

[EXECUTIVE ORDER NO. 226, July 16, 1987]

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 I. - TITLE AND DECLARATION OF POLICY

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

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

1. The State shall encourage private Filipino and foreign investments in industry, agriculture, forestry, mining, tourism and other sectors of the economy which shall: provide significant employment opportunities relative to the amount of the capital being invested; increase productivity of the land, minerals, forestry, aquatic and other resources of the country, and improve utilization of the products thereof; improve technical skills of the people employed in the enterprise; provide a foundation for the future development of the economy; meet the tests of international competitiveness; accelerate development of less developed regions of the country; and result in increased volume and value of exports for the economy.
2. The State shall ensure holistic development by safeguarding the well-being of the social, cultural and ecological life of the people. For this purpose, consultation with affected communities will be conducted whenever necessary.
3. The State shall extend to projects which will significantly contribute to the attainment of these objectives, fiscal incentives without which said projects may not be established in the locales, number and/or pace required for optimum national

economic development. Fiscal incentives systems shall be devised to compensate for market imperfections, to reward performance contributing to economic development, to cost-efficient and be simple to administer.

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

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

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

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

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

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

CHAPTER II - BOARD OF INVESTMENTS

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

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

ART. 5. *Qualifications of Governors of the Board.* - The governors of the Board shall be citizens of the Philippines, at least thirty (30) years old, of good moral character

and of recognized competence in the fields of economics, finance, banking, commerce industry, agriculture, engineering, law, management or labor.

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

ART. 7. *Powers and Duties of the Board.* - The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary generally once a week on such a 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 of investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: *Provided*, That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President;

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

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

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

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

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

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

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

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

(13) In appropriate cases, and subject to the conditions which the Board deems necessary, suspend the nationality requirement provided for in this Code or any other nationalization statute in cases of ASEAN projects or investments by ASEAN nationals in preferred projects, and with the approval of the President, extend said suspension to other international complementation arrangements for the manufacture of a particular product on a regional basis to take advantage of economies of scale;

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

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

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

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

(d) The operation of the registered enterprises 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 of 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 & compile statistical, technical, marketing, financial and other data required for the effective implementation of this Code;

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

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

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

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

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

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

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

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

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

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

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

ART. 9. *Powers and Duties of the Vice-Chairman.* - The Vice-Chairman shall have the