

# [ PRESIDENTIAL DECREE NO. 485, June 19, 1974 ]

## **AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED FIFTY-ONE HUNDRED EIGHTY-SIX AS AMENDED, OTHERWISE KNOWN AS THE INVESTMENT INCENTIVES ACT, AND REPUBLIC ACT NUMBERED SIXTY-ONE HUNDRED THIRTY-FIVE AS AMENDED, OTHERWISE KNOWN AS THE EXPORT INCENTIVES ACT.**

**WHEREAS**, to further ensure the sound development of the national economy, it is imperative that certain provisions of R.A. No. 5186 ("Investment Incentives Act") and R.A. No. 6135 ("Export Incentives Act") be amended;

**WHEREAS**, there are certain sectors of the industry, i.e., those engaged essentially in rendering services, such as public utilities, the growth of which is likewise indispensable to the sound development of the national economy;

**WHEREAS**, under the present provisions of the Investment Incentives Act, service industries are not eligible for registration thereunder;

**WHEREAS**, to encourage and hasten the establishment of facilities that are necessary for a balanced growth of the economy and the effective regional dispersal of industries, certain services to be listed in a Utilities Priorities Plan should be eligible for incentives upon registration with the Board of Investments;

**WHEREAS**, there is further need to align the incentives and requirements of the Export Incentives Act with the Investment Incentives Act;

**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 amendments to Republic Act Numbered Fifty-One Hundred Eighty-Six, as amended, otherwise known as the Investment Incentives Act and Republic Act Numbered Sixty-One Hundred Thirty-Five, as amended, otherwise known as the Export Incentives Act, as follows:

**SECTION 1.** Subsections (b), (i) and (j) of Section 8 of Republic Act Numbered Fifty-One Hundred Eighty-Six are hereby amended to read as follows:

"SEC. 3. \* \* \*

- b. "*Registered Enterprise*" shall mean a corporation (1) incorporated, organized and existing under Philippine laws, (2) of which, except as provided in Section nineteen of this Act, at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine Nationals, and at least sixty percent (60%) of the members of the Board of Directors are citizens of the Philippines, (3) engaged in a preferred area of investment, and (4) duly registered with the Board of Investments; *Provided, however*, That the term registered enterprise shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, development banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumers cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy

and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bond or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions; neither shall the term include business organization whose exclusive or principal purpose is to buy goods and merchandise and resell the same in substantially the same form in which bought.

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- i. "*Measured Capacity*" shall mean the estimated additional volume of production or service which the Board determines to be desirable in each preferred and pioneer area of investment, in order to supply the needs of the economy at reasonable prices, taking into account the export potential of the area. Measured capacity shall not be less than the amount by which the measurable market demand exceeds the existing productive capacity in said preferred and pioneer areas nor shall measured capacity be so much in excess of measurable market demand as to foster or encourage overcrowding in any such area. For export market industries, the Board shall base measured capacity on the availability of domestic raw materials after deducting the needs of the domestic market therefor. In no case, however, shall measured capacity be construed so as to result in a monopoly in any preferred or pioneer area of investment which would unduly restrict trade and fair competition.
- j. "*Tax Credit*" shall mean any of the credits against taxes and/or duties extended to a registered enterprise by this Act, to evidence which a tax credit certificate shall be issued by the Secretary of Finance. Unless otherwise provided herein, the tax credit certificate may be used by the registered enterprise to pay taxes, duties, charges and fees due to the national government in connection with its registered operations. A tax credit certificate shall be non-transferable; it may be used by the registered enterprise only for as long as it enjoys the benefits and incentives provided for in this Act, but may not be used so as to result, in effect, in a refund."

**SEC. 2.** Section 3 of the same Act is hereby further amended by adding a new subsection (1) which reads as follows:

"(1) "*Public Utilities Priorities Plan*" shall mean the plan prepared by the Board in consultation with the Board of Transportation, Board of Power, Power Development Council, and other appropriate government agencies. Such plan shall be approved by the President upon recommendation of the National Economic and Development Authority (NEDA), which shall contain a listing of specific public utilities which can qualify for incentives under this Act, and which shall be supported by studies of existing and prospective regional demands for such 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 the existing facilities to produce such service."

**SEC. 3.** Subsection (d) of Section 7 of the same Act is hereby amended to read as follows:

"(d) *Tax exemption on Imported Capital Equipment.*— Within seven (7) 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 enterprise 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 direct 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 (P500,000.00) or more for the first two 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, mere deferment in payment of taxes and duties as above provided shall be allowed without reduction thereof. 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 (3) the total cost of importation is less than one million dollars (\$1,000,000.00) or (4) the Board has other means of determining the reasonableness of the procurement cost. If the registered enterprise sells, transfers or disposes these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it. However, 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: (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise. In such cases, the transferee shall not be subject to the taxes and duties on the said equipment other than the deferred taxes, if any, if it will undertake an economic project substantially carrying out the objective

for which such equipment has been imported, as determined by the Board."

**SEC. 4.** Section 9 (b) of the same Act is hereby amended to read as follows:

"(b) *Reduced Income Tax.*—Registered enterprises shall be entitled for the first five (5) years from its registration, to deduct from its taxable income an amount equivalent to the sum of the direct labor cost and local raw materials utilized in the manufacture of its completely finished export products: *Provided, however,* That such deduction shall in no case exceed twenty-five per centum (25%) of its total export revenue: *Provided, further,* That in case of traditional exports, the local raw material component shall not be included in computing the above deduction."

**SEC. 5.** The second paragraph of Section 10 of the same Act is hereby amended to read as follows:

"The above-mentioned financial institutions, to the extent allowed by their respective charters or applicable laws, shall contribute to the capital of a registered enterprise whenever the said contribution would enable the formation of a pioneer or other registered enterprise with at least sixty per cent (60%) control by Philippine Nationals: *Provided,* That the shares representing the contribution of the said financial institutions shall be offered for public sale to Philippine Nationals through all the members of a registered Philippine stock exchange within a reasonable period after such acquisition."

**SEC. 6.** Section 16 of the same Act is hereby further amended by adding a new subsection (p) to read as follows:

"(p) Withdraw or cancel partially or totally, the incentives granted to a registered enterprise under Republic Act Numbered Fifty-one hundred eighty-six or Republic Act Numbered Sixty-one hundred thirty-five when the registered enterprise has a paid-up capital of at least five hundred thousand pesos (P500,000.00) and earns for at least two (2) years profits from the registered operations in excess of thirty-three and one-third per cent (33 1/3%) of equity even without incentives under the said laws."

**SEC. 7.** The first and fourth paragraph of Section 18 of the same Act is hereby amended to read as follows:

"**SEC. 18.** *Preferred and Pioneer Areas of Investment.*— The Board of Investments shall submit to the President, not later than the end of January of every year, through the National Economic and Development Authority, an Investment Priorities Plan and Public Utilities Priorities Plan, as defined in Section 3(k) and (1) of this Act."

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Considering the amount of investment capital which the Board may estimate to be available during any given year, the Board shall give priority to projects with the highest rates of return to the national economy. No project shall be included in the Investment Priorities Plan or