



HOUSE OF REPRESENTATIVES

H. No. 5958

BY REPRESENTATIVE GARCIA (A.), PER COMMITTEE REPORT NO. 2077

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 FREEPORT AUTHORITY, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

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

1 SECTION 1. *Short Title.* – This Act shall be known as the “Bataan
2 Special Economic Zone and Freeport Act of 2006”.

3 SEC 2. *Declaration of Policy.* – It is hereby declared the policy of the
4 State to actively encourage, promote, induce and accelerate the sound and
5 balanced industrial, economic and social development of the country in order
6 to provide jobs to the people especially those in the rural areas, increase
7 productivity and individual and family income, and thereby improve the level
8 and quality of living conditions through the establishment, among others, of
9 special economic zones in suitable and strategic locations in the country and

1 through measures that will attract legitimate and productive foreign
2 investments.

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

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

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

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

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

27 (D) Foreign citizens and companies owned by non-Filipinos, in
28 whatever proportion, may set up enterprises in the BSEZFP, either by

1 themselves or in a joint venture with Filipinos in any sector of industry,
2 international trade and commerce within the BSEZFP;

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

6 (F) The BSEZFP may provide incentives such as tax- and duty-free
7 importations of raw materials, capital and equipment to registered enterprises
8 located therein. However, exportation or removal of goods from the territory of
9 the BSEZFP to the other parts of the Philippine territory shall be subject to
10 customs duties and taxes under the Tariff and Customs Code of the
11 Philippines, as amended, and the National Internal Revenue Code (NIRC) of
12 1997, as amended;

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

22 (H) Goods manufactured by the BSEZFP shall be made available for
23 immediate retail sale in the domestic market, subject to the payment of
24 corresponding taxes on raw materials and other regulations that may be
25 formulated by the BSEZFP Authority, together with the PEZA, the Bangko
26 Sentral ng Pilipinas (BSP), the Department of Finance (DOF), the Bureau of
27 Customs (BoC) and the DTI in accordance with the NIRC of 1997, as
28 amended, and the Tariff and Customs Code of the Philippines, as amended.

1 However, in order to protect domestic industries, a Negative List of industries
2 shall be drawn up and regularly updated by the PEZA. Enterprises engaged in
3 industries included in such Negative List shall not be allowed to sell their
4 products locally; and

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

8 SEC. 5. *Incentives to Registered Enterprises.* – The Bataan Special
9 Economic Zone and Freeport Authority (BSEZFPA) shall provide the
10 following incentives to the registered enterprises located therein as follows:

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

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

17 (2) Category B - Registered domestic enterprises on the following shall
18 be entitled to a six-year ITH:

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

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

22 (3) Category C - Registered export enterprises shall be entitled to a six-
23 year ITH: *Provided, however,* That if the export enterprise complies with the
24 following: (a) large capital investments or sizeable employment generation, or
25 (b) use technology of high level, or (c) located outside Metro Manila, it shall
26 be entitled to an eight-year ITH.

27 Registered enterprises embarking on new investments that are listed in
28 the current Investment Priorities Plan (IPP) shall be entitled to incentives

1 provided herein pertaining to the new investments and subject to such terms
2 and conditions as the BOI may determine.

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

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

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

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

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

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

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

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

12 (1) Two percent (2%) to the national government;

13 (2) One percent (1%) to the Province of Bataan;

14 (3) One percent (1%) shall be remitted by the business establishments
15 to the treasurer's office of the municipality or city where the enterprise is
16 located; and

17 (4) One percent (1%) to the BSEZFPA.

18 All persons and service establishments in the BSEZFP shall be subject
19 to national and local taxes under the NIRC of 1997, as amended, and the Local
20 Government Code of 1991.

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

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

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

8 (a) *These are not manufactured domestically in sufficient quantity, of*
9 *comparable quality and at reasonable prices;*

10 (b) *These are reasonably needed and will be used exclusively by the*
11 *registered enterprise in the manufacture of its products, unless prior approval*
12 *of the BSEZFPA is secured for the part-time utilization of said equipment in a*
13 *nonregistered activity to maximize usage thereof or the proportionate taxes and*
14 *duties are paid on a specific equipment and machinery being permanently used*
15 *for nonregistered activities; and*

16 (c) *Approval of the BSEZFPA was obtained by the registered*
17 *enterprise for the importation of such machinery, equipment and spare parts.*

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

23 (i) *The same is made to another enterprise enjoying tax and duty*
24 *exemption on imported capital equipment;*

25 (ii) *The same is made to another enterprise, upon payment of the taxes*
26 *and duties on the net book value of the capital equipment to be sold;*

27 (iii) *The exportation of the capital equipment, machinery, spare parts or*
28 *source documents or those required for pollution abatement and control; and*

1 (iv) Proven technical obsolescence of the said equipment, machinery or
2 spare parts.

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

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

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

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

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

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

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

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

27 (H) Incentives on Breeding Stocks and Genetic Materials - Importation
28 of breeding stocks and genetic materials within ten (10) years from the date of

1 registration of commercial operation of the enterprise shall be exempt from all
2 taxes and duties: *Provided*, That such breeding stocks and genetic materials are
3 reasonably needed in the registered activity and approved by the BSEZFPA.

4 The availment of the incentives by a registered enterprise shall be
5 subject to the following: (1) that said breeding stocks and genetic materials
6 would have been qualified for tax- and duty-free importation under the
7 preceding paragraph; (2) that the breeding stocks and genetic materials are
8 reasonably needed in the registered activity; (3) that approval of the BSEZFPA
9 has been obtained by the registered enterprise; and (4) that the purchase is
10 made within ten (10) years from the date of registration of commercial
11 operation of the registered enterprise.

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

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

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

24 (K) (1) Tax Treatment of Merchandise in the BSEZFP - (a) Except as
25 otherwise provided in this Act, foreign and domestic merchandise, raw
26 materials, supplies, articles, equipment, machineries, spare parts and wares of
27 every description, except those prohibited by law, brought into the zone to be
28 sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded

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

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

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

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

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

24 (f) Subject to such regulations respecting identity and safeguarding of
25 the revenue as the BSEZFPA may deem necessary when the identity of an
26 article entered into the export processing zone under the immediately
27 preceding paragraph has been lost, such article when removed from the zone
28 and taken to the customs territory shall be treated as foreign merchandise

1 entering the country for the first time, under the provisions of the Tariff and
2 Customs Code of the Philippines, as amended.

3 (g) Articles produced or manufactured in the BSEZFP and exported
4 therefrom shall, on subsequent importation into the customs territory, be
5 subject to the import laws applicable to like articles manufactured in a foreign
6 country.

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

10 (2) Tax Treatment of Merchandise in the BSEZFP - The BSEZFP shall
11 be operated and managed as a separate customs territory ensuring free flow or
12 movement of goods within, into and exported out of the free trade/freeport
13 zone. Importations of raw materials and capital equipment are tax- and duty-
14 free. However, exportations or removal of goods from the free trade/freeport
15 zone to the other parts of the Philippine territory shall be subject to customs
16 and internal revenue regulations.

17 (3) Tax Treatment of Services in the BSEZFP – (a) Sale of service by
18 an entity from the customs territory to a registered ecozone or free trade
19 enterprise, or by a registered ecozone or freeport enterprise to another ecozone
20 or freeport enterprise shall be treated as indirect export and hence, entitled to
21 the benefits allowed by law for such transaction.

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

25 (L) Registered export-oriented enterprise shall have access to the
26 utilization of the bonded warehousing system in accordance with the rules and
27 regulations of the BoC.

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

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

20 The said foreign national admitted under this provision, as well as their
21 respective spouses and dependents, shall be exempt from: (1) obtaining Alien
22 Certificate of Registration and Emigration Clearance Certificates; and (2)
23 securing the Alien Employment Permit (AEP) and all types of clearances,
24 permits, licenses or their equivalents required by any government department
25 or agency.

26 SEC. 6. *Incentives to Investors.* - Any foreign national covered under
27 Subsection (M) of Section 5 of this Act who invests an amount of One hundred
28 fifty thousand US dollars (US\$150,000.00), either in cash and/or equipment, in

1 a registered enterprise shall be entitled to an investor's visa: *Provided*, That he
2 has the following qualifications:

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

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

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

7 (D) He has not been institutionalized for any mental disorder or
8 disability: *Provided, further*, That in securing the investor's visa, the alien-
9 applicant shall be entitled to the same privileges provided for under Section
10 5(M) hereof.

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

17 *SEC. 7. Administration, Implementation and Monitoring of Incentives.*

18 -- The BSEZFPA shall be responsible for the administration and
19 implementation of the incentives granted to its respective registered
20 enterprises: *Provided*, That any incentive administration policy adopted by the
21 BOI for registered enterprises shall be uniformly applied by the BSEZFPA.

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

24 (A) To adopt consistent procedures of administering incentives in
25 accordance with the guidelines established by the BOI;

26 (B) To adopt and implement systems and procedures affecting trade
27 and customs policies in accordance with the requirements established by the
28 DOF and the BOI;

1 (C) To submit data and information to the DOF and the BOI as required
2 by any of these agencies to ascertain consistency of investment policies and
3 incentives, including their implementation as provided in Subsection (A), and
4 to ensure proper implementation of systems and procedures affecting trade and
5 customs policies as provided in Subsection (B); and

6 (D) To perform all other duties and responsibilities as may be required
7 by the President.

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

13 SEC. 8. *Extension of Period of Availment.* – The availment period of
14 the incentives provided herein may be extended by the BSEZFPA, in the event
15 that the registered enterprise suffers operational *force majeure* or any event
16 equivalent thereto, impairing its viability.

17 SEC. 9. *Duration of Incentives.* – Enterprises registered with the
18 BSEZFPA may enjoy the ITH or the NOLCO granted by the latter prior to the
19 availment of the five percent (5%) GIE.

20 Fiscal incentives under this Act shall be terminated after a cumulative
21 period of twenty (20) years from the date of registration or the start of
22 commercial operation, whichever is applicable, except that it could be
23 extended with regard to industries deemed indispensable to national
24 development.

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

27 SEC. 10. *Creation of the Bataan Special Economic Zone and Freeport*
28 *Authority* (BSEZFPA). – There is hereby created a body corporate to be

1 known as the Bataan Special Economic Zone and Freeport Authority,
2 hereinafter referred to as the BSEZFPA, which shall manage and operate the
3 BSEZFP in accordance with the provisions of this Act. This corporate
4 franchise shall expire in fifty (50) years counted from the first year after the
5 effectivity of this Act, unless otherwise extended by Congress. It shall be
6 organized within one hundred eighty (180) days after the effectivity of this Act.

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

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

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

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

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

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

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

25 (F) To regulate and undertake the establishment, operation and
26 maintenance of utilities, other services and infrastructure in the BSEZFP such
27 as, but not limited to, heat, light and power, water supply, telecommunications,

1 transport, toll roads and bridges, port services, etc. and to fix just, reasonable
2 and competitive rates, fares, charges and prices thereof;

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

11 (H) To operate on its own, either directly or through a license to others,
12 tourism-related activities, including games, amusements, recreational and
13 sports facilities under priorities and standards set by the BSEZFPA;

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

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

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

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

8 (M) To issue certificates of origin for products manufactured or
9 processed in the BSEZFP in accordance with the prevailing rules of origin and
10 the pertinent regulations of the DTI or the DOF;

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

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

18 SEC. 13. *Board of Directors of the BSEZFPA.* – The powers of the
19 BSEZFPA shall be vested in and exercised by a board of directors, hereinafter
20 referred to as the Board, which shall be composed of the following:

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

23 (B) A vice chairman who shall come from among the members of the
24 Board; and

25 (C) Members consisting of:

26 (1) The governor of the Province of Bataan;

27 (2) The congressional representative of the district covering the
28 BSEZFP;

- 1 (3) The mayor of the Municipality of Mariveles, Province of Bataan;
- 2 (4) One representative from the domestic investors;
- 3 (5) One representative from the foreign investors; and
- 4 (6) One representative from the workers working in the BSEZFP.

5 The chairman of the Board shall sit as the administrator of the
6 BSEZFPA. The governor, the congressional representative and the mayor of
7 the Municipality of Mariveles, Province of Bataan shall serve as *ex officio*
8 members of the Board, whose terms in the Board corresponds to their terms as
9 elected officials.

10 The chairman and the members of the Board, except the *ex officio*
11 members, shall be appointed by the President of the Philippines to serve for a
12 term of six years, unless sooner separated from service due to death, voluntary
13 resignation or removal for cause. In case of death, resignation or removal for
14 cause, the replacement shall serve only the unexpired portion of the term.

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

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

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

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

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

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

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

9 (E) To submit to the Board for its approval, policies, systems,
10 procedures, rules and regulations that are essential to the operation of the
11 BSEZFP;

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

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

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

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

1 No officer or employee of the BSEZFPA, subject to civil service laws
2 and regulations, shall be removed or suspended except for cause, as provided
3 for by law.

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

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

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

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

23 SEC. 19. *Remittances.* – In the case of foreign investments, a registered
24 enterprise in the BSEZFP shall have the right to remit earnings from the
25 investment in the currency in which the investment was originally made and at
26 the exchange rate prevailing at the time of remittance, subject to the provisions
27 of Section 74 of Republic Act No. 265, as amended.

1 SEC. 20. *Applicability Clause.* – The provisions of Sections 30 to 41 of
2 Republic Act No. 7916, otherwise known as “The Special Economic Zone Act
3 of 1995”, as amended, shall likewise apply to the BSEZFP.

4 SEC. 21. *Capitalization.* – The BSEZFPA shall have an authorized
5 capital stock of two billion (2,000,000,000) no-par shares with a minimum
6 issue of Ten pesos (P10.00) each, the majority shares of which shall be
7 subscribed and paid for by the national government and the LGU embracing
8 the BSEZFP. The Board of the BSEZFPA with the written concurrence of the
9 Secretary of the DOF may sell shares, representing not more than forty *per*
10 *centum* (40%) of the capital stock of the BSEZFPA to the general public under
11 such policy as the Board and the Secretary of the DOF may determine. The
12 national government and the LGUs shall, in no case, own less than sixty *per*
13 *centum* (60%) of the total issued and outstanding capital of the BSEZFPA.

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

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

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

27 SEC. 24. *Relationship with the Local Government Units.* – Except as
28 herein provided, the Municipality of Mariveles in the Province of Bataan shall

1 operate and function in accordance with the Local Government Code of 1991.
2 In case of any conflict between the BSEZFPA and the Municipality of
3 Mariveles on matters affecting the BSEZFP other than defense and security
4 matters, the decision of the BSEZFPA shall prevail.

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

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

13 SEC. 27. *Implementing Rules and Regulations.* – The DTI, the DOF,
14 the LGUs and the Department of the Interior and Local Government shall
15 formulate the implementing rules and regulations of this Act within ninety (90)
16 days after its approval. Such rules and regulations shall take effect fifteen (15)
17 days after their publication in a newspaper of general circulation in the
18 Philippines.

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

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

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

Approved,