

[REPUBLIC ACT NO. 11453, August 30, 2019]

**AN ACT FURTHER STRENGTHENING THE POWERS AND
FUNCTIONS OF THE AUTHORITY OF THE FREEPORT AREA OF
BATAAN (AFAB), AMENDING FOR THIS PURPOSE REPUBLIC ACT
NO. 9728, OTHERWISE KNOWN AS THE "FREEPORT AREA OF
BATAAN (FAB) ACT OF 2009"**

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

SECTION 1. Section 3 of Republic Act No. 9728 is hereby amended to read as follows:

"SEC. 3. *Conversion of the Bataan Economic Zone (BEZ) into the Freeport Area of Bataan.* - The existing Bataan Economic Zone located in the Municipality of Mariveles, Province of Bataan is hereby converted into a special economic zone and freeport, and along with other territories indicated in this Act, shall be known as the Freeport Area of Bataan (FAB).

"The FAB shall cover the (a) land territories in the Municipality of Mariveles, Province of Bataan formerly part of the BEZ comprising an area of approximately one thousand seven hundred forty-two and 48/100 (1,742.48) hectares (the 'FAB main zone'), and (b) all other expansion areas within the Province of Bataan which may be declared as part of the FAB in compliance with Section 4(g) of this Act, including all municipal waters within the FAB main zone and of the expansion areas located at the coastline of the Province of Bataan (the 'other FAB zones').

"The metes and bounds of the FAB main zone, and the other FAB zones, which shall be fenced and include the establishment of an administrative office for ease of customs administration and border control, shall be determined based on the technical description and coordinates verified and approved by the Land Management Bureau, the National Mapping and Resource Information Authority, and other government agencies as may be provided by pertinent law.

"Prospective developers and locators may choose to register with the AFAB, PEZA or such other investment promotion agency: *Provided*, That in no case shall a registered enterprise enjoy incentives from two (2) or more investment promotion agencies: *Provided, further*, That in no case shall an AFAB-registered enterprise be located within an ecozone administered or managed by another investment promotion agency."

SEC. 2. Section 4 of Republic Act No. 9728 is hereby amended to read as follows:

"SEC. 4. *Governing Principles.* - The FAB shall be managed and operated under the following principles:

"(a) Within the framework and limitations of the Constitution and applicable provisions of the Local Government Code, the FAB, shall be developed into and operated as a decentralized self-reliant and self-sustaining industrial, commercial-trading, research and development, engineering, medical, education, information and communications technology including emerging and future technologies such as artificial technology, blockchain, business process outsourcing, cloud computing, cybersecurity, distributed ledger technology, financial technology solutions, internet of things, and virtual reality, retirement, and healthcare services, agro-industrial, tourism, banking, financial, multinational trading and investment center with provision for suitable residential areas;

"(b) Notwithstanding the autonomy provided in Section 4(a) of this Act, the FAB shall continue to be provided by the National Government and/or local government with transportation, telecommunications and other facilities needed to attract legitimate and productive investments, generate linkage with industries and employment opportunities for the people of the Province of Bataan and its neighboring towns and cities. The FAB shall also have priority and preferential access to such National Government and/or local government transportation and telecommunications infrastructure and other facilities, and access to the FAB shall be incorporated in the planning, construction, and operation of such infrastructure or expansions: *Provided*, That the autonomy and self-reliance of the AFAB shall not be a hindrance to assistance and/or partnerships with other units and instrumentalities of the government: *Provided, further*, That no assistance or partnership be construed as a waiver of the autonomy of the AFAB;

"(c) x x x

"(d) Foreign citizens and companies owned by non-Filipinos in whatever proportion may set up enterprises in the FAB, either by themselves or in joint venture with Filipinos in any sector of industry, international trade, and commerce within the territorial jurisdiction of the FAB as provided in Section 3 of this Act: *Provided*, That the AFAB may require a minimum investment in freely convertible currencies from any enterprise seeking registration as a FAB enterprise;

"(e) The FAB shall be managed and operated as a separate customs territory ensuring free flow or movement of goods "and capital within, into and out of its territory: *Provided*, That in accordance with Sections 301 and 817 of Republic Act No. 10863, the Bureau of Customs (BOC) shall continue to exercise border protection and customs control authority over the customs territory adjacent to the FAB: *Provided, further*, That the AFAB shall allow patrol or other law enforcement arrangements by the BOC and other government agencies within the municipal waters covered by the other FAB zones subject to coordination with the AFAB to enhance its protection and control capacity and ensure compliance with customs, fisheries and other laws and regulations;

"(f) x x x

"(g) The areas comprising the FAB may be expanded or reduced when necessary. For this purpose, the AFAB, with the concurrence of the appropriate and affected local government units (LGUs) and the agreement of appropriate national government agencies, government-owned and -controlled corporations and

instrumentalities, and the approval of the AFAB Board in accordance and in compliance with existing laws and local ordinances shall have the power to acquire, procure, and/or expand either by purchase, negotiation, condemnation proceedings, or any other arrangement, any private or alienable and disposable public lands and/or their respective water territories within the territorial jurisdiction of the Province of Bataan, if any, for the following purposes: (1) consolidation of lands for FAB development and establishment of new industrial estates and economic zones under the FAB; (2) acquisition of right-of-way to the FAB; and (3) the protection, and safeguard of watershed areas and the maintenance and improvement of its water yield and natural assets valuable to the prosperity of the FAB, the LGU, and the National Government, the effective management of solid and water waste in compliance with existing national laws and local ordinances, and its impact to adjacent areas within the local government concerned: *Provided*, That any expansion shall be aligned with the comprehensive land use plan of the affected LGUs: *Provided, further*, That the expansion outside the Municipality of Mariveles may be revoked by the President of the Philippines: *Provided, finally*, That the AFAB and the relevant LGUs and national government agencies shall provide for immediate and responsive mechanisms, best management practices and suitable environmental protection programs for land and coastal management to address any abuse and/or exploitation of the natural environment within the territorial jurisdiction of the FAB as provided in Section 3 of this Act;

"(h) Goods manufactured by FAB enterprises shall be made available for immediate retail sale in the domestic market, subject to the payment of corresponding taxes on raw materials and other regulations that may be formulated by the AFAB, together with the Philippine Economic Zone Authority (PEZA), the Bangko Sentral ng Pilipinas (BSP), the Department of Finance (DOF), the BOC and the Department of Trade and Industry (DTI) in accordance with the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended: *Provided*, That the value of the goods at the time of the importation shall be the basis in determining the appropriate duties and taxes: *Provided, further*, That in cooperation with the AFAB, the foregoing agencies shall provide and implement measures to support the improvement of ease and cost of doing business within the FAB and the enhancement of the investment promotion capacity of the AFAB. In order to protect the domestic industries, a negative list of industries shall be drawn up and regularly updated by the AFAB. Enterprises engaged in industries included in such negative list shall not be allowed to sell their products locally notwithstanding the registration of such enterprises in the FAB; and

"(i) The defense of the FAB and the security of its perimeter fence shall be the responsibility of the National Government in coordination with the AFAB and the LGUs. The AFAB shall provide its own internal security and firefighting forces."

SEC. 3. Section 6 of Republic Act No. 9728 is hereby amended to read as follows:

"SEC. 6. *Imposition of a Tax Rate of Five Percent (5%) on Gross Income Earned.* - No taxes, local and national, shall be imposed on registered business establishments operating within the FAB. In lieu thereof, and subject to Section 10 of this Act, said business establishments shall pay a five percent (5%) final tax on their gross income earned in the following percentages:

"(a) *One per centum (1%)* to the National Government;

"(b) One *per centum* (1%) to the Province of Bataan;

"(c) One *per centum* (1%) to the host city/ municipality; and

"(d) Two *per centum* (2%) to the Authority of the Freeport Area of Bataan."

SEC. 4. Section 7 of Republic Act No. 9728 is hereby amended to read as follows:

"SEC. 7. *Incentive to Investors.* - Any foreign national who invests an amount of Seventy-five thousand US dollars (US\$75,000.00), either in cash and/or equipment, in a registered enterprise shall be entitled to an investor's visa: *Provided, That* he has the following qualifications:

"(a) He is at least eighteen (18) years of age;

"(b) He has not been convicted of a crime involving moral turpitude;

"(c) He is not afflicted with any loathsome, dangerous or contagious disease; and

"(d) He has not been institutionalized for any mental disorder or disability.

"As a holder of investor's 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 duly prescribed for the purpose, to prove that he has maintained his investment in the country, should said alien withdraw his investments from the Philippines, then the investor's visa issued to him shall automatically expire."

SEC. 5. Section 13 of Republic Act No. 9728 is hereby amended to read as follows:

"SEC. 13. *Powers and Functions of the AFAB.* — The AFAB shall have the following functions:

"(a) x x x;

"(b) x x x;

"(c) To operate, administer, manage, and develop, in accordance with Executive Order No, 525, as amended, the FAB according to the principles and provisions set forth in this Act and to coordinate with the LGUs for the development plans, activities and operation of the FAB;

"(d) To register, regulate and supervise the enterprises in the FAB in an efficient and decentralized manner, subject to existing laws;

"(e) To coordinate with the LGUs and the Metro Bataan Development Authority (MBDA) and exercise general supervision over the development plans, activities and operations of the FAB. The exclusive delegation of certain powers to AFAB under this Act notwithstanding, the AFAB may partner with the MBDA in the implementation of development plans, enforcement of environmental laws, maintenance of road network and transport facilities, and performance of such other services designed to enhance the attractiveness of the FAB as an investment destination. The AFAB may

provide assistance to the MBDA to ensure that the equipment and other resources necessary to perform the services envisaged under this Act are adequately provided;

"(f) To authorize or undertake, on its own or through others, and to regulate the establishment, construction, operation and maintenance of public utilities, services, and infrastructure in the FAB such as shipping, barging, stevedoring, cargo handling, hauling, warehousing, storage of cargo, port services or concessions, piers, wharves, bulkheads, bulk terminals, mooring areas, storage areas, roads, bridges, reclamation projects, terminals, conveyors, water supply and storage, sewerage, drainage, airport operations in coordination with the Civil Aviation Authority of the Philippines and such other services or concessions or infrastructure necessary or incidental to the accomplishment of the objectives of this Act: *Provided, however,* That the private investors in the FAB shall be given priority in the awarding of contracts, franchises, licenses, or permits for the establishment, operation and maintenance of utilities, services and infrastructure in the FAB;

"(g) To license, set fees, regulate and undertake the establishment, operation and maintenance of utilities, other services, educational and medical institutions and infrastructure in the FAB such as, but not limited to, heat, light and power, water supply, telecommunications, mobile, internet and other data facilities, transport, toll roads and bridges, port services, etc., and to fix just, reasonable and competitive rates, fares, charges and prices thereof;

"(h) To construct, acquire, own, lease, operate and maintain on its own or through contracts, franchises, licenses, bulk purchase from the private sector and build-operate-transfer scheme, or under a joint venture with the private sectors, any or all of the public utilities and infrastructure required or needed for the operation and development of the FAB, including transportation, access and connection to, and out of the FAB, in coordination with appropriate national and local government authorities and in conformity with applicable laws thereon. For this purpose, the AFAB shall exercise the power of eminent domain over private lands granted in paragraph (b) of this section insofar as it may be reasonably necessary, without prejudice to the execution of agreements with public agencies, and subject to the limitations prescribed therein and the observance of the prerequisites of taking of possession and the determination and payment of just compensation in accordance with Republic Act No. 10752. otherwise known as 'The Right-of-Way Act';

"(i) To operate on its own, either directly or through a license to other tourism-related activities, including games, amusements, recreational and sports facilities, subject to the approval and supervision of the Philippine Amusement and Gaming Corporation (PAGCOR);

"(j) To raise, or borrow, within the limitation provided by law, and subject to the approval or opinion of the Monetary Board of the BSP, in accordance with law, adequate and necessary funds from local or foreign sources, to finance its projects and programs under this Act, and for that purpose, to issue bonds, promissory notes, and other forms of securities, and to secure the same by a guarantee, pledge, mortgage, deed of trust, or an assignment of all or part of its property or assets;