

[ **BOI, January 30, 2004** ]

**BOARD OF INVESTMENTS REVISED RULES OF PROCEDURE ON  
THE CANCELLATION OF REGISTRATION UNDER R.A. 5186, R.A.  
6135, P.D. 1789 AND E.O. 226**

*Adopted: 30 January 2004*

*Date Filed: 30 July 2014*

**WHEREAS**, under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, the Board of Investments is mandated to regulate and promote investments in the country;

**WHEREAS**, the Board is vested with the power to process and approve applications for registration of business enterprises, imposing such terms and conditions as may be necessary to promote the objectives of E.O. No. 226;

**WHEREAS**, certain violations committed by the registered enterprises of the provisions of E.O. No. 226, its Implementing Rules and Regulations, and of the general specific terms and conditions of registration warrant the cancellation of their registration;

**WHEREAS**, to expedite the cancellation of registration of business enterprises found to be committing violations, it is necessary that rules of procedure on the cancellation of registration be prescribed by the Board for the guidance of all concerned;

**NOW, THEREFORE**, the BOARD, by virtue of the powers vested in it by Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, do hereby promulgate and adopt the following:

**RULE I**

**General Provisions**

**Section 1. Title of the Rules.** These rules shall be known and cited as the Revised Rules of Procedure on the Cancellation of Registration under E.O. 226.

**Section 2. Cancellation of Registration; Grounds Therefor.** Registration shall be canceled for any of the following grounds:

- a. Delay of the project timetable by one (1) year unless otherwise reinstated as a registered enterprise by the Board [*Art. 7(8), E.O. 226; Sec. 1, Rule XII, Implementing Rules and Regulations*];
- b. Withdrawal from business/cessation of operations (*Sec. 2, Rule XII, supra*);
- c. Suspension of business operations for more than one (1) year or beyond the period allowed by the Board;
- d. Voluntary surrender of certificate of registration;

- e. By graduation, which refers to the state in which a BOI registered enterprise has reached the end of the useful life of its entitlement to incentives;
- f. Failure to maintain the qualifications for registration as required by the Code [*Sec. 1(a), Rule XXIV, supra*];
- g. Violation of any provision of the Code [*Sec. 1 (b), Rule XXIV, supra*];
- h. Violation of the Implementing Rules and Regulations or any of the general and specific terms and conditions of registration [*Sec. 1(c), Rule XXIV, supra*];
- i. Violation of any law for the protection of labor or of the consuming public [*Sec. 1(d), Rule XXIV, supra*];
- j. Misrepresentation or false statements made by the registered enterprise in any documents submitted in connection with its registration with the Board; or
- k. Acts or omissions by the registered enterprise or its officers in violation of any law, decree, executive order, letter of instructions, or rules and regulations the implementation of which is entrusted to the Board or under which any of the aforementioned issuances the Board is called upon to perform certain acts or is a party in interest.

## **RULE II**

### **Cancellation of Registration**

**Section 1. Initiate Cancellation Proceedings.** The "Department" concerned shall initiate cancellation procedures against BOI-registered enterprises. It shall prepare a Memorandum for the cancellation of the BOI registration based on any of the ground/s so enumerated in Rule 1, Section 2, par. (a) to (k). The same shall be supported by substantial evidence on record.

At the instance of any interested party and upon finding of reasonable basis to prove that the registered enterprise has committed any of the grounds for cancellation of registration under Section 2 of these rules. The Department concerned shall prepare a "show-cause letter of cancellation of registration" addressed to the subject BOI registered enterprise requiring it to explain in writing why its registration should not be canceled.

**Section 2. Memorandum; contents.** The Memorandum for the cancellation of registration shall contain the following:

- a) The status of registration of the enterprise;
- b) The grounds for the cancellation of registration, a statement of the acts or omissions constituting the same, a statement of facts to establish compliance by the Board with the due notice requirement mandated under Article 7 of E.O. 226, the law and evidence in support of its findings and a recommendation for the cancellation of registration including:
  - (i) The imposition of fines and penalties, including the payment of interest, with basis therefor;
  - (ii) A recommendation for an order of refund, if warranted by the facts/evidence at hand.

**Section 3. Complaint by an Interested Party; contents.** Any interested party may file a verified complaint for the cancellation of the registration of any BOI-registered enterprise. It shall contain the following:

- a) Name and address of the Complainant and his legal capacity to file the complaint;
- b) Name and address of the registered enterprise complained of;
- c) Ground/s for the cancellation of registration and the acts or omissions complained of as constituting the same.

**Section 4. Show-Cause Letter of cancellation; contents.** The "showcause letter" shall be addressed to the registered enterprise concerned and shall contain the following:

- a) Ground/s for the cancellation of the registration;
- b) Acts and/or omissions constituting the same;
- c) Imposition of fines and/or penalties, whenever applicable
- d) Order of refund of incentives, whenever applicable;
- e) Order for the registered enterprise to file its "Reply" within fifteen (15) days from receipt of the "show-cause" letter with a proviso that failure or inability to reply within such period will constrain the Office to immediately recommend the cancellation of the registration of the subject enterprise by way of a Memorandum.

**Section 5. Approval by the Management Committee and the BOARD.** The Memorandum shall first be presented to the Management Committee (MANCOM). Upon recommendation by the MANCOM, the same shall be submitted for the approval by the BOARD.

The subject BOI registered enterprise shall be notified of the cancellation of its registration.

### **RULE III** **Service of Notice**

**Section 1. Modes of Service of the NOTICE.** Service of the NOTICE referred to in the preceding section shall be made and/or complied with either by "personal delivery"; "via registered mail" pursuant to Section 5, Rule 13 of the Revised Rules of Court; or through "publication."

**Section 2. Service by Personal Delivery; how effected.** Service of the NOTICE by personal delivery is done when the BOI, through its employee representative, delivers the NOTICE in person, to a responsible officer in the subject registered enterprise's place of business. If the service of the NOTICE is refused, said BOI personnel shall execute an affidavit stating the refusal of the service.

**Section 3. Service by Registered Mail; how effected.** Service of the NOTICE by registered mail shall be made by depositing a copy of the same, in a sealed envelope, plainly addressed to the registered enterprise, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days, if undelivered, pursuant to Section 7, Rule 13 of the Revised Rules of Court.

**Section 4. Service by Publication, how effected.** If upon diligent effort and inquiry, the registered enterprise's principal place of business cannot be located, service of the NOTICE may be effected by way of publication in a newspaper of general circulation.

Note: For purposes of publication, a “newspaper of general circulation” shall refer to a national newspaper(s) belonging to the top ten (10) publishers and with a circulation of at least 100,000 copies daily [Sec. 1 (ee), Rule I, Implementing Rules and Regulations, EO 226].

**Section 5. Service of NOTICE by publication upon a registered enterprise whose registration reached its useful life (beyond 10 years).** When a BOI-registered enterprise reaches its useful life of entitlement to incentives or “graduation”, service of the NOTICE thereto may be effected by means of publication in a newspaper of general circulation.

**Section 6. Completeness of Service.** Personal service is complete upon actual delivery of the Notice. Service by registered mail is complete upon actual receipt thereof by the registered enterprise.

**Section 7. Proof of Service.** Proof of service by personal delivery shall consist of the official return of the server, or an affidavit of the party serving, containing a full statement of the date, place and manner of service.

In case of service via registered mail, proof of service shall consist of the return card and/or the registry receipt issued by the mailing office.

Upon receipt of the “Return to Sender (RTS)” notice from the Postal Office, registered enterprises/addressees’ that failed or were unable to claim the “Notice of Cancellation” via registered mail shall be included in the “List of Notice of Cancellation by Publication” to be presented to the MANCOM and the BOARD.

Service by publication shall be proven through the presentation of the official receipt issued by the publishing company, a copy of the publication itself and/or the affidavit of the appropriate officer of the publishing company that the same has been published in their newspaper.

**Section 8. Service of the Show-Cause Letter; modes; how effected; when completed; how proved.** The provisions of Sections 1, 2, 3, 4, 5, 6 and 7 of Rule 3 shall apply to the service of the Letter referred to in the preceding section.

#### **RULE IV**

##### **Reply**

**Section 1. Filing; Content.** Within fifteen (15) days from receipt of the “show-cause letter”, the registered enterprise shall prepare a written reply thereto, specifying each material allegation of fact the truth of which it does not admit and shall set forth the substance of the matters upon which it relies to support its denial. Where the registered enterprise desires to deny only a part of an averment, it shall specify so much of it as is true and material and shall deny only the remainder. Defenses and objections not pleaded are deemed waived.

Copy of the Reply shall be furnished the private complainant, if there be any.

In case of service by publication [Section 4, Rule III], the “Reply” shall be filed within fifteen (15) days from the date of publication.

**Section 2. Enterprise in Default; when; effect.** If the registered enterprise fails to file a Reply within the fifteen (15) day period, the same shall be deemed in