incentives, including all official reports required to be submitted to the  
12 Board, shall be subject to a fine not to exceed One million pesos  
13 (P1,000,000.00) but, without prejudice to the disapproval of its application  
14 for registration or cancellation of its registration: *Provided,* That any  
15 willful commission of fraudulent misrepresentation in its application for  
16 registration or submission of reports or gross violation of this Code and its  
17 Implementing Rules and Regulations, a fine of at least One million pesos  
18 (P1,000,000.00) but not to exceed Ten million pesos (P10,000,000.00)  
19 shall be imposed, in addition to other penalties that may be imposed by the  
20 Board.

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

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

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

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

12 SEC. 36. *Appeals from Board's Decision.* – All orders or decisions  
13 of the Board in cases involving the provisions of this Code shall  
14 immediately be executory. No appeal from the order or decision of the  
15 Board by the party adversely affected shall stay such order or decision,  
16 unless a *supersedeas* bond equivalent to the amount stated in the order or  
17 decision is posted by the appellant.

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

27 In cases involving the denial of an application for registration, the  
28 party adversely affected by such denial may appeal the same to the Office  
29 of the President within thirty (30) days from notice of the order denying

1 the application for registration. Where an appeal has been filed, said order  
2 or decision shall be final and executory ninety (90) days after the  
3 perfection of the appeal, unless reversed.

4       SEC. 37. *Congressional Oversight Committee.* – A Congressional  
5 Oversight Committee, herein referred to as the Committee, is hereby  
6 constituted in accordance with the provisions of this Code. The  
7 Committee shall be composed of the Chairmen of the Committee on Ways  
8 and Means and Committee on Trade and Industry of the Senate and House  
9 of Representatives and four additional members from each house, to be  
10 designated by the Speaker of the House of Representatives and the Senate  
11 President, respectively.

12       The Committee shall, among others, in aid of legislation, monitor  
13 and ensure the proper implementation, especially Section 16 of this Act.  
14 The Committee is also empowered to require all IPAs submission of all  
15 pertinent information, including but not limited to, availment of fiscal  
16 incentives, total investments, and cost-benefit analysis of incentives  
17 against investments, in a regular manner.

18       SEC. 38. *Effectivity of Implementing Rules and Regulations.* – The  
19 IPAs, NEDA, DOF, Department of Trade and Industry and other  
20 appropriate government agencies, shall promulgate rules and regulations  
21 to implement the intent and provisions of this Code. Such rules and  
22 regulations shall take effect fifteen (15) days following its publication in a  
23 newspaper of general circulation in the Philippines.

24       SEC. 39. *Transitory Provision.* – Until the Implementing Rules and  
25 Regulations of this Code take effect, the present rules and regulations to  
26 implement the provisions of this Code shall apply.

27       For activities or entities, whether government or private, whose tax  
28 and/or duty exemptions or preferential treatment under special laws are  
29 withdrawn or repealed by this Act, pertinent provisions of the National

1 Revenue Code (NIRC) of 1997, as amended; the Tariff and Customs Code,  
2 as amended; and the Local Government Code, shall apply: *Provided,*  
3 *however,* that non-stock savings and loan associations shall be considered  
4 as financial institutions and shall be taxed accordingly. Any distribution of  
5 net surplus or dividends to members shall be subject to ten percent (10%)  
6 final withholding tax, as provided in Sec. 24 (B) (2) of the NIRC, as  
7 amended.

8 SEC. 40. *Separability Clause.* – The provisions of this Code are  
9 hereby declared to be separable and, in the event any of such provisions is  
10 declared unconstitutional, the other provisions which are not affected  
11 thereby shall remain in force and effect.

12 SEC. 41. *Repealing Clauses.* – The following laws or provisions of  
13 laws are hereby repealed:

14 (1) Batas Pambansa Blg. 44 – “An Act To Promote Investments in  
15 Less Developed Areas”

16 (2) Batas Pambansa Blg. 391 – “An Act Declaring the 1983  
17 Investment Incentives Policy by Modifying the System on the Grant of  
18 Investment Incentives, Amending for the Purpose Presidential Decree No.  
19 1689 and other Pertinent Laws”

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

23 Presidential Decree No. 1893 – “Further Amending Presidential  
24 Decree No. 1623 entitled “Authorizing the Issuance of Special Investors  
25 Resident Visas to Aliens and for other Purposes”, as amended.

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

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

4 (6) Executive Order No. 815 – “To Safeguard and Promote the  
5 Development of the Philippine Semiconductor Electronics Industry”

6 (7) Executive Order No. 1045 – “Modifying Fiscal Incentives to  
7 BOI-Registered Enterprises”

8 (8) Presidential Decree No. 66 – “Creating the Export Processing  
9 Zone Authority and Revising Republic Act No. 5490”

10 (9) Republic Act No. 7888 – “An Act to Amend Article 7(13) of  
11 Executive Order No. 226, Otherwise Known as the Omnibus Investment  
12 Code of 1987)”

13 (10) Book I, V, VI of Executive Order No. 226 are hereby  
14 absolutely repealed;

15 (11) The incentive provisions under the following investment -  
16 related laws are hereby repealed as follows:

17 (a) Sections 36(f) of Presidential Decree No. 705, otherwise  
18 known as the “Revised Forestry Code”;

19 (b) Sections 6 and 7 of Republic Act No. 7103, otherwise known  
20 as the “Iron and Steel Industry Act”;

21 (c) Sections 6 and 7 of Republic Act No. 7471, otherwise known  
22 as the “Philippine Overseas Shipping Development Act” and Section 2 of  
23 Republic Act No. 9301 (An Act Amending Certain Provisions of Republic  
24 Act No. 7471 otherwise known as the “Philippine Overseas Shipping  
25 Development Act and For Other Purposes”;

26 (d) Section 19 of Republic Act No. 7279, otherwise known as the  
27 “Urban Development and Housing Act of 1992”;

28 (e) Sections 16 (a), (b), (c), (d), (e) and 17 of Republic Act No.  
29 7844, otherwise known as the “Export Development Act of 1994”;



1 (f) Sections 83, 90, 91, 92 and 93 of Republic Act No. 7942,  
2 otherwise known as the "Philippine Mining Act of 1995";

3 (g) Section 35 (b), (c) and (d) of Republic Act No. 8550, otherwise  
4 known as the "Philippine Fisheries Code of 1998";

5 (h) Section 9 of Republic Act No. 8479, otherwise known as the  
6 "Downstream Oil Deregulation Act of 1998";

7 (i) Section 1 of Republic Act No. 9281, entitled "An Act to  
8 Strengthen Agriculture and Fisheries Modernization in the Philippines by  
9 Extending the Effectivity of Tax Incentives and its Mandated Funding  
10 Support, Amending for this Purpose Sections 109 and 112 of Republic Act  
11 No. 8435";

12 (j) Section 45 of Republic Act No. 9003 also known as  
13 "Ecological Solid Waste Management Act of 2000";

14 (k) Section 26 (A.1, A.1.1, A.1.2) of Republic Act No. 9275,  
15 entitled "The Philippine Clean Water Act of 2004";

16 (l) Sections 4 and 19 of Republic Act No. 9295 also known as "An  
17 Act Promoting the Development of Philippine Domestic Shipping,  
18 Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in  
19 Government Policies Towards Shipping in the Philippines and For Other  
20 Purposes";

21 (m) Section 13 of Republic Act No. 8479 also known as the "Clean  
22 Air Act of 1999";

23 (n) Section 16 of Republic Act No. 7844, entitled "An Act to  
24 Develop Exports as a Key Towards the Achievement of the National Goals  
25 Towards the Year 2000".

26 (12) The provisions of:

27 (a) Section 12 (c) and (g) of Republic Act No. 7227, otherwise  
28 known as the "Bases Conversion and Development Act of 1992;"

1 (b) Section 6 of Proclamation 984 creating the Morong Special  
2 Economic Zone pursuant to Republic Act No. 7227;

3 (c) Section 5 of Proclamation 216 Creating the Poro Point Special  
4 Economic Zone pursuant to Republic Act No. 7227;

5 (d) Section 3 of Executive Order No. 32, Series of 1994 amending  
6 Executive Order No. 103, Series of 1993, establishing the John Hay  
7 Development Corporation;

8 (e) Section 4, paragraphs (e), (f) and (g) of Republic Act No. 7903,  
9 otherwise known as "Zamboanga City Special Economic Zone Act of  
10 1995";

11 (f) Section 4, paragraphs (b), (c) and (e) of Republic Act No.  
12 7922, entitled "Cagayan Special Economic Zone Act of 1995"; and

13 (g) Sections 8, 9 and 10 of Presidential Decree No. 538, entitled  
14 "Creating and Establishing the PHIVIDEC Industrial Authority and  
15 Making its Subsidiary Agency of the Philippine Veterans Investment  
16 Development Corporation Defining Its Powers, Functions and  
17 Responsibilities and for Other Purposes" which are inconsistent with this  
18 Act, are hereby repealed or modified accordingly: *Provided, however,*  
19 *That they shall draw their respective incentives from any of those provided*  
20 *for under this Code.*

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

26 (14) The provisions of Section 12 (b) of Republic Act No. 7227  
27 and Section 5 of Republic Act No. 7103 are modified accordingly.

28 (15) The following incentive provisions under the specific laws  
29 cited herein are hereby absolutely repealed:

- 1 (a) Last sentence of Section 17 of Republic Act No. 7820, "An Act  
2 Creating the Partido Development Administration, Defining its  
3 Powers and Functions, Providing Funds Therefor, and for Other  
4 Purposes";
- 5 (b) Section 8(d) of Republic Act No. 5487, "An Act to Regulate the  
6 Organization and Operation of Private Detective, Watchmen or  
7 Security Guard Agencies (The Private Security Agency Law)";  
8 and
- 9 (c) Section 8 of Republic Act No. 8436, "An Act Authorizing the  
10 Commission on Elections to Use an Automated Election system  
11 in the May 11, 1998 National or Local Elections and in  
12 Subsequent National or Local Electoral Exercises, Providing  
13 Funds Therefor and for Other Purposes" are hereby repealed.
- 14 (d) Section 25 of Presidential Decree No. 857, "Providing for the  
15 Reorganization of Port Administration and Operation Functions  
16 in the Philippines, Revising Presidential Decree No. 505  
17 Dated July 11, 1974, Creating the Philippine Port Authority, by  
18 Substitution, and for Other Purposes"; and
- 19 (e) Sections 2 and 3 of Presidential Decree No. 1362, "Allowing  
20 Radio Broadcasting and Television Stations to Import Radio or  
21 Television Equipment, Spare Parts and Allied Technical and  
22 Program Materials to be Used Exclusively in their Broadcast  
23 Operations Subject to Certain Conditions".
- 24 (16) The tax and/or duty incentives granted to government-owned  
25 and -controlled corporations or government agencies under the following  
26 laws are hereby repealed: *Provided*, That the tax and/or duty exemptions  
27 withdrawn herein maybe recommended to be restored in whole or in part,  
28 after careful and objective evaluation, by the Fiscal Incentives Review  
29 Board (FIRB):

- 1 (a) Section 14 of Republic Act No. 7354, "An Act Creating the  
2 Philippine Postal Corporation, Defining its Powers, Functions  
3 and Responsibilities, Providing for Regulation";
- 4 (b) Title 9, Section 21 of Republic Act No. 7306, "An Act  
5 Providing for the Establishment of the People's Television  
6 Network, Inc., Defining its Powers and Functions, Providing  
7 for its Sources of Funding and For Other Purposes";
- 8 (c) Sections 18, 19, 20 and 21 of Republic Act No. 6847, "An Act  
9 Creating and Establishing the Philippine Sports Commission,  
10 Defining its Powers, Functions and Responsibilities  
11 Appropriating Funds Therefor, and for Other Purposes";
- 12 (d) Section 18 of Republic Act No. 8044, "An Act Creating the  
13 National Youth Commission, Establishing a National  
14 Comprehensive and Youth Development, Appropriating  
15 Funds Therefor, and for Other Purposes";
- 16 (e) Subparagraph (a)(2) and last sentence of subparagraph (b) of  
17 Section 8 and Section 14 of Presidential Decree No. 269,  
18 "Creating the National Electrification Administration as a  
19 Corporation, Prescribing its Powers and Activities,  
20 Appropriating the Necessary Funds Therefor and Declaring a  
21 National Policy Objective for the Total Electrification of the  
22 Philippines on an Area Coverage Service Basis, the  
23 Organization, Promotion and Development of Electric  
24 Cooperatives to Attain the Said Objective, Prescribing Terms  
25 and Conditions for Their Operations, The Repeal of Republic  
26 Act No. 6038, and for Other Purposes;
- 27 (f) Section 14(b) of Republic Act No. 7308, "An Act to Promote  
28 And Develop the Seed Industry in the Philippines and Create a  
29 National Seed Industry Council and for Other Purposes";

- 1 (g) Section 9 Subsection (e), last sentence of the first paragraph of  
2 subsection (f), second paragraph of subsection (i), and  
3 subsection (j) of Republic Act No. 7900, "An Act to Promote  
4 the Production, Processing, Marketing, and Distribution of  
5 High Value Crops, Providing Funds Therefor, and for Other  
6 Purposes".
- 7 (h) Section 20 of Republic Act No. 7279, otherwise known as the  
8 "Urban Development and Housing Act of 1992"; and
- 9 (i) Sections 1, 2, 3 and 4 of Republic Act No. 7109, entitled "An  
10 Act Granting Tax Exemption Privileges to Local Water  
11 Districts"

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

14 SEC. 42. *Effectivity.* – This Act shall take effect fifteen (15) days  
15 following its publication in a newspaper of general circulation in the  
16 Philippines.

Approved,

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