

[REPUBLIC ACT NO. 5186, September 16, 1967]

AN ACT PRESCRIBING INCENTIVES AND GUARANTEES TO INVESTMENTS IN THE PHILIPPINES, CREATING A BOARD OF INVESTMENTS, APPROPRIATING THE NECESSARY 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 and cited as the Investment Incentives Act.

SEC. 2. *Declaration of Policy.*—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 practicable dispersal of industries, under conditions which will encourage competition and discourage monopolies, it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the standards of living of the people, and provide for an equitable distribution of wealth. It is further declared to be the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available.

SEC. 3. *Definition of Terms.*—For purposes of this Act:

(a) "Board" shall mean the Board of Investments created under this Act.

(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 of the capital stock outstanding and entitled to vote is owned and held by Philippine Nationals, and at least sixty per cent 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 terra 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, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions;

neither shall the term include business organizations whose exclusive or principal purpose is to provide services or buy goods and merchandise and resell the same in substantially the same form in which bought,

(c) "*Technological assistance contracts*" shall mean contracts for: (1) the transfer, by license or otherwise, of patents, processes, formulas or other technological rights of foreign origin; and/or (2) foreign assistance concerning technical and factory management, design, planning, construction and similar matters.

(d) "*Foreign loan*" shall mean any credit facility or financial assistance other than equity investment obtained by a registered enterprise from a source outside the Philippines and brought into the Philippines either in foreign exchange or in other assets, and registered with the Central Bank and the Board, which shall assess and appraise the assets other than foreign exchange representing the proceeds of the loan.

(e) "*Foreign investments*" shall mean equity investment, owned by a non-Philippine National in a registered enterprise, made in the form of foreign exchange or other assets actually transferred to the Philippines and registered with the Central Bank and the Board, which shall assess and appraise the value of such assets other than foreign exchange.

(f) "*Philippine National*" shall mean a citizen of the Philippines; or a partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty per cent of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine National and at least sixty per cent of the fund will accrue to the benefit of Philippine Nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty percent of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine National.

(g) "*Preferred areas of investment*" shall mean the economic activities that the Board shall have declared as such in accordance with Section eighteen hereof.

(h) "*Pioneer enterprise*" shall mean a registered enterprise (1) engaged in the manufacture, processing, or production, and not merely in the assembly or packaging, of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw material into another raw material or finished good which is new and untried in the Philippines: Provided, That the final product involves or will involve substantial use and processing of domestic raw materials, whenever available.

(i) "*Measured capacity*" shall mean the estimated additional volume of production 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 shall measured capacity be construed so as to result in a monopoly in any preferred or pioneer area of investment.

(j) "*Tax credit*" shall mean any of the credits against taxes extended to a registered enterprise by this Act, to evidence which a tax credit certificate shall be issued by the Bureau of Internal Revenue. 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-transferrable; 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 a refund.

(k) "*Investments Priorities Plan*" shall mean the plan prepared by the Board and approved by the President upon recommendation of the National Economic Council, which shall contain the analysis, synthesis, and projections of data collected by the Board from public and private sources, and which measures and indicates:

(1)The existing and prospective demand for specific products and commodities, final and intermediate, in the light of the level and structure of income, production, trade, prices and relevant economic and technical factors;

(2)The existing capacities for producing specific products and commodities;

(3)The gaps between prospective demand and existing supply for specific products and commodities, and the additional production capacities that must be induced where such gaps exist;

(4)The specific products and commodities, manufactured out of or with the use of domestic raw materials, the export of which should be encouraged;

(5)The specific areas of economic activity to be declared preferred and pioneer areas of investment and the corresponding measured capacities thereof;

(6)The capital investments necessary to bring such additional capacities into existence;

(7)The raw material input requirements of the additional production capacities needed, and the sources thereof, whether domestic or imported;

(8)The manpower requirements of existing and new industries;

(9)The regions where such additional capacities can be located considering the presence of natural resources, labor, transport facilities, power, water supply, and the like;

(10)The respective roles and responsibilities of the private sector and the government in bringing such additional capacities into existence;

(11)The specific public works projects that need to be undertaken by the government and the capital investment required therefor, to make private investments in preferred and pioneer areas feasible;

(12)The prospective impact of the projected investments on prices, the exchange rate and the balance of payments;

(13)The changes in tariffs that would be required for the protection of industry during its infant state;

(14)The minimum requirements for maintaining conditions of competition in any industry; and

(15)Other similar or relevant factors which the Board considers desirable to include.

SEC. 4. *Basic Rights and Guarantees.*—All investors and enterprises are entitled to the basic rights and guarantees provided in the Constitution. Among other rights recognized by the Government of the Philippines are the following.

(a)*Repatriation of Investment.*—In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

(b)*Remittance of Earnings.*—In the case of foreign investments, the right to remit earnings from the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

(c)*Foreign Loans and Contracts.*—The right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technological assistance contracts, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

(d)*Freedom from Expropriation.*—There shall be no expropriation by the government of the property represented by investments or of the property of enterprises except for public use or in the interest of national welfare and defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate at the time of remittance, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

(e)*Requisition of Investment.*—There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation

shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

SEC. 5. *Incentives to Investors in a Registered Enterprise.*—An investor, with respect to his investment in a registered enterprise, shall be granted the following incentive benefits:

(a)*Protection of Patents and Other Proprietary Rights.*—The right to be protected from infringement of patents, trademarks, copyright, trade names, and other proprietary rights, where such patents, trade marks, copyright, trade names, and other propriety rights have been registered with the Board and the appropriate agencies of the Government of the Philippines.

(b)*Capital Gains Tax Exemption.*—Exemption from income tax on that portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of a registered enterprise within six months from the date the gains were realized: *Provided*, (1) that the said sale, disposition or transfer and the investment of the proceeds thereof have been registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned, or conveyed for a period of five years from the date the investment was made. If such shares of stock are disposed of within the said period of five (5) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

SEC. 6. *Incentives to Philippine Nationals Investing in Pioneer Enterprises.*—In addition to the incentives provided in the preceding sections, Philippine Nationals investing in a pioneer enterprise shall be granted the following incentives benefits:

(a)*Tax Allowance for Investments.*—An investment allowance to the extent of his actual investment, paid in cash or property shall be allowed as a deduction from his taxable income but not to exceed ten per cent thereof: *Provided*, (1) That the investment is made in a subscription of shares in the original and/or increased capital stock of a pioneer enterprise within seven years from the date of registration; (2) that the shares are held for a period of not less than three years; and (3) that the investment is registered with the Board. If the shares are disposed of within the said three year period, the taxpayer shall lose the benefit of this deduction, his income tax liability shall be recomputed, and he shall pay whatever additional sum be due plus interest thereon, within thirty days from the date of disposition.

(b)*Capital Gains Tax Exemption.*—Exemption from income tax on the portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of, or in the purchase of stock owned by foreigners in, pioneer enterprises, within six