



## THE OMNIBUS INVESTMENTS CODE OF 1987

Executive Order No. 226

### CHAPTER 1 TITLE AND DECLARATION OF POLICY

ARTICLE 1. *Short Title.* ~ This Order shall be known as the "Omnibus Investments Code of 1987."

ART. 2. *Declaration of Investment Policies.* ~ To accelerate the sound development of the national economy in consonance with the principles and objectives of economic nationalism and in pursuance of a planned economically feasible and practical dispersal of industries and the promotion of small and medium scale industries, under conditions which will encourage competition and discourage monopolies, the following are declared policies of the State:

1. The State shall encourage private Filipino and foreign investments in industry, agriculture, forestry, mining, tourism and other sectors of the economy which shall: provide significant employment opportunities relative to the amount of the capital being invested; increase productivity of the land, minerals, forestry, aquatic and other resources of the country, and improve utilization of the products thereof improve technical skills of the people employed in the enterprise; provide a foundation for the future development of the economy; meet the tests of international competitiveness; accelerate development of less developed regions of the country; and result in increased volume and value of exports for the economy.

2. The State shall ensure holistic development by safeguarding the well-being of the social, cultural and ecological life of the people. For this purpose, consultation with affected communities will be conducted whenever necessary.

3. The State shall extend to projects which will significantly contribute to the attainment of these objectives, fiscal incentives without which said projects may not be established in the locales, number and/or pace required for optimum national economic development. Fiscal incentive systems shall be devised to compensate for market imperfections, to reward performance contributing to economic development, be cost-efficient and be simple to administer.

4. The State considers the private sector as the prime mover for economic growth. In this regard, private initiative is to be encouraged, with deregulation and self-regulation of business activities to be generally adopted where dictated by urgent social concerns.

5. The State shall principally play a supportive role, rather than a competitive one, providing the framework, the climate and the incentives within which business activity is to take place.

6. The State recognizes that there are appropriate roles for local and foreign capital to play in the development of the Philippine economy and that it is the responsibility of Government to define these roles and provide the climate for their entry and growth.

7. The State recognizes that industrial peace is an essential element of economic growth and that it is a principal responsibility of the State to ensure that such a condition prevails.

8. Fiscal incentives shall be extended to stimulate the establishment and assist initial operations of the enterprise, and shall terminate after a period of not more than 10 years from registration or start-up of operation unless a specific period is otherwise stated.

The foregoing declaration of investment policies shall apply to all investment incentive schemes.

## CHAPTER II BOARD OF INVESTMENTS

ART. 3. *The Board of Investments.* ~ The Board of Investments shall implement the provisions of Books One to Five of this Code.

ART. 4. *Composition of the Board.* ~ The Board of Investments shall be composed of seven (7) governors: The Secretary of Trade and Industry, three (3) Undersecretaries of Trade and Industry to be chosen by the President; and three (3) representatives from other government agencies and the private sector. The Secretary of Trade and Industry shall be concurrently Chairman of the Board and the Undersecretary of the Department of Trade and Industry for Industry and Investments shall be concurrently the Vice-Chairman of the Board and its Managing Head. The three (3) representatives from the other government agencies and the private sector shall be appointed by the President for a term of four (4) years: *Provided*, That upon the expiration of his term, a governor shall serve as such until his successor shall have been appointed and qualified: *Provided, further*, That no vacancy shall be filled except for the unexpired portion of any term, and that no one may be designated to be a governor of the Board in an acting capacity but all appointments shall be ad interim or permanent.

ART 5. *Qualifications of Governors of the Board.* ~ The governors of the Board shall be citizens of the Philippines, at least thirty (30) years old, of good moral character and of recognized competence in the fields of economics, finance, banking, commerce, industry, agriculture, engineering, law, management or labor.

ART. 6. *Appointment of Board Personnel.* ~ The Board shall appoint its technical staff and other personnel subject to Civil Service Law, rules and regulations.

ART 7. *Powers and Duties of the Board.* ~ The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4) governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:

(1) Prepare annually the Investment Priorities Plan as defined in Article 26, which shall contain a listing of specific activities that can qualify for incentives under Book 1 of this Code, duly supported by the studies of existing and prospective demands for such products and services in the light of the level and structure of income, production, trade, prices and relevant economic and technical factors of the regions as well as existing facilities;

(2) Promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Code relevant to the Board;

(3) Process and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of this Code, including refund of incentives when appropriate, restricting availment of certain incentives not needed by the project in the determination of the Board, requiring performance bonds and other guarantees, and payment of application, registration, publication and other necessary fees and when warranted, may limit the availment of the tax holiday incentive to the extent that the

investor's country law or treaties with the Philippines allows a credit for taxes paid in the Philippines;

(4) After due hearing, decide controversies concerning the implementation of the relevant books of this Code that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: *Provided*, That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President;

(5) Recommend to the Commissioner of Immigration and Deportation the entry into the Philippines for employment of foreign nationals under this Code;

(6) Periodically check and verify, either by inspection of the books or by requiring regular reports, the proportion of the participation of Philippine nationals in a registered enterprise to ascertain compliance with its qualification to retain registration under this Code;

(7) Periodically check and verify the compliance by registered enterprises with the relevant provisions of this Code, with the rules and regulations promulgated under this Code and with the terms and conditions of registration;

(8) After due notice, cancel the registration or suspend the enjoyment of incentives benefits of any registered enterprise and/or require refund of incentives enjoyed by such enterprise including interests and monetary penalties, for (a) failure to maintain the qualifications required by this Code for registration with the Board or (b) for violation of any provisions of this Code, of the rules and regulations issued under this Code, of the terms and conditions of registration, or of laws for the protection of labor or of the consuming public: *Provided*, That the registration of an enterprise whose project timetable, as set by the Board is delayed by one year, shall be considered automatically cancelled unless otherwise reinstated as a registered enterprise by the Board;

(9) Determine the organizational structure taking into account Article 6 of this Code; appoint, discipline and remove its personnel consistent with the provisions of the Civil Service Law and Rules;

(10) Prepare or contract for the preparation of feasibility and other pre-investment studies for pioneer areas either upon its own initiative; or upon the request of Philippine nationals who commit themselves to invest therein and show the capability of doing so: *Provided*, That if the venture is implemented, then the amount advanced by the Board shall be repaid within five (5) years from the date the commercial operation of said enterprise starts;

(11) When feasible and considered desirable by the Board, require registered enterprises to list their shares of stock in any accredited stock exchange or directly offer a portion of their capital stock to the public and/or their employees;

(12) Formulate and implement rationalization programs for certain industries whose operation may result in dislocation, overcrowding or inefficient use of resources, thus impeding economic growth. For this purpose, the Board may formulate guidelines for progressive manufacturing programs, local content programs, mandatory sourcing requirements and dispersal of industries. In appropriate cases and upon approval of the President, the Board may restrict, either totally or partially, the importation of any equipment or raw materials or finished products involved in the rationalization program;

(13) In appropriate cases, and subject to the conditions which the Board deems necessary, suspend the nationality requirement provided for in this Code or any other nationalization statute in cases of ASEAN projects or investments by ASEAN nationals in preferred projects, and with the approval of the President, extend said suspension to other

international complementation arrangements for the manufacture of a particular product on a regional basis to take advantage of economies of scale;

(14) Extend the period of availment of incentives by any registered enterprise; Provided, That the total period of availment shall not exceed ten (10) years, subject to any of the following criteria:

(a) The registered enterprise has suffered operational force majeure that has impaired its viability;

(b) The registered enterprise has not fully enjoyed the incentives granted to it for reasons beyond its control;

(c) The project of the registered enterprise has a gestation period which goes beyond the period of availment of needed incentives; and

(d) The operation of the registered enterprise has been subjected to unforeseen changes in government policies, particularly, protectionism policies of importing countries, and such other supervening factors which would affect the competitiveness of the registered firm;

(15) Regulate the making of investments and the doing of business within the Philippines by foreigners or business organizations owned in whole or in part by foreigners;

(16) Prepare or contract for the preparation of industry and sectoral development programs and gather and compile statistical, technical, marketing, financial and other data required for the effective implementation of this Code;

(17) Within four (4) months after the close of the fiscal year, submit annual reports to the President which shall cover its activities in the administration of this Code, including recommendations on investment policies;

(18) Provide, directly or through Philippine diplomatic missions, such information as may be of interest to prospective foreign investors;

(19) Collate, analyze and compile pertinent information and studies concerning areas that have been or may be declared preferred areas of investments; and

(20) Enter into agreements with other agencies of government for the simplification and facilitation of systems and procedures involved in the promotion of investments, operation of registered enterprises and other activities necessary for the effective implementation of this Code;

(21) Generally, exercise all the powers necessary or incidental to attain the purposes of this Code and other laws vesting additional functions on the Board.

**ART. 8. Powers and Duties of the Chairman.** ~ The Chairman shall have the following powers and duties:

(1) To preside over the meetings of the Board;

(2) To render annual reports to the President and such special reports as may be requested;

(3) To act as liaison between investors seeking joint venture arrangements in particular areas of investment;

(4) Recommend to the Board such policies and measures he may deem necessary to carry out the objectives of this Code; and

(5) Generally, to exercise such other powers and perform such other duties as may be directed by the Board of Governors from time to time.

ART. 9. *Powers and Duties of the Vice-Chairman.* ~ The Vice-Chairman shall have the following powers and duties:

(1) To act as Managing Head of the Board;

(2) To preside over the meetings of the Board in the absence of the Chairman;

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

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

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

INVESTMENTS WITH INCENTIVES  
TITLE I  
PREFERRED AREAS OF INVESTMENTS  
CHAPTER I  
DEFINITION OF TERMS

ART. 10. Board shall mean the Board of Investments created under this Code.

ART. 11. Registered Enterprise shall mean any individual, partnership, cooperative, corporation or other entity incorporated and/or organized and existing under Philippine laws; and registered with the Board in accordance with this Book; *Provided, however,* That the term registered enterprise shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, development banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumers' cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions.

ART. 12. Technological assistance contracts shall mean contracts for: (1) the transfer, by license or otherwise, of patents, processes, formulas or other technological rights of foreign origin; and/or (2) foreign assistance concerning technical and factory management, design, planning, construction, operation and similar matters.

ART. 13. Foreign loans shall mean any credit facility or financial assistance other than equity investment denominated and payable in foreign currency or where the creditor has the option to demand payment in foreign exchange and registered with the Central Bank and the Board.

ART. 14. Foreign Investments shall mean equity investments owned by a non-Philippine national made in the form of foreign exchange or other assets actually transferred to the Philippines and registered with the Central Bank and the Board, which shall assess and appraise the value of such assets other than foreign exchange.

ART. 15. Philippine national shall mean a citizen of the Philippines or a domestic partnership or association wholly-owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and

entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided*, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national.

ART. 16. Preferred areas of investments shall mean the economic activities that the Board shall have declared as such in accordance with Article 28 which shall be either non-pioneer or pioneer.

ART. 17. Pioneer enterprise shall mean a registered enterprise (1) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale of (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines or (3) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainment of the national goal in relation to a declared specific national food and agricultural program for self sufficiency and other social benefits of the project or (4) which produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations: *Provided*, That the final product in any of the foregoing instances, involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment; *Provided, further*, That the foregoing definitions shall not in any way limit the rights and incentives granted to less-developed-area enterprises provided under Title V, Book 1 hereof.

ART. 18. Non-pioneer enterprise shall include all registered producer enterprises other than pioneer enterprises.

ART. 19. Expansion shall include modernization and rehabilitation and shall mean increase of existing volume or value of production or upgrading the quality of the registered product or utilization of inefficient or idle equipment under such guidelines as the Board may adopt.

ART. 20. Measured capacity shall mean the estimated additional volume of production or service which the Board determines to be desirable in each preferred area of investment in order to supply the needs of the economy at reasonable prices, taking into account the export potential of the product, including economies of scale which would render such product competitive in the world market. Measured capacity shall not be less than the amount by which the measurable domestic and country's potential export market demand exceeds the existing productive capacity in said preferred areas. For export market industries, when warranted, the Board shall base measured capacity on the availability of domestic raw materials after deducting the needs of the domestic market therefor.

ART. 21. Tax Credit shall mean any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance. The tax credit certificates including those issued by the Board pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their

laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the National Government: *Provided*, That the tax credits issued under this Code shall not form part of the gross income of the grantee/transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: *Provided, further*, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.

ART. 22. Export products shall mean manufactured or processed products the total F.O.B. Philippine port value of the exports of which did not exceed five million dollars in the United States currency in the calendar year 1968 and which meet the local content requirement, if any, set by the Board, and standards of quality set by the Bureau of Product Standards, or, in default of such standards, by the Board or by such public or private organization, chamber, group or body as the Board may designate. The above definition notwithstanding, the Investment Priorities Plan may include other products for exports subject to such conditions and limited incentives as may be determined by the Board.

ART. 23. Export sales shall mean the Philippine port F.O. B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered constructively exported for purposes of this provision:

(1) sales to bonded manufacturing warehouses of export-oriented manufacturers;

(2) sales to export processing zones;

(3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs;

(4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: *Provided, further*, That export sales of registered export traders may include commission income: and *Provided, finally*, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales.

ART. 24. Production cost shall mean the total of the cost of direct labor, raw materials, and manufacturing overhead, determined in accordance with generally accepted accounting principles, which are incurred in manufacturing or processing the products of a registered enterprise.

ART. 25. Processing shall mean converting of raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means or by a special

treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or dessicating quick freezing, that results in a change in the nature or state of the products. Merely packing or packaging shall not constitute processing.

ART. 26. Investment Priorities Plan shall mean the overall plan prepared by the Board which includes and contains:

(a) The specific activities and generic categories of economic activity wherein investments are to be encouraged and the corresponding products and commodities to be grown, processed or manufactured pursuant thereto for the domestic or export market;

(b) Specific public utilities which can qualify for incentives under this Code and which shall be supported by studies of existing and prospective regional demands for the services of such public utilities in the light of the level and structure of income, production, trade, prices and relevant economic and technical factors of the regions as well as the existing facilities to produce such services;

(c) Specific activities where the potential for utilization of indigenous non-petroleum based fuels or sources of energy can be best promoted; and

(d) Such other information, analyses, data, guidelines or criteria as the Board may deem appropriate.

The specific and generic activities to be included in the Investment Priorities Plan with their status as pioneer or non-pioneer shall be determined by the Board in accordance with the criteria set forth in this Book.

## CHAPTER II INVESTMENT PRIORITIES PLAN

ART. 27. *Investment Priorities Plan.* ~ Not later than the end of March of every year, the Board of Investments, after consultation with the appropriate government agencies and the private sector, shall submit to the President an Investment Priorities Plan: *Provided, however,* That the deadline for submission may be extended by the President.

ART. 28. *Criteria in Investment Priority Determination.* ~ No economic activity shall be included in the Investment Priorities Plan unless it is shown to be economically, technically and financially sound after thorough investigation and analysis by the Board.

The determination of preferred areas of investment to be listed in the Investment Priorities Plan shall be based on long-run comparative advantage, taking into account the value of social objectives and employing economic criteria along with market, technical; and financial analyses.

The Board shall take into account the following:

(a) Primarily, the economic soundness of the specific activity as shown by its economic internal rate of return;

(b) The extent of contribution of an activity to a specific development goal;

(c) Other indicators of comparative advantage;

(d) Measured capacity as defined in Article 20; and

(e) The market and technical aspects and considerations of the activity proposed to be included.

In any of the declared preferred areas of investment, the Board may designate as pioneer areas the specific products and commodities that meet the requirements of Article 17 of

this Code and review yearly whether such activity, as determined by the Board, shall continue as pioneer, otherwise, it shall be considered as non-pioneer and accordingly listed as such in the Investment Priorities Plan or removed from the Investment Priorities Plan.

ART. 29. *Approval of the Investment Priorities Plan.* ~ The President shall proclaim the whole or part of such plan as in effect; or alternatively return the whole or part of the plan to the Board of Investments for revision.

Upon the effectivity of the plan or portions thereof, the President shall issue all necessary directives to all departments, bureaus, agencies or instrumentalities of the government to ensure the implementation of the plan by the agencies concerned in a synchronized and integrated manner. No government body shall adopt any policy or take any course of action contrary to or inconsistent with the plan.

ART. 30. *Amendments.* ~ Subject to publication requirements and the criteria for investment priority determination, the Board of Investments may, at any time, add additional areas in the plan, alter any of the terms of the declaration of an investment area or the designation of measured capacities, or terminate the status of preference. In no case, however, shall any amendment of the plan impair whatever rights may have already been legally vested in qualified enterprises which shall continue to enjoy such rights to the full extent allowed under this Code. The Board shall not accept applications in an area of investment prior to the approval of the same as a preferred area nor after approval of its deletion as a preferred area of investment.

ART. 31. *Publication.* ~ Upon approval of the plan, in whole or in part or upon approval of an amendment thereof, the plan or the amendment, specifying and declaring the preferred areas of investment and their corresponding measured capacity shall be published in at least one (1) newspaper of general circulation and all such areas shall be open for application until publication of an amendment or deletion thereof, or until the Board approves registration of enterprises which fill the measured capacity.

### CHAPTER III REGISTRATION OF ENTERPRISES

ART. 32. *Qualifications of a Registered Enterprise.* ~ To be entitled to registration under the Investment Priorities Plan, an applicant must satisfy the Board that:

(1) He is a citizen of the Philippines, in case the applicant is a natural person, or in case of a partnership or any other association, it is organized under Philippine laws and that at least sixty percent (60%) of its capital is owned and controlled by citizens of the Philippines; or in case of a corporation or a cooperative, it is organized under Philippine laws and that at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine nationals as defined under Article 15 of this Code, and at least sixty percent (60%) of the members of the Board of Directors are citizens of the Philippines. If it does not possess the required degree of ownership as mentioned above by Philippine nationals, the following circumstances must be satisfactorily established:

(a) That it proposes to engage in a pioneer project as defined in Article 17 of this Code, which, considering the nature and extent of capital requirements, processes, technical skills and relative business risks involved, is in the opinion of the Board of such a nature that the available measured capacity thereof cannot be readily and adequately filled by Philippine nationals; or, if the applicant is exporting at least seventy percent (70%) of its total production, the export requirement herein provided may be reduced in meritorious cases under such conditions and/or limited incentives as the Board may determine;

(b) That it obligates itself to attain the status of a Philippine national, as defined in Article 15, within thirty (30) years from the date of registration or within such longer period as the Board may require taking into account the export potential of the project: *Provided*, That a registered enterprise which exports one hundred percent (100%) of its total production need not comply with this requirement;

(c) That the pioneer area it will engage in is one that is not within the activities reserved by the Constitution or other laws of the Philippines to Philippine citizens or corporations owned and controlled by Philippine citizens;

(2) The applicant is proposing to engage in a preferred project listed or authorized in the current Investment Priorities Plan within a reasonable time to be fixed by the Board or, if not so listed, at least fifty percent (50%) of its total production is for export or it is an existing producer which will export part of production under such conditions and/or limited incentives as the Board may determine; or that the enterprise is engaged or proposing to engage in the sale abroad of export products bought by it from one or more export producers; or the enterprise is engaged or proposing to engage in rendering technical, professional or other services or in exporting television and motion pictures and musical recordings made or produced in the Philippines, either directly or through a registered trader.

(3) The applicant is capable of operating on a sound and efficient basis and of contributing to the national development of the preferred area in particular and of the national economy in general; and

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

ART. 33. *Application.* ~ Applications shall be filed with the Board, recorded in a registration book and the date appearing therein and stamped on the application shall be considered the date of official acceptance.

Whenever necessary, the Board, through the People's Economic Councils, shall consult the communities affected on the acceptability of locating the registered enterprise within their community.

ART. 34. *Approval and Registration Procedures.* ~ The Board is authorized to adopt rules and regulations to facilitate action on applications filed with it, prescribe criteria for the evaluation of several applications filed in one preferred area; devise standard forms for use of applicants and delegate to the regional offices of the Department of Trade and Industry the authority to receive and process applications for enterprises to be located in their respective regions.

Applications filed shall be considered automatically approved if not acted upon by the Board within twenty (20) working days from official acceptance thereof.

ART. 35. *Criteria for Evaluation of Applications.* ~ The following criteria will be considered in the evaluation of applications for registration under a preferred area:

(a) The extent of ownership and control by Philippine citizens of the enterprises;

(b) The economic rates of return;

(c) The measured capacity: *Provided*, That estimates of measured capacities shall be regularly reviewed and updated to reflect changes in market supply and demand conditions:

*Provided, further,* That measured capacity shall not result in a monopoly in any preferred area of investment which would unduly restrict trade and fair competition nor shall it be used to deny the entry of any enterprise in any field of endeavor or activity;

(d) The amount of foreign exchange earned, used or saved in their operations;

(e) The extent to which labor, materials and other resources obtained from indigenous sources are utilized;

(f) The extent to which technological advances are applied and adopted to local conditions;

(g) The amount of equity and degree to which the ownership of such equity is spread out and diversified; and

(h) Such other criteria as the Board may determine.

ART. 36. *Appeal from Board's Decision.* ~ Any order or decision of the Board shall be final and executory after thirty (30) days from its promulgation. Within the said period of thirty (30) days, said order or decision may be appealed. to the Office of the President. Where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.

ART. 37. *Certificate of Registration.* ~ A registered enterprise under this Code shall be issued a certificate of registration under the seal of the Board of Investments and the signature of its Chairman and/or such other officer or employee of the Board as it may empower and designate for the purpose. The certificate shall be in such form and style as the Board may determine and shall state, among other matters:

(a) The name of the registered enterprise;

(b) The preferred area of investment in which the registered enterprise is proposing to engage;

(c) The nature of the activity it is undertaking or proposing to undertake, whether pioneer or non-pioneer, and the registered capacity of the enterprise; and

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

## TITLE II BASIC RIGHTS AND GUARANTEES

ART. 38. *Protection of Investment.* ~ All investors and registered enterprises are entitled to the basic rights and guarantees provided in the Constitution. Among other rights recognized by the Government of the Philippines are the following:

(a) *Repatriation of Investments.* ~ In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation, subject to the provisions of Section 74 of Republic Act No. 265, as amended. For investments made pursuant to Executive Order No. 32 and its implementing rules and regulations, remittability shall be as provided therein.

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

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

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

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

### TITLE III INCENTIVES TO REGISTERED ENTERPRISES

ART. 39. *Incentives to Registered Enterprises.* ~ All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

(a) *Income Tax Holiday.* ~

(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

i. the project meets the prescribed ratio of capital equipment to number of workers set by the Board;

ii. utilization of indigenous raw materials at rates set by the Board;

iii. the net foreign exchange savings or earnings amount to at least US\$500,000.00 annually during the first three(3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board may determine; *Provided, however,* That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

(3) The Provision of Article 7 (14) notwithstanding, registered firms shall not be entitled to any extension of this incentive.

(b) *Additional Deduction for Labor Expense.* ~ For the first five (5) years from registration a registered enterprise shall be allowed an additional deduction from the taxable income of fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers if the project meets the prescribed ration of capital equipment to number of workers set by the Board: *Provided*, That this additional deduction shall be doubled if the activity is located in less developed areas as defined in Art. 40.

(c) *Tax and Duty Exemption on Imported Capital Equipment.* ~ Within five (5) years from the effectivity of this Code, importations of machinery and equipment and accompanying spare parts of new and expanding registered enterprises shall be exempt to the extent of one hundred per cent (100%) of the customs duties and national internal revenue tax payable thereon; *Provided*, That the importation of machinery and equipment and accompanying spare parts shall comply with the following conditions:

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

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

(3) The approval of the Board was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts.

In granting the approval of the importations under this paragraph, the Board may require international canvassing but if the total cost of the capital equipment or industrial plant exceeds US\$5,000,000, the Board shall apply or adopt the provisions of Presidential Decree Numbered 1764 on International Competitive Bidding.

If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without prior approval of the Board within five (5) years from date of acquisition, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax exemption given it.

The Board shall allow and approve the sale, transfer or disposition of the said items within the said period of five (5) years if made:

(aa) to another registered enterprise or registered domestic producer enjoying similar incentives;

(bb) for reasons of proven technical obsolescence; or

(cc) for purposes of replacement to improve and/or expand the operations of the registered enterprise.

(d) *Tax Credit on Domestic Capital Equipment.* ~ A tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new and expanding registered enterprise which purchases machinery, equipment and spare parts from a domestic manufacturer: *Provided*, That (1) That the said equipment, machinery and spare parts are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval

of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof; (2) that the equipment would have qualified for tax and duty-free importation under paragraph (c) hereof; (c) that the approval of the Board was obtained by the registered enterprise; and (4) that the purchase is made within five (5) years from the date of effectivity of the Code. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts, the provisions in the preceding paragraph for such disposition shall apply.

(e) *Exemption from Contractor's Tax.* ~ The registered enterprise shall be exempt from the payment of contractor's tax, whether national or local.

(f) *Simplification of Customs Procedures.* ~ Customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products by registered enterprises shall be simplified by the Bureau of Customs.

(g) *Unrestricted Use of Consigned Equipment.* ~ Provisions of existing laws notwithstanding, machinery, equipment and spare parts consigned to any registered enterprise shall not be subject to restrictions as to period of use of such machinery, equipment and spare parts: *Provided*, That the appropriate re-export bond is posted unless importation is otherwise covered under subsections (c) and (m) of this Article: *Provided, further*, That such consigned equipment shall be for the exclusive use of the registered enterprise.

If such equipment is sold, transferred or otherwise disposed of by the registered enterprise the related provision of Article 39 (c) (3) shall apply. Outward remittance of foreign exchange covering the proceeds of such sale, transfer or disposition shall be allowed only upon prior Central Bank approval.

(h) *Employment of Foreign Nationals.* ~ Subject to the provisions of Section 29 of Commonwealth Act Number 613, as amended a registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years from its registration, extendible for limited periods at the discretion of the Board: *Provided, however*, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of president, treasurer and general manager or their equivalents may be retained by foreign nationals beyond the period set forth herein.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act Numbered 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. A registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports on such training to the Board.

(i) *Exemption on Breeding Stocks and Genetic Materials.* ~ The importation of breeding stocks and genetic materials within ten (10) years from the date of registration or commercial operation of the enterprise shall be exempt from all taxes and duties: *Provided*, That such breeding stocks and genetic materials are (1) not locally available and/or obtainable locally in comparable quality and at reasonable prices; (2) reasonably needed in the registered activity; and (3) approved by the Board.

(j) *Tax Credit on Domestic Breeding Stocks and Genetic Materials.* ~ A tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported shall be given to the registered enterprise which purchases breeding stock and genetic materials from a domestic producer: *Provided*, (1) That said breeding stocks and genetic materials would have qualified for tax and duty free importation under the preceding

paragraph; (2) that the breeding stocks and genetic materials are reasonably needed in the registered activity; (3) that approval of the Board has been obtained by the registered enterprise; and (4) that the purchase is made within ten (10) years from date of registration or commercial operation of the registered enterprise.

(k) *Tax Credit for Taxes and Duties on Raw Materials.* ~ Every registered enterprise shall enjoy a tax credit equivalent to the National Internal Revenue taxes and Customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof, exported directly or indirectly by the registered enterprise: *Provided, however,* That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

Nothing herein shall be construed as to preclude the Board from setting a fixed percentage of export sales as the approximate tax credit for taxes and duties of raw materials based on an average or standard usage for such materials in the industry.

(l) *Access to Bonded Manufacturing/Trading Warehouse System.* ~ Registered export oriented enterprises shall have access to the utilization of the bonded warehousing system in all areas required by the project subject to such guidelines as may be issued by the Board upon prior consultation with the Bureau of Customs.

(m) *Exemption from Taxes and Duties on Imported Spare Parts.* ~ Importation of required supplies and spare parts for consigned equipment or those imported tax and duty free by a registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes payable thereon: *Provided, however,* That at least seventy percent (70%) of production is exported; *Provided, further,* That such spare parts and supplies are not locally available at reasonable prices, sufficient quantity and comparable quality; *Provided, finally,* That all such spare parts and supplies shall be used only in the bonded manufacturing warehouse of the registered enterprise under such requirements as the Bureau of Customs may impose.

(n) *Exemption from Wharfage Dues and any Export Tax, Duty, Impost and Fee.* ~ The provisions of law to the contrary notwithstanding, exports by a registered enterprise of its non-traditional export products shall be exempted from any wharfage dues, and any export tax, duty, impost and fee.

#### TITLE IV INCENTIVES TO LESS-DEVELOPED-AREA REGISTERED ENTERPRISE

ART. 40. A registered enterprise regardless of nationality located in a less-developed-area included in the list prepared by the Board of Investments after consultation with the National Economic and Development Authority and other appropriate government agencies, taking into consideration the following criteria: low per capita gross domestic product; low level of investments; high rate of unemployment and/or underemployment; and low level of infrastructure development including its accessibility to developed urban centers, shall be entitled to the following incentives in addition to those provided in the preceding article:

(a) *Pioneer Incentives.* ~ An enterprise in a less-developed-area registered with the Board under Book 1 of this Code, whether proposed, or an expansion of an existing venture, shall be entitled to the incentives provided for a pioneer registered enterprise under its law registration.

(b) *Incentives for Necessary and Major Infrastructure and Public Facilities.* ~ Registered enterprises establishing their production, processing or manufacturing plants in an area that the Board designates as necessary for the proper dispersal of industry or in an area which the Board finds deficient in infrastructure, public utilities, and other facilities, such as irrigation, drainage or other similar waterworks infrastructure may deduct from taxable income an amount equivalent to one hundred percent (100%) of necessary and major infrastructure works it may have undertaken with the prior approval of the Board in consultation with other government agencies concerned; *Provided,* That the title to all such infrastructure works shall upon completion, be transferred to the Philippine Government; *Provided, further,* That any amount not deducted for a particular year may be carried over for deduction for subsequent years not exceeding ten (10) years from commercial operation.

#### TITLE V GENERAL PROVISIONS

ART. 41. *Power of the President to Rationalize Incentives.* ~ The President may, upon recommendation of the Board and in the interest of national development, rationalize the incentives scheme herein provided; extend the period of availment of incentives or increase rates of tax exemption of any project whose viability or profitability require such modification.

ART. 42. *Refund and Penalties.* ~ In case of cancellation of the certificate granted under this Code, the Board may, in appropriate cases, require the refund of incentives availed of the impose corresponding fines and penalties.

ART. 43. *Benefits of Multiple Area Enterprises.* ~ When a registered enterprise engages in activities or endeavors that have not been declared preferred areas of investments, the benefits and incentives accruing under this Code to registered enterprises and investors therein shall be limited to the portion of the activities of such registered enterprise as is a preferred area of investment.