

[**PRESIDENTIAL DECREE No. 1159, June 03, 1977**]

PRESCRIBING INCENTIVES FOR INVESTMENTS IN AGRICULTURAL ENTERPRISE

WHEREAS, it is our primordial objective to be self-reliant in our basic requirements for food and raw materials and in the implementation thereof also hasten our rural development and thus bring about a more equitable distribution of wealth for our people;

WHEREAS, it is necessary that we attain a mutually reinforcing balance in the development of the agricultural and industrial sectors of our economy;

WHEREAS, the accelerated development of the agricultural sector strengthens and stabilizes the economic, political, and social structure of the country by diffusing productive employment and income opportunities to the countryside while attaining self-sufficiency in basic food and raw materials, and increasing production of export crops and other products;

WHEREAS, agricultural endeavors are generally of a higher risk nature than industrial or commercial undertakings due to its exposure to natural calamities and the vagaries of weather, and thus require more and different incentives;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution do hereby order and decree the extension of additional incentives to cultural endeavors, to wit:

SECTION 1. *Title.* This Decree shall be known and cited as the "Agricultural Investments Incentives Act."

SEC. 2. *Definition of terms.* As used in this Decree the following terms are defined as follows:

(a) "Board of Investments" or "Board " shall mean the Board of Investments created by Republic Act No. 5186, otherwise known as the Investment Incentives Act.

(b) "Department of Agriculture" or "Department" shall mean the Department of Agriculture.

(c) "Registered Agricultural Enterprise" shall mean any individual, corporation, partnership, cooperative or other entity organized and existing under the Philippine laws which is registered with the Board of Investments in accordance with this Decree.

(d) "Pioneer Agricultural Enterprise" shall mean an enterprise registered with the Board and engaged in the pursuit of agricultural activities and/or service, including the industrial aspects of food processing whenever appropriate, predetermined jointly by the board and the Department to be feasible and highly essential to the attainment of the national goal taking into account the risk, magnitude of investment, relation to a declared specific national food and agriculture program for self-sufficiency and other social benefits of the project: Provided, that the final product in the case of processed food involves or will involve substantial use and processing of domestic raw materials from agricultural production.

(e) "Agricultural Investments Priorities Plan" shall mean the plan prepared jointly by the Board and the Department and approved by the President upon recommendation of the National Economic and Development Authority.

(f) "Preferred Areas of Investment" shall mean the economic activities which may be pioneer or non-pioneer in nature, declared as such in the Agricultural Investments Priorities Plan.

(g) "Philippine national" shall mean a citizen of the Philippines; or a partnership, a cooperative, 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 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 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 of the capital stock outstanding and entitled to vote to both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent 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.

(h) "Foreign loan" shall mean any credit facility or financial assistance other than equity investment obtained by a registered enterprise from a source outside the Philippines and brought into the Philippines either in foreign exchange or in other assets, and registered with the Central Bank and the Board, which shall assess and appraise the assets other than foreign exchange representing the proceeds of the loan.

(i) "Foreign investments" shall mean equity investment, owned by a non-Philippine national in a registered enterprise, 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.

(j) "Measured capacity" shall mean the estimated additional volume of agricultural production, service or food product, which the Board and the Department shall have jointly determined 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 area.

(k) "Tax credit" shall mean any of the credits against taxes and/or duties extended to a registered enterprise by the Secretary of Finance pursuant to this Decree.

(l) "Capital stock" shall be construed to include the stock certificates issued by corporations, membership certificates issued by cooperatives, and such other legal evidences of ownership issued by other entities.

SEC. 3. *Basic Rights and Guarantees.* All investors and 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 Investment. 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.

(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 265.

(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 265.

(d) Freedom from Expropriation. There shall be no expropriation by the government of the property represented by investments or of the property of enterprises except for public use or in the interest of national welfare and 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 265.

(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 265.

SEC. 4. *Incentives to Investors in Agricultural Registered Enterprise.* An investor, with respect to his investment in a registered enterprise, shall be granted the following incentives benefits:

(a) Protection of Patents and Other Proprietary Rights. The right to be protected from infringement of patents, trademarks, copyrights, trade names and other proprietary rights, have been registered with the Board and the appropriate agencies of the Government of the Philippines.

(b) Capital Gains Tax Exemption. Exemption from income tax on that portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section 34 of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of a registered enterprise within six months from the date the gains were realized; Provided, (1) that the said sale, disposition or transfer and the investment of the proceeds thereof have been registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned or conveyed for a period of five years from the date the investment was made. If such shares of stock are disposed of within the said period of five (5) years, all taxes due on the gains realized from the original transfer sale or disposition of the capital assets shall immediately become due and payable.

SEC. 5. *Incentives to Philippine Nationals Investing In Pioneer Agricultural Enterprise.* In addition to the incentives provided in the preceding sections, Philippine nationals investing in a pioneer agricultural enterprise shall be granted the following incentive benefits:

(a) Tax-Allowance for Investments. An investment allowance to the extent of his actual investment, paid in cash or property shall be allowed as a deduction from his taxable income but not to exceed twenty (20%) percent thereof; Provided, (1) That the investment is made in a subscription of shares in the original and/or increased capital stock of a pioneer enterprise within seven years from the date of registration; (2) That the investment does not come from the proceeds of the sale, disposition, or transfer of capital assets where the gain realized therefrom is exempt from income tax; (3) That the shares are held for a period of not less than three years; (4) That the investment is registered with the Board. If the shares are disposed of within the said three year period, the taxpayer shall lose the benefit of this deduction, his income tax liability shall be recomputed, and he shall pay whatever additional sum be due plus interest thereon, within thirty days from the date of disposition.

(b) Capital Gains Tax Exemption. Exemption from income tax on the portion of the gains realized from the sale, disposition or transfer of capital assets, as defined in Section 34 of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of or in the purchase of stock owned by foreigners in pioneer enterprises, within six months from the date the gains were realized: Provided, (1) That such sale, disposition or transfer and the investment of the proceeds thereof are registered with the Board and the Bureau of Internal Revenue; and (2) that the share of stock representing the investment are not disposed of, transferred, assigned or conveyed for a period of three (3) years from the date the investment was made. If said share of stock are disposed of within the said period of three (3) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

SEC. 6. *Incentives to a Registered Agricultural Enterprise.* A registered enterprise, to the extent engaged in a preferred of investment, shall be granted the following incentive benefits:

(a) Deduction of Organizational and Pre-operating Expenses. All capitalized organizational and pre-operating expenses attributable to the establishment of a registered enterprise may be deducted from its taxable income over a period of not more than ten years beginning with the month the enterprise begins operations, provided the taxpayer indicates the desired amortization period at the time of the filing of income tax returns for the first taxable year. For the purpose of this provision, organizational and pre-operating expenses shall include expenses for pre-investment studies, start up costs, costs of initial recruitment and training, pilot projects and similar expenses.

(b) Accelerated Depreciation. At the option of the taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets and capital equipment including breeding stock may be (1) depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten years or less; or (2) depreciated over any number of years between five years and expected life if the latter is more than ten

(10) years; and the depreciation thereon allowed as a deduction from taxable income: Provided, that the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used.

(c) Net Operating Loss Carry-over. A net operating loss incurred in any of the first ten years of operations may be carried over as a deduction from taxable income for the six years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the six taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining five years. The net operating loss shall be computed in accordance with the provisions of the National Internal Revenue Code, any provisions of this Decree to the contrary notwithstanding, except that income not taxable either in whole or in part under this or other laws shall be included in gross income.

(d) Tax Exemption on Imported Capital Equipment. Within seven years from the date of registration of the enterprise, importations of machinery and equipment, and spare parts shipped with such machinery and equipment, shall not be subject to tariff duties and compensating tax; Provided, That said machinery, equipment and spare parts: (1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprises in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in non-registered operations to maximize usage thereof, or the proportionate taxes and duties are paid on the specific equipment and machinery being permanently used for non-registered operations; (3) are covered by shipping documents in the name of the registered enterprise to whom the shipment will be delivered directly by customs authorities and (4) the prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts. For enterprises approved for registration by the Board after the effective date of this Decree, which are engaged in new preferred non-pioneer activities with total assets or projected total assets of five hundred thousand pesos (P500,000) or more for the first two (2) years of commercial operations, the Board, subject to the criteria to be formulated in consultation with the Secretary of Finance, and to the above enumerated conditions, shall in lieu of an exemption reduce partially the tariff duties and compensating tax on such machinery, equipment and spare parts, and defer the payment of such reduced taxes and duties for a period not exceeding ten (10) years, after posting the appropriate bond as may be required by the Secretary of Finance. For replacement or modernization of existing facilities of pioneer and non-pioneer registered enterprises or for expansion of projects with 20% or greater return on equity, but in no case exceeding 33-1/3% thereof, mere deferment in payment of taxes and duties as above provided shall be allowed without reduction thereof for return of taxes and duties as above provided shall be imposed without deferment. In granting approval of importations under this paragraph, the Board shall require international bidding to be conducted by the end-user in Manila under its supervision; however, the Board may, in its discretion, dispense with this requirement if (1) there is, to the knowledge of the Board, only one manufacturer of the machinery, equipment, and spare parts to be imported, or (2) the importation is caused by the expansion of the registered enterprises and such imports shall be acquired from the same manufacturer who supplied the machinery, equipment, and spare parts being used by the registered enterprise, or