

EXECUTIVE ORDER NO. 226

THE OMNIBUS INVESTMENTS CODE OF 1987

WHEREAS, the Government is committed to encourage investments in desirable areas of activities;

WHEREAS, to facilitate investment, there is a need to adopt a cohesive and consolidated investments incentives law;

WHEREAS, it is imperative to integrate basic laws on investment, to clarify and harmonize their provisions for the guidance of domestic and foreign investors;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order and ordain the following:

PRELIMINARY TITLE

CHAPTER 1. TITLE AND DECLARATION OF POLICY

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

ARTICLE 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 fountain 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 the 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 system 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 recognize 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 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

ARTICLE 3. The Board of Investments. — The Board of Investments shall implement the provisions of Books One to Five of this Code.

ARTICLE 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 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 governor of the Board in an acting capacity but all appointments shall be ad interim or permanent.

ARTICLE 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.

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

ARTICLE 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 I 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 of (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, the 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.

ARTICLE 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 investments;

(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.

ARTICLE 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.

BOOK I

INVESTMENTS WITH INCENTIVES

TITLE I — PREFERRED AREAS OF INVESTMENTS

CHAPTER I — DEFINITION OF TERMS

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

ARTICLE 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, developmental 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.

ARTICLE 12. "Technological assistance contracts" shall mean contracts for: (1) the transfer, by license 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.

ARTICLE 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.

ARTICLE 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.

ARTICLE 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 registered 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 per cent (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.

ARTICLE 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.

ARTICLE 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 or (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 I, hereof.

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

ARTICLE 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.

ARTICLE 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 therefore

ARTICLE 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 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.

ARTICLE 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 export subjects to such conditions and limited incentives as may be determined by the Board.

ARTICLE 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 exports products exported directly by a registered export producer or the net selling price of export product 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 trader 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.

ARTICLE 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.

ARTICLE 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 desiccating, quick freezing, that results in a change in the nature or state of the products. Merely packing or packaging shall not constitute processing.

ARTICLE 26. "Investment Priorities Plan" shall mean the over-all 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, analyzes, 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

ARTICLE 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.

ARTICLE 28. Criteria in Investment Priority Determination. — No economic activity shall be included in the Investment Priority 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 developmental goal;
- (c) Other indicators or 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.

ARTICLE 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 Investment 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.

ARTICLE 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.

ARTICLE 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

ARTICLE 32. Qualifications of a Registered Enterprises. — 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 per cent (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 per cent (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 projects 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 per cent (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 with 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 are it will engage in is one that is not within the activities reserved by the Constitution or other laws of the Philippines to the 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 in 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 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 undertakings 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.

ARTICLE 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.

ARTICLE 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 the 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.

ARTICLE 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 condition;
- (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.

ARTICLE 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.

ARTICLE 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

ARTICLE 38. Protection of Investments. — All investors and registered enterprises are entitled to the basic rights and guarantees provided in the Constitution. Among other rights recognized by the Government of the Philippines are the following:

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

ARTICLE 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 ratio 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 enterprise shall be exempt to the extent of one hundred percent (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; (3) 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 Procedure. — 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 part consigned to any registered enterprises 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 the 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 position 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 stocks and generic materials from a domestic producer: Provided, 1) That said breeding stocks and generic 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 the 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 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

ARTICLE 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 & 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 develop 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 I 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 of registration.

(b) Incentives for necessary and Major Infrastructure and Public Utilities. — Registered enterprise establishing their production, processing or manufacturing plants in an area that the Board designates as necessary for the proper dispersal of industry or in 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

ARTICLE 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.

ARTICLE 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 and impose corresponding fines and penalties.

ARTICLE 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.

BOOK II

FOREIGN INVESTMENTS WITHOUT INCENTIVES

Repealed by Republic Act Number 7042

BOOK III

INCENTIVES TO MULTINATIONAL COMPANIES ESTABLISHES REGIONAL OR AREA HEADQUARTERS IN THE PHILIPPINES

CHAPTER I — LICENSING OF THE MULTINATIONAL COMPANY

ARTICLE 58. Qualifications of Multinational Company. — Any foreign business entity formed, organized and existing under any laws other than those of the Philippines whose purpose, as expressed in its organizational documents or by resolution of its Board of Directors or its equivalent, is to supervise, superintend, inspect or coordinate, its own affiliates, subsidiaries, or branches in the Asia-Pacific Region may establish a regional or area headquarters in the Philippines, after securing a license therefor from the Securities and Exchange Commission, upon the favorable recommendation of the Board of Investments.

The Securities and Exchange Commission shall, within thirty (30) days from the effectivity of this Code, issue the implementing rules and regulations. The following minimum requirements shall, however, be complied with by the said foreign entity.

(a) A certification from the Philippine Foreign Trade Senior Officer or in the absence of such an official, a Philippine Consul in the foreign firm's home country that said foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia-Pacific Region.

(b) A certification from a principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its Board of Directors or governing copy to establish its regional headquarters in the Philippines, specifying that:

1. The activities of the regional headquarters shall be limited to acting as a supervisory, communications and coordinating center for its subsidiaries, affiliates and branches in the region;
2. The headquarters will not derive any income from sources within the Philippines and will not participate in any manner in the management of any subsidiary or branch office it might have in the Philippines;
3. The headquarters shall notify the Board of Investments and the Securities and Exchange Commission of any decision to close down or suspend operations of its headquarters or terminate the services of any expatriate at least fifteen (15) days before the same is effected.

(c) Any undertaking that the multinational company will remit into the country such amount as may be necessary to cover its operations in the Philippines but which amount will not be less than fifty thousand United States dollars or its equivalent in other foreign currencies annually. Within thirty (30)

days from receipt of Certificate of Registration from the Securities and Exchange Commission, the multinational company will submit to the Securities and Exchange Commission a Certificate of inward remittance from a local bank showing that it has remitted to the Philippines the amount of at least thirty

thousand United States dollars or its equivalent in other foreign currencies and converted the same to Philippine currency. Annually, within thirty (30) days from the anniversary date of the multinational company's registration as a regional or area headquarters with the Securities and Exchange Commission, it will submit proof to the Securities and Exchange

Commission of inward remittance amounting to at least fifty thousand United States dollars or its equivalent in other foreign currencies during the past year.

(d) Any willful violation by the regional or area headquarters of a multinational company of any of the provisions of this Code, or its implementing rules and regulations, or other terms and conditions of its registration, or any provision of existing laws, shall constitute a sufficient cause for the cancellation of its license or registration.

CHAPTER II — INCENTIVES TO EXPATRIATES

ARTICLE 59. Multiple entry visa. — Foreign personnel of regional or area headquarters of multinational companies, their respective spouses, and unmarried children under twenty-one years of age, if accompanying them or if following to join them after their admission into the Philippines as non-immigrant shall be issued a multiple entry special visa, valid for a period of one year, to enter the Philippines: Provided, That a responsible officer or the applicant company submits a certificate to the effect that the person who seeks entry into the Philippines is an executive of the applicant company and will work exclusively for applicant's company and will work exclusively for applicant's regional or area headquarters which is duly licensed to operate in the Philippines, and that he will receive a salary and will be paid by the headquarters in the Philippines an amount equivalent to at least twelve thousand United States dollars, or the equivalent in other foreign currencies per annum.

The admission and stay shall be co-terminus with the validity of the multiple entry special visa. The stay, however, is extendible yearly upon submission to the Commission on Immigration and Deportation of a sworn certification by a responsible officer of the regional or area headquarters; that its license to operate remains valid and subsisting; that he has been paid in the Philippines from the date of original admission, the equivalent of at least one thousand United States dollars per month, or its equivalent in other foreign currencies; and that the regional or area headquarters has withheld the tax due on said compensation and the same has been paid to the Bureau of Internal Revenue.

Non-immigrant who have been admitted under the multiple entry special visa, as well as their respective spouses and dependents, shall be exempt from:

the payment of all fees due under the immigration and alien registration laws; securing alien certificates of registration; and obtaining immigration clearance certificates, and all types of clearances required by any government department or agency, except that upon final departure from the Philippines the employer of the said non-immigrants shall so advise in writing the Commission on Immigration and Deportation at least five (5) working days prior to the non-immigrant's departure, and the finally departing non-immigrant employee shall be required to submit to the said office a tax clearance from the Bureau of Internal Revenue.

ARTICLE 60. Withholding Tax of 15 %. — Aliens employed by regional or area headquarters of multinational corporations shall be subject for each taxable year upon their gross income received from the regional or area headquarters established in the Philippines by multinational companies as salaries, wages, annuities, compensations, remunerations, and emoluments to a tax equal to fifteen per centum of such gross income.

ARTICLE 61. Tax and Duty Free Importation. — An alien executive of the regional or area headquarters of a multinational company shall enjoy tax and duty free importation of personal and household effects as provided for under Section 105 (h) of the Tariff and Customs Code, as amended, and Section 169 (b) (4) of the Internal Revenue Code, as amended.

ARTICLE 62. Travel Tax Exemption. — Personnel of multinational companies performing technical and supervisory functions with regional headquarters at, but not engaged in business in the Philippines and the dependents of such foreign personnel if joining them during the period of their assignment in the Philippines, as certified to by the Board of Investments, shall be exempted from the payment of travel tax imposed under Section 1 of Presidential Decree No. 1183, by securing a Travel Tax Certificate from the Philippine Tourism Authority.

CHAPTER III — INCENTIVES TO THE REGIONAL HEADQUARTERS

ARTICLE 63. Exemption from Income Tax. — Regional or area headquarters established in the Philippines by multinational corporations and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Regional shall not be subject to income tax.

ARTICLE 64. Exemption from Contractor's Tax. — The regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, are exempted from the contractor's tax.

ARTICLE 65. Exemption from all Kinds of Local Licenses Fees, Dues. — The regional or area headquarters of multinational companies shall be exempt from all kinds of local licenses, fees, dues, imposts or any other local taxes or burdens.

ARTICLE 66. Tax and Duty Free Importation of Training Materials; Importation of Motor Vehicles. — Regional or area headquarters shall also enjoy tax and duty free importation of equipment and materials for training, conferences which are needed for the functions of the regional or area headquarters and which are not locally available subject to the prior approval of the Board of Investments.

Regional or area headquarters shall be entitled to the importation of motor vehicles subject to the prior approval of the Board and the payment of the corresponding taxes and duties: Provided, That such motor vehicles shall be for the exclusive use of its expatriate executives and that the number thereof shall not exceed the number of its expatriate executives and that such motor vehicles may be replaced every three (3) years from their importation.

ARTICLE 67. Exemption from Registration Requirements. — The regional or area headquarters of multinational companies shall be exempt from the provisions of Book II of this Code.

BOOK IV

INCENTIVES TO MULTINATIONAL COMPANIES ESTABLISHING REGIONAL WAREHOUSES TO SUPPLY SPARE PARTS OR MANUFACTURED COMPONENTS AND RAW MATERIALS TO THE ASIA-PACIFIC REGION AND OTHER FOREIGN MARKETS

ARTICLE 68. Qualifications. — A multinational company organized and existing under any laws other than those of the Philippines which is engaged in international trade and supplies spare parts or manufactured components and raw materials to its distributors or markets in the Asia-Pacific Area and other foreign areas and which has established or will simultaneously establish a regional or area headquarters in the Philippines in accordance with the provisions of Book III of this Code and the rules and regulations implementing the same may also establish regional warehouse or warehouses in the Philippines, after securing a license therefor from the Board of Investments.

The following minimum requirements shall be submitted or complied with by the said foreign entity in accordance with the rules and regulations to be issued by the Board of Investments as provided for in Article 7 (2) of this Code.

(a) A certification from the Foreign Trade Officer or in the absence of such an official, a Philippine Consul in the foreign firm's home country that said foreign firm is engaged in international trade and supplies or will supply spare

parts or manufactured components and raw materials to its distributors or markets in the Asia-Pacific Region.

(b) A certification from a principal officer of the foreign entity to the effect that said foreign entity has been authorized by its Board of Directors or governing body to establish its regional warehouse in the Philippines, specifying that:

1. The activities of the regional warehouse shall be limited to serving as a supply depot for the storage, deposit, safekeeping of its spare parts or manufactured components and raw materials including the packing, covering, putting up, marking, labelling and cutting or altering to customer's specification, mounting and/or packaging into kits or marketable lots thereof, to fill up transactions and sales made by its head offices or parent companies and to serving as a storage or warehouse of goods purchased locally by the home office of the multinational for export abroad; Provided, That said locally purchased goods for export may be stored in the regional warehouse only after they have been cleared for export in accordance with the laws and regulations, including those of the Central Bank and simplified procedures governing exports. The regional warehouse shall not directly engage in trade nor directly

solicit business, promote any sale, nor enter into any contract for the sale or disposition of goods in the Philippines. cdtai

2. The regional warehouse will not derive any income from the sources within the Philippines and its personnel will not participate in any manner in the management of any subsidiary, affiliate or branch office it might have in the Philippines.

3. The personnel of the regional headquarters shall be responsible for the operation of the regional warehouse subject to the provisions of this Code.

(c) The multinational company shall pay the Board of Investments and the appropriate Regional Collector of Customs the corresponding license fees and storage fees to be determined by said offices.

(c) An application for the establishment of a regional warehouse shall be made in writing to the Board of Investments upon recommendation of the Bureau of Customs. The application shall describe the premises, the location and capacity of the regional warehouse and the purpose for which the building is to be used.

The jurisdiction and responsibility of supervising the regional warehouses shall be vested on the Bureau of Customs.

The Board of Investments, in consultation with the Regional Director of Customs of the district where the warehouse will be situated shall cause an examination of the premises to be made with reference particularly to the location, construction and means provided for the safekeeping of its articles and if found satisfactory, it may authorize its establishment without complying with the requirements of any other government body and aimed at providing speedy procedure for its establishment, subject to the following conditions:

1) That the articles to be stored in the warehouse are spare parts or manufactured components and/or raw materials of the multinational company operator for distribution and supply to its Asia-Pacific markets including packaging, coverings, brands, labels and warehouse equipment as provided in Art. 69 (a) hereof;

2) That the entry or importation, storage or re-export of the goods destined for or to be stored in the regional warehouse will not involve any dollar outlay from Philippine sources;

3) That they are of such character as to be readily identifiable for re-export; and in case of local distribution they shall be subject to Article 69 paragraph (b) and the guidelines implementing Book IV of this Code;

4) That they shall be allowed provisional entry expeditiously by means of a pro forma invoice of the parent company, identified, examined and appraised by the Regional Collector of Customs and they shall be directly delivered to and kept in the regional warehouses and released therefrom only in accordance with Article 69 paragraphs (a) and (b) and the guidelines implementing Book IV of this Code;

In the absence of a Regional Collector of Customs where the volume of the establishment of regional warehouses does not yet warrant the creation of said offices, the duties of the Regional Collector of Customs shall be performed by the Collector of Customs of the district where the regional warehouse will be located.

5) Each shipment of goods which will be stored in the regional warehouse shall be covered by an affidavit of the multinational company operator setting forth that said articles shall be exclusively used as supply for its Asia-Pacific markets and stating the C & F price thereof; cd i

6) That it shall file an ordinary warehousing bond in an amount equal to ONE HUNDRED PER CENT (100%) of the ascertained customs duties on the articles imported without prejudice to its filing a general warehousing bond in lieu of the ordinary warehousing bond.

7) The percentage of annual allowable withdrawal for domestic use shall be subject to the approval of the Board of Investments; Provided, however, That in no case shall such withdrawals exceed thirty per cent (30%) of the value of goods it has brought in for any given year and the payment of the corresponding taxes and duties.

ARTICLE 69. Tax Treatment of Imported Articles in the Regional Warehouse. —

(a) Tax Incentives for Qualified Goods Destined for Re-exportation to the Asia-Pacific and other Foreign Markets. — Except as otherwise provided in this Code, imported spare parts or manufactured components, raw materials and other items including any packages, coverings, brands and labels and warehouse equipment as may be allowed by the Board of Investments for the use exclusively on the goods stored, except those prohibited by law, brought into the regional warehouse from abroad to be kept, stored and/or deposited or used therein and re-exported directly therefrom under the supervision of the Regional Collector of Customs for distribution to its Asia-Pacific and other foreign markets in accordance with the guidelines implementing Book IV of this Code including to a bonded manufacturing warehouse in the Philippines and eventually re-exported shall not be subject to customs duty, internal revenue tax, export tax nor to local taxes, the provisions of law to the contrary notwithstanding.

(b) Payment of Applicable Duties and Taxes on Qualified Goods subject to Laws and Regulations Covering Imported Merchandise if destined for the Local Market. — Any spare parts, manufactured components, raw materials and other items sent, delivered, released or taken from the regional warehouse to the local market in accordance with the guidelines implementing Book IV of this Code shall be subject to the payment of customs duties, taxes and other charges and for which purpose, the proper commercial invoice of the head offices or parent companies shall be submitted to the Regional Collector of Customs; and shall be subject to laws and regulations governing imported merchandise, Provided, that in case any of the foregoing items are sold, bartered, hired or used for purposes other than they were intended for without prior compliance with the guidelines implementing Book IV of this Code and without prior payment of the duty, tax or other charge which would have been due and payable at the time of entry if the articles had been entered without the benefit of this decree, shall be subject to forfeiture and the importation shall constitute a fraudulent practice against customs revenue punishable under Section 3602, as amended, of the Tariff and Customs Code of the Philippines;

Provided, further, that a sale pursuant to a judicial order shall not be subject to the preceding proviso without prejudice to the payment of duties, taxes and other charges.

ARTICLE 70. Exemption from the Maximum Storage Period under the Tariff and Customs Code; Period of Storage in the Regional Warehouse. — The provision of the law in Section 1908 of the Tariff and Customs Code of the Philippines, as amended, to the contrary notwithstanding, articles duly entered for warehousing may remain in the regional warehouses for a period of two (2) years from the time of their transfer to the regional warehouse, which period may be extended with the approval of the Board of Investments for an additional period of one (1) year upon payment of the corresponding storage fee on the unexported articles, as provided for under Article 68 paragraph (c) for each extension until they are re-exported in accordance with the guidelines implementing Book IV of this Code. Any article, withdrawn, release or removed

contrary to the provisions of said guidelines shall be forfeited pursuant to the provisions of Article 69, paragraph (b) hereof.

ARTICLE 71. Rules and Regulations on the Jurisdiction, Operation and Control over Qualified Goods Stored in the Regional Warehouse. — The Board of Investments and the Bureau of Customs shall jointly issue special rules and regulations on the receiving, handling, custody, entry, examinations, classifications, delivery, storage, warehousing, manipulation and packaging, release for re-exportation and for the safekeeping, recording, inventory and liquidation of said qualified goods, any existing law notwithstanding. Such rules and regulations shall be formulated in consultation with the applicants/operators of regional warehouses in order to be responsive to the objective of providing a procedure for the speedy inflow and outflow of the qualified goods which are destined for the Asia-Pacific and other foreign markets and keeping a proper balance between promoting the Philippines as a center for multinational regional warehouses and safeguarding the revenue laws of the country.

The Commissioner of customs is directed is directed to expedite the immediate re-exportation or transshipment of the foregoing goods destined for regional warehousing to their Asia-Pacific and other foreign markets, including the emergency withdrawal for re-exportation by air and ship and the partial liquidation of bonds adopting simplified export procedures therefor.

ARTICLE 72. Penalties. — Any willful violation by the regional or area headquarters of a multinational company which has established regional warehouse or warehouses of the provisions of existing laws and the implementing guidelines of Book IV of this Code shall constitute a sufficient cause for the cancellation of its license or registration in addition to the penalties hereinabove provided in Article 69, paragraph (b) hereof. cdt

ARTICLE 73. The regional or area headquarters of multinational companies establishing regional warehouses shall be exempt from the provisions of Book II of this Code.

BOOK V

SPECIAL INVESTORS RESIDENT VISA

ARTICLE 74. Qualifications. — Any alien who possesses the following qualifications may be issued a Special Investors Resident Visa.

1. He had not been convicted of a crime involving moral turpitude;
2. He is not afflicted with any loathsome, dangerous or contagious disease;
3. He has not been institutionalized for any mental disorder or disability;
4. He is willing and able to invest the amount of at least US\$75,000.00 in the Philippines; Provided, That the foregoing invested amount shall be lowered to US\$50,000 for aliens availing of Executive Order No. 63 and Executive Order No. 1037 subject to the conditions imposed by said legislations: Provided, further, That for purposes of compliance with this particular condition, the alien-applicant should prove that he has remitted such amount in acceptable foreign currency to the Philippines.

ARTICLE 75. Reportorial Requirements. — As a holder of the Special Investors Resident Visa, an alien shall be entitled to reside in the Philippines while his investment subsists. For this purpose, he should submit an annual report, in the form fully prescribed for the purpose, to prove that he has maintained his investment in the country. Should said alien withdraw his said investment from the Philippines, then the Special Investors Resident Visa issued to him will automatically expire.

BOOK VI

INCENTIVES OF EXPORT PROCESSING ZONE ENTERPRISES

ARTICLE 76. Employment of Foreign Nationals. — The provisions of law to the contrary notwithstanding, Export Processing Zone Authority, hereinafter referred to as the "Authority" may authorize an alien or an association, partnership, corporation or any other form of business organization formed, organized, chartered or existing under any law other than those of the Philippines, or which is not a Philippine national, or the working capital of which is fully owned or controlled by aliens to do business or engage in an industry inside the export processing zone.

Subject to the provisions of Section 29 of Commonwealth Act No. 613, as amended, an enterprise, a zone 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 Authority: Provided, however, That when the majority of the capital stock of a zone registered enterprise is owned by foreign national, 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 employed within the purview of this Book, their spouses, and unmarried children under twenty-one years of age who are not excluded by Sec. 29 of C.A. No. 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. They shall be issued a multiple entry visa, valid for a period of three years, to enter and leave the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports. The validity of the

multiple entry special visa shall be extendible yearly. Foreign Nationals who have been issued multiple entry special visas under this provision, as well as their respective spouses and dependents, shall be exempt from obtaining alien certificates and all types of clearances required by any government department or agency. For this purpose, the Commission on Immigration and Deportation and the authority shall jointly issue the necessary implementing rules and regulations.

A registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports of such training to the Board.

ARTICLE 77. Tax Treatment of Merchandise in the Zone. — (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

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

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

(4) Merchandise sent from the export processing zone to the customs territory shall, whether or not combined with or made part of other articles while in the zone, be subject to rules and regulations governing imported merchandise. The duties and taxes shall be assessed on the value of imported materials (except when the final product is exempt) and the internal revenue taxes on the values added.

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

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

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

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

ARTICLE 78. Additional Incentives. — A zone registered enterprise shall also enjoy all the incentive benefits provided in Article 39 hereof under the same terms and conditions stated therein. In addition zone registered enterprises shall also be entitled to the following:

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

(b) Production equipment or machineries, not attached to real estate, used directly or indirectly, in the production, assembly or manufacture of the registered product of the zone registered enterprise shall be exempt from real property taxes.

FINAL PROVISIONS

ARTICLE 79. Interpretation. — All doubts concerning the benefits and incentives granted enterprises and investors by this Code shall be resolved in favor of investors and registered enterprises.

ARTICLE 80. Vested Rights. — Existing registered enterprises which are enjoying the incentives under the laws repealed by Books One and Six of this Code shall continue to enjoy such incentives for the period therein stated: Provided, however, That firms which made investments in new or expansion projects approved or registered by the Board of the Authority on or after December 1, 1986 but before the effectivity of this Code may opt to be governed by the provisions of this Code.

ARTICLE 81. Confidentiality of Applications. — All applications and their supporting documents filed under this Code shall be confidential and shall not be disclosed to any person, except with the consent of the applicant or on orders of a court of competent jurisdiction.

ARTICLE 82. Judicial Relief . — All orders or decisions of the Board in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision: Provided, That all appeals shall be filed directly with the Supreme Court within thirty (30) days from receipt of the order or decision.

ARTICLE 83. Effectivity of Implementing Rules and Regulations. — The Board shall promulgate rules and regulations to implement the intent and provisions of this Code and shall have the authority to impose such fines in amounts that are just and reasonable in cases of late submission or non-compliance on the part of registered enterprises, with reporting and other requirements under this Code and its implementing rules and regulations. Such rules and regulations shall take effect fifteen (15) days following its publication in newspaper of general circulation in the Philippines.

ARTICLE 84. Separability Clause. — The provisions of this Code are hereby declared to be separable and, in the event any such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

ARTICLE 85. Repealing Clause. — The following provisions or laws are hereby repealed:

- 1) Batas Pambansa 44
- 2) Batas Pambansa 391 (1983)
- 3) Presidential Decree 218
- 4) Presidential Decree 1419
- 5) Presidential Decree 1623, as amended
- 6) Presidential Decree No. 1789 (1981)
- 7) Presidential Decree 2032
- 8) Executive Order 815
- 9) Executive Order 1945 (1985)

All other laws, decrees, executive orders, administrative orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Code are hereby repealed, amended or modified accordingly.

ARTICLE 86. Effectivity. — This Code shall take effect immediately upon approval.

Done in the City of Manila, this 16th day of July, in the year of Our Lord, nineteen hundred and eighty-seven.