

[REPUBLIC ACT NO. 9728, October 23, 2009]

AN ACT CONVERTING THE BATAAN ECONOMIC ZONE LOCATED IN THE MUNICIPALITY OF MARIVELES, PROVINCE OF BATAAN, INTO THE FREEPORT AREA OF BATAAN (AFAB), CREATING FOR THIS PURPOSE THE AUTHORITY OF THE FREEPORT AREA OF BATAAN (AFAB), APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

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

Section 1. *Short Title.* — This Act shall be known as the "Freeport Area of Bataan (FAB) Act of 2009.

SEC. 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively encourage, promote, induce and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people especially those in the rural areas, increase productivity and individual and family income, and thereby improve the level and quality of living condition through the establishment, among others, of special economic zones in suitable and strategic locations in the country and through measures that will attract legitimate and productive foreign investments.

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 to be known as the Freeport Area of Bataan (FAB). The FAB shall cover the Municipality of Mariveles, Province of Bataan.

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, agro-industrial, tourist, banking, financial and investment center with suitable residential areas;
- b. The FAB shall continue to be provided with transportation, telecommunications and other facilities needed to attract legitimate and productive investments, generate linkage industries and employment opportunities for the people of the Province of Bataan and its neighboring towns and cities;
- c. The FAB may establish mutually beneficial economic relations with other entities or enterprises within the country or with foreign entities or enterprises;

- 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 FAB;
- 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;
- f. The FAB shall provide incentives such as tax and duty-free importations of raw materials, capital and equipment to registered enterprises located therein. However, exportation or removal of goods from the territory of the FAB to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code (NIRC) of 1997, as amended;
- g. The areas comprising the FAB may be expanded or reduced when necessary. For this purpose, the FAB Authority which will be created under this Act, with the concurrence of the local government units (LGUs), in accordance with existing laws and local ordinances shall have the power to acquire either by purchase, negotiation or condemnation proceedings, any private lands within or adjacent to the FAB for the following purposes: (1) consolidation of lands for FAB development; (2) acquisition of right of way to the FAB; and (3) the protection of watershed areas and the maintenance and improvement of its water yield and natural assets valuable to the prosperity of the FAB, the management of solid and water waste and its impact to adjacent areas within the local government concerned.

The LGU and the FAB shall provide for a mechanism to address inappropriate exploitation of the natural environment and disruptive land use within the jurisdiction of the FAB;

- h. Goods manufactured by the FAB enterprise 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 FAB Authority, together with the Philippine Economic Zone Authority (PEZA), the *Bangko Sentral ng Pilipinas* (BSP), the Department of Finance (DOF), the Bureau of Customs (BOC) and the Department of Trade and Industry (DTI) in accordance with the NIRC of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended. However, in order to protect the domestic Industries, a negative list of industries shall be drawn up and regularly updated by the PEZA. Enterprises engaged in industries included in such negative list shall not be allowed to sell their products locally; 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 FAB Authority and the LGUs.

SEC. 5. *Fiscal Incentives.* — The registered enterprises operating within the FAB may be entitled to the existing pertinent fiscal incentives as provided for under Republic Act No. 7916, as amended by Republic Act No. 8748, also known as the Special Economic Zone Act of 1995, or those provided under Executive Order No. 226, as amended, otherwise known as the Omnibus Investment Code of 1987.

SEC. 6. *Imposition of a Tax Rate of Five Percent (5%) on Gross Income Earned.* —

No taxes, local and national, shall be imposed on business establishments operating within the FAB. In lieu thereof, 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 treasurer's office of the Municipality of Mariveles; and1avvphi1
- d. Two *per centum* (2%) to the Authority of the Freeport of Area of Bataan.

SEC. 7. *Incentive to Investors.* — Any foreign national who invests an amount of One hundred fifty thousand US dollars (US\$150,000.00), 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. 8. *Administration, Implementation and Monitoring of Incentives.* — For the proper administration, implementation and monitoring of tax incentives provided under this law, the following are herein mandated:

- a. The AFAB shall be responsible for the administration and implementation of the incentives granted to its respective registered enterprises. Among others, it shall adopt and implement systems and procedures affecting trade and customs policies.

The BOC shall set up and establish a custom's controlled area outside the gate of the FAB to facilitate payment of taxes on goods entering the Philippine customs territory; and

- b. The AFAB shall likewise submit to the DOF its annual tax expenditures based on the tax incentives granted to its registered enterprises. The DOF, for its part, shall create a single database of all incentives provided by the governing authority. The DOF shall monitor the incentives granted, and submit an annual report to the President.

SEC. 9. *Extension of Period of Availment.* — The availment period of the incentives provided herein may be extended by AFAB, in the event that the registered

enterprise has suffered operational *force majeure* that has impaired its viability, equivalent thereto.

SEC. 10. *Duration of Incentives.* — Enterprises registered with AFAB may enjoy the income tax holiday (ITH) or the net operating loss carry over (NOLCO) granted by the authority prior to the availment of the five percent (5%) gross income earned (GIE).

Fiscal incentives under this Act shall be terminated after a cumulative period of twenty (20) years from date of registration or start of commercial operation, whichever is applicable, except that it could be extended with regard to industries deemed indispensable to national development.

The industries exempted from this provision shall be determined by the AFAB.

SEC. 11. *Creation of the Authority of the Freeport Area of Bataan (AFAB).* — There is hereby created a body corporate to be known as the Authority of the Freeport Area of Bataan (AFAB), hereafter referred to as the AFAB which shall manage and operate the FAB, in accordance with the provisions of this Act.

SEC. 12. *Principal Office of the AFAB.* — The AFAB shall maintain its principal office in the Municipality of Mariveles, Province of Bataan, but it may establish liaison offices within the Philippines as may be necessary for the proper conduct of its business.

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

- a. To adopt, alter, use a corporate seal, to contract, lease, buy, sell, acquire, own and dispose properties of whatever nature;
- b. To sue and be sued in order to carry out its duties, responsibilities, privileges, powers and functions as granted and provided for in this Act and to exercise the power of eminent domain for public use and public purpose;
- c. To operate, administer, manage, 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 recommend to the President the issuance of a proclamation to fix and delimit the site of the FAB;
- e. To register, regulate and supervise the enterprises in the FAB in an efficient and decentralized manner, subject to existing laws;
- f. To coordinate with the LGUs and exercise general supervision over the development plans, activities and operations of the FAB;
- g. 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 Aeronautics Board, 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;

- h. 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;
- i. 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, in coordination with appropriate national and local government authorities and in conformity with applicable laws thereon;
- j. 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);
- k. To raise or borrow, within the limitation provided by 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;
- l. To provide security for the FAB in coordination with the national and local governments. For this purpose, the AFAB may establish and maintain its security forces and firefighting capability or hire others to provide the same. In the event that an assistance of the military force is necessary, it shall not interfere in the internal affairs of the FAB except to provide the necessary security and defense, and their expenses shall be borne by the National Government;
- m. To protect, preserve, maintain and develop the virgin forests, beaches, coral and coral reefs, and maintain ecological balance within the FAB. For this purpose, the rules and regulations of the Department of Environment and Natural Resources (DENR) and other government agencies involved in the above functions shall be implemented by the AFAB;
- n. To create, operate and/or contract to operate such functional units or offices of the AFAB as it may deem necessary;
- o. To issue certificates of origin for products manufactured or processed in the FAB;
- p. To Issue rules and regulations consistent with the provisions of this Act as may be necessary to implement and accomplish the purposes, objectives and policies provided herein;
- q. To exercise such powers as may be essential, necessary or incidental to the powers granted to it hereunder as well as those that shall enable it to carry out, implement and accomplish the purposes, objectives and policies of this Act; and