

**[PITC MEMORANDUM CIRCULAR NO. CT-95.1/01,
January 10, 1995]**

**GUIDELINES FOR THE EVALUATION AND APPROVAL OF OFFSETS
ARRANGEMENTS TO BE UNDERTAKEN PURSUANT TO E.O. 120
AND ITS IMPLEMENTING RULES AND REGULATIONS**

A.

Introduction

These guidelines are promulgated pursuant to the provisions of E.O. 120 dated August 19, 1993 and its Implementing Rules and Regulations (IRR) signed on November 14, 1994, directing the adoption of countertrade as a supplemental tool with respect to the importation or procurement of foreign capital equipment, machinery, products, goods and services of the National Government, its departments, bureaus, agencies and offices including government owned and controlled corporations.

These guidelines shall govern the evaluation, review, approval and implementation of OFFSET arrangements to be undertaken pursuant to E.O. 120 and its implementing Rules and Regulations.

B.

Objectives of Offsets

Offsets in its various forms are generally intended to enhance the industrialization and technological development of the country by encouraging investments, technology transfer research and development and related activities that would provide the appropriate environment and infrastructure needed to assist Philippine companies in achieving global product competitiveness and/or to correct imbalances in foreign exchange flows.

C.

Eligible Offsets

As cited in Annex "A" of the IRR to E.O. 120, offsets may be Direct or Indirect. When the offset to be undertaken is directly related to the capital equipment, machinery, goods or services imported by the Philippine government, the same is considered DIRECT. Otherwise, they are considered INDIRECT.

Subject to the provisions of E.O. 120 and its IRR, the following are eligible categories of offset activities, to wit:

C.1 Foreign Investments:

C.1.1 *Definition* -

"Foreign investments - as defined E.O. 226 otherwise known as the "Omnibus Investment Code of 1987", shall mean equity investments owned by a Non-Philippine national (in a Philippine enterprise), made in the form of foreign exchange or other assets actually transferred to the Philippines and registered with the Bangko Sentral ng Pilipinas and the Board of Investments, which shall assess and appraise the value of such assets other than foreign exchange.

C.1.2 *Classes* - Foreign Investments include original and additional investments. These may be in the form of cash or assets/properties.

C.1.3 *Exclusions* - The following are excluded and shall not be considered as foreign investments within the framework of these guidelines: (i) the receipt of stock dividends by all the stock- holders of a new corporation on a pro-rata basis; (ii) ownership of bonds, including income bonds, debentures, notes or other evidences of indebtedness; or (iii) purchase of stock options or stock warrants until the holder exercises the option and actually acquires stock from the corporation.

C.1.4 *Eligible Areas for Foreign Investments* - The following Philippine enterprises may be the beneficiaries of foreign investments, whether in cash or assets/property, under these guidelines:

- a. Pioneer Enterprises: Pioneer Enterprises expressly defined and enumerated in E.O. 226 and the current Investment Priorities Plan (IPP) of the BOI are eligible for investments hereunder.
- b. Non-Pioneer Enterprises: Non-Pioneer Enterprises expressly defined and enumerated in E.O. 226 and the current IPP of the BOI are eligible for investments hereunder.
- c. Investments in areas/activities not listed above or specifically identified in the IPP may be considered only on a case-to-case basis subject to such guidelines as may be determined by PITC.

C.1.5 *Requirements for Eligibility as Offsets*

- a. Investments must come from a foreign-based institution or entity;
- b. If the investments are made in the form of cash, the funds must not be sourced or borrowed from the local Philippine banking system but from overseas;
- c. Where the investments are made in the form of personal property (other than cash), the same must be brand-new unless otherwise approved by PITC in writing; and
- d. The investment, duly evidenced by stock certificates or similar instruments, must not be withdrawn, transferred or assigned to another firm or entity by the original investor within five (5) years from date of investment except with the prior express written approval of PITC and the Philippine beneficiary

thereof. An Undertaking to this effect shall be executed by the original investor upon approval of the investment proposal by PITC.

- e. The investment must comply with the requirements/provisions of E.O. 226 and the current IPP, including the ownership requirements for registered enterprises.

C.2. Technology Transfer

C.2.1 *Definition - Technology Transfer* - is the transfer to a Philippine firm, agency, or institution of specialized technical knowledge related to processes or products which are not otherwise available in the Philippines on normal commercial terms.

C.2.2. *Eligible Technology Transfer Arrangements* - The forms of technology transfer of proprietary, non-proprietary and intellectual property or information which are eligible as offsets under these guidelines include:

- a. Patents, formulae, technological rights or processes, licensing or know-how agreements, technical data packs, software, continuing access to current overseas expertise or data, more particularly in the areas listed in Annex "A" hereof.
- b. Transfer of equipment and resources not available in the Philippines under normal commercial terms.
- c. Other forms of technology transfer defined and/or prescribed by the Department of Science and Technology (DOST).

C.2.3 *Requirements for Eligibility as Offsets*

- a. All technology transfer arrangements must be subject of appropriate written contracts/documents which are duly registered/approved by the Bureau of Patents, Trademarks and Technology Transfer;
- b. Technology transfer arrangements hereunder must result in the capability of the Philippine beneficiary to locally manufacture, manage, design, improve and/or utilize a new product or process, as certified to by the said Philippine beneficiary;
- c. The technology or process transferred hereunder must not be normally available in the Philippines; and
- d. Beneficiaries of these arrangements must be Filipinos or Philippine companies duly licensed or registered in accordance with the laws of the Philippines.

C.3 Research and Development

C.3.1 *Thrusts of Research and Development* - To be eligible as offsets hereunder, research and development activities must be directed towards the enhancement, improvement, advancement, and/or efficiency of Philippine industries, products, services, and/or environment.

C.3.2 *Eligible Areas for R & D* - The areas specified in Items C.1.4 above, as eligible for foreign investments under these guidelines, shall likewise be eligible areas for R & D activities hereunder. Other areas for R & D activities not otherwise specified therein shall subject to PITC written approval on a case-to-case basis.

C.3.3 *Requirements for Eligibility as offsets.*

- a. R & D must be initiated and substantially supported/financed by a foreign-based supplier/contractor;
- b. R & D must be associated with a scientific or technological activity preferably in the export sector and falling within the Science and Technology Agenda for National Development;
- c. R & D supplier/contractor must ensure that the results of the R & D are turned over to and owned by the Philippine beneficiary and if commercially viable, to be exploited under normal commercial terms for the benefit of the Philippine such terms to be incorporated in appropriate contracts/documents to be submitted to PITC;
- d) R & D activities must utilize or be conducted in collaboration with local (Philippine) firms and institutions including government-owned manufacturing or research establishments or laboratories; and,
- e) The R & D must be undertaken in accordance with the guidelines set forth by the DOST.

C.4 Training and Skills Upgrade

C.4.1 *Requirements for Eligibility as Offsets*

- a. Training and skills upgrade programs must not be available in the Philippines;
- b. Training and skills upgrade programs must be initiated and substantially supported/financed by foreign-based supplier;
- c. Training and skills upgrade must assist in the dissemination of scarce, new or advanced technological or scientific knowledge or processes, particularly in the areas listed in Annex "A" hereof;
- d. Training or skills upgrade must be applicable to the Philippine setting/environment; and
- e. Beneficiaries of the training or skills upgrade program must submit appropriate post-training/skills upgrade reports to PITC, duly certified by the Head of the Office concerned.

C.5 Donations/Grants

C.5.1 *Eligible Areas for Donations/Grants* - Donations or grants for educational, scientific, technological, research, social and

environmental development programs/projects including those activities listed in C.1.4 above are eligible as offsets.

C.5.2 *Eligible Donations/Grants* - Donations or grants may either be in the form of cash or property.

C.5.2 *Requirements for Eligibility as Offsets*

- a. Donations or grants should come from foreign-based institutions;
- b. If donations/grants are in the form of foreign currency (cash), the same must be sourced from outside the Philippines and inwardly remitted to the Philippines. If in the form of property, the same must be appraised, evaluated and approved by the Philippine beneficiary thereof.
- c. Beneficiaries of the donations or grants may either be government or private institutions (including Non-governmental Organizations) duly organized and existing under the laws of the Philippines;
- d. Donations or grants must be made directly to the Philippine beneficiaries thereof; and
- e. Donations or grants shall be duly evidenced by appropriate documents/deeds to be submitted to PITC together with a Certification from the Philippine beneficiaries evidencing receipt of the funds or property.

C.6 Environmental Projects

C.6.1 *Definition - "Environmental Projects"* - as used herein shall refer to the projects directed towards the preservation, rehabilitation or development of the country's ecological balance and the rational use of resources to attain sustainable development as approved/endorsed by the Department of Environment and Natural Resources (DENR).

C.6.2 *Environmental Projects Eligible as Offsets*

- a. Rehabilitation of degraded natural habitats within national parks or protected areas.
- b. Watershed rehabilitation and reforestation activities.
- c. Air, water and soil quality management projects including air and water pollution control projects.
- d. Solid and Liquid Waste Disposal/Recycling Projects.
- e. Projects pertaining to the introduction or development of renewable energy sources (i.e. solar energy and wind energy).
- f. Projects analogous to the foregoing as expressly endorsed/approved by the DENR.