

RULE XXIX RULES AND REGULATIONS TO IMPLEMENT EXECUTIVE ORDER NO. 226 OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987

Pursuant to paragraph 2 of Article 7 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, the following rules and regulations are hereby promulgated to implement the intent and provisions of the said Code.

**PART I
GENERAL PROVISIONS**

**RULE I
DEFINITIONS AND BASIC GUIDELINES**

SECTION 1. For purposes of these rules and regulations. —

- a. **"Code"** shall mean the Omnibus Investments Code of 1987.
- b. **"Foreign loan"** and **"Foreign investment"** shall be understood as defined in Articles 13 and 14 of the Code, respectively. Foreign investments may be in the form of acceptable and freely convertible foreign currencies, patents, processes, formulae or other technological rights given definite monetary value and other assets actually transferred to the Philippines.
- c. **"Domestic enterprise"** shall mean any enterprise formed, organized or existing under the laws of the Philippines.
- d. **"Foreign enterprise"** shall mean any firm, association, partnership, corporation or any other form of business organization formed, organized, chartered or existing under any law other than those of the Philippines.
- e. **"Investment"** shall mean equity participation in a domestic enterprise. It includes both original and additional investments, whether made directly as in stock subscription, or indirectly through the transfer of equity from one investor to another as in stock purchase. The receipt of stock dividends by all the stockholders of a corporation on pro rata basis shall not be deemed new or additional investment. Ownership of bonds (including income bonds), debentures, notes or other evidences of indebtedness is not investment.

The purchase of stock options or stock warrants is not an investment until the holder thereof exercises his option and actually acquires stock from the corporation.

- f. **"Doing business"** shall be any act or combination of acts, enumerated in Article 44 of the Code. In particular, "doing business" includes:

- 1) Soliciting orders, purchases (sales) or service contracts. Concrete and specific solicitations by a foreign firm or by an agent of such foreign firm, not acting independently of the foreign firm, amounting to negotiations or fixing of the terms and conditions of sales or service contracts, regardless of where the contracts are actually reduced to writing, shall constitute doing business even if the enterprise has no office or fixed place of business in the Philippines. The arrangements agreed upon as to manner, time and terms of delivery of the goods or the transfer of title thereto is immaterial. A foreign firm which does business through middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines. But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines.
- 2) Appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, i.e., it transacts business in its name and for its own account, and not in the name or for the account of a principal. Thus, where a foreign firm is represented in the Philippines by a person or local company which does not act in its name but in the name of the foreign firm, the latter is doing business in the Philippines.
- 3) Appointing as representative or distributor an alien who entered the Philippines as a non-immigrant solely or principally to act as representative or distributor staying in the Philippines continuously for 180 days or more, or for a total period of 180 days or more in any calendar year although the stay is not continuous. To be deemed doing business in the Philippines, said representative or distributor need not maintain a stock of goods produced by the enterprise whom he represents.
- 4) Opening offices, whether called "liaison" offices, agencies or branches, unless proven otherwise.
- 5) Establishing a factory, workshop or processing plant.
- 6) Undertaking building construction or erection project.
- 7) Opening a store, whether wholesale or retail, without prejudice to the provisions of the Retail Trade Act.
- 8) Maintaining or operating a warehouse for business purposes, including the storage, display or delivery of its own products.
- 9) Participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines. This includes an

individual or entity which acts as manager of a domestic enterprise pursuant to a management contract. An individual serving as director or officer of a domestic enterprise by virtue of occupying such position shall not be deemed doing business in the Philippines.

Mere investment in a domestic enterprise which has a distinct legal personality and duly licensed to transact business in the Philippines and/or the exercise of the rights as such investor, shall not constitute doing business therein.

- 10) Any other act or acts which imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, or in the progressive prosecution of, commercial gain or of the purpose and object of the business organization.

The following acts by themselves shall not be deemed doing business in the Philippines:

- 1) The publication of a general advertisement through newspapers, brochures, or other publication media or through radio or television.
 - 2) Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines.
 - 3) Collecting information in the Philippines. Thus, sending a roving correspondent to gather news in the Philippines does not of itself constitute doing business therein.
 - 4) Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.
- g. The term "***Philippine national***" under Article 15 of the Code shall not include a partnership, association, corporation or other juridical entity organized and existing under the laws of any other country even if wholly owned by Philippine citizens.

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of subscribed capital stock whether fully paid or not. But only such stocks as are generally entitled to vote are considered for availment of incentives, excluding stocks which are entitled to vote only under exceptional circumstances as well as delinquent stocks which by law are denied the right to vote.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential. Thus, stocks the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

In the case of corporations, "outstanding capital" refers to the subscribed capital stock, whether fully paid or not, voting or non-voting. In case of partnership, "outstanding capital" refers to the total agreed capitalization.

- h. **"Licensed to do business"** for purposes of Articles No. 48 and 50 of the Code shall mean that the enterprise not only has been registered with the Securities and Exchange Commission or with any other government agency but also that it has obtained the necessary permits and licenses from national and local authorities to enable it to pursue its business activities.
- i. **"Registered enterprise"** shall be as defined in Article 11 of the Code, and refers to an enterprise engaged or proposing to engage; 1) in an area of activity listed in the Investment Priorities Plan; 2) if not so listed, at least fifty (50%) per cent of its production is for export if a Philippine national or at least seventy (70%) per cent of its production is for export if foreign owned; 3) exporting part of its production under such terms and conditions and/or limited incentives as the Board may determine; 4) producing or manufacturing a product which is used as input to an export product; 5) export trading of export products bought by it from one or more export producers; 6) rendering service to domestic and foreign tourists if listed in the IPP; 7) in rendering technical, professional or other services as may be determined by the Board which are paid for in foreign currency; or 8) in exporting television and motion pictures and musical recordings made or produced in the Philippines, either directly or through an export trader.
- j. **"Export products"** shall refer to those listed as such in the Investment Priorities Plan; or if not so listed, it is a non-traditional export product as defined in Article 22 and duly approved as such by the Board. For purposes of Article 39(k) of the Code, packaging materials and supplies necessary to put the product into exportable form shall constitute part of such export product.
- k. **"Net Foreign Exchange Earnings"** shall mean the total foreign exchange proceeds from the export of the registered product or service minus the total foreign exchange expenses incurred in the production of the registered product or the rendering of the export service and the depreciation of imported capital equipment.
- l. **"Net Foreign Exchange Savings"** shall mean the foreign exchange that would have been expended had the registered product been imported less the total

foreign exchange expenses incurred in the production of the registered product or the rendering of the export service and the depreciation of capital equipment.

- m. **"Packaging"** refers to the process by which semi-finished or finished products, whether locally produced or not, are placed without substantial alteration in a container or receptacle or are wrapped in preparation for the market. It may include weighing and/or reduction of products to standard measurements and specifications, and other similar packaging processes.
- n. **"Assembly"** refers to the activity by which semi-finished or finished parts or materials, whether locally produced or not are put together or combined to form a distinct product for sale or consumption, without substantially changing the physical, mechanical or electromagnetic characteristic and/or chemical properties of such parts and materials.
- o. To constitute a **"new and untried process or system of production,"** the process or system must not only be entirely novel in the Philippines technologically, but also substantially better than the existing process from the standpoint of improving productivity, viability of the enterprise and utilization of domestic raw materials.
- p. The availability or unavailability of domestic raw materials shall be determined by the Board after due inquiry. The Board may require from the applicant for registration who has represented that the domestic raw materials needed for the manufacture of its products are not available, a certificate to that effect and a written commitment that, if and when they become available, it will make substantial use thereof in the manufacture of its products.
- q. **"Date of official acceptance"** shall be the date stamped on the application and recorded in the registration book of the Board. However, for applications filed with the regional offices of the Department of Trade and Industry the date of official acceptance in relation to the twenty (20) day period for automatic approval, shall be the date the application is recorded in the registration book of the Board until such time as the regional offices are fully equipped to accept and process applications.
- r. **"Registration book"** shall refer to the Application Book of the Board which records the name of the applicant for registration and the corresponding dates where the official acceptance of their application are consecutively entered. This is to be differentiated from the Certificate of Registration Book which records the names of all registered enterprises and their corresponding dates of registration.
- s. **"Date of registration"** shall mean the date when the certificate of registration is issued after the completion of the Board's evaluation of the project, unless an earlier date is indicated as the effective registration date, for purposes of incentive availment, in cases of amendment or reclassification.

- t. The **"income"** of the registered firm entitled to income tax holiday shall be confined to income directly derived from registered operations.
- u. **"Start of commercial operations"** for purposes of the income tax holiday, shall be the date specified in the project study submitted to the Board or the date when a particular enterprise actually begins production of the registered product for commercial purposes or commercial harvest in the case of agricultural activities, whichever comes first, irrespective of phases or modules or schedule of development. In the case of service oriented activities, it shall mean the date when a particular registered enterprise begins catering to or servicing its clients on a commercial basis. In the case of export traders and service exporters, the term shall mean the date when the initial export shipment in commercial quantity has been made or initial performance of service as borne out by the appropriate supporting documents.
- v. **"Wages"** as used in Article 39(b) of the Code shall include salaries and wages as well as bonuses and allowances which form part of the employee's taxable income.
- w. **"Spare parts"** referred to in Article 39(m) shall mean the usual components of machinery and/or equipment which are subject to normal wear and tear arising from use, utilization and operation.
- x. **"Traditional export products"** are export products the total F.O.B. Philippine port value of the exports of which exceeded five million dollars in United States currency in the calendar year 1968.
- y. A **"Multinational Company"** is a firm or entity organized and existing under laws other than those of the Philippines engaged in international trade with affiliates, subsidiaries or branch offices in the Asia-Pacific Region.
- z. **"Asia-Pacific Region"** shall mean all countries bordering the Pacific Ocean on the side of Asia, including Australia and New Zealand.
- aa. **"Affiliates"** shall include dealers or distributors of the entity granted franchise or contract for the sale or distribution of its goods or services.
- bb. **"Principal Officer or the Foreign Entity"** shall mean the President, Executive Vice-President, General Manager or officer of equivalent category of the foreign entity, while "responsible officer of the regional headquarters" shall mean the head of the office or one duly acting in his place.
- cc. **"Regional Collector of Customs"** shall mean the Collector of Customs in the district where the regional warehouse will be established.

- dd. **"Due Course Letter"** shall mean the letter advice which the Board of Investments shall issue to the applicant for the establishment of a regional warehouse upon satisfactory compliance with certain documentary requirements prior to endorsement to the Bureau of Customs.
- ee. **"Newspaper of General Circulation"** shall refer to national newspapers belonging to the top ten (10) publishers and with a circulation of at least 100,000 copies daily.
- ff. **"Expansion"** shall mean installation of additional facilities/equipment that will result in increase in production capacity. It may include modernization and rehabilitation. No expansion for additional capacity shall be allowed unless applicant has attained, in general, 85% utilization of existing capacity.

Modernization or Rehabilitation to be registrable may or may not result in increase in capacity but the following conditions should be met:

- 1) area must be listed in the IPP specifically for modernization or rehabilitation; and
- 2) phases/stages of production sought to be modernized/re-rehabilitated must be identified;
- 3) must result in any of the following:
 - a) substantial reduction of production cost; or
 - b) significant increase in productive efficiency including debottlenecking;
or
 - c) meaningful upgrading of product quality; or
 - d) keeping abreast with the state of the art in the production of registered product.

SECTION 2. Whenever any of the foregoing terms is used in the Code or these Rules, it shall be deemed to have the same meaning as above defined unless in any specific provision, the context in which the term is found indicates that it is meant to convey a different meaning.

SECTION 3. **Rights of Investors Investing in a Registered Enterprise.** — For purposes of exercising the basic rights and guarantees granted to investors as provided in Article 38 (a) and (b) of the Code, the repatriation of investments and remittance of earnings from investments made shall be allowed in the currency in which the investment was originally made and at the exchange rate prevailing at the time of

repatriation or remittance, subject to the provisions of Section 74 of Republic Act No. 265, as amended, and existing Central Bank rules and regulations.

PART II INVESTMENTS WITH INCENTIVES

RULE II QUALIFICATIONS FOR APPLICANT

SECTION 1. **Qualifications.** — Every applicant for registration must possess all the qualifications and none of the disqualifications prescribed in the Code.

In case of Philippine nationals proposing to export at least 50% of production or foreign nationals proposing to export at least 70% of production, the Board may require a higher export commitment taking into account the existing local production and market condition.

In case of foreign nationals proposing to export less than seventy percent (70%) of actual production, the Board may allow registration in meritorious cases, subject to such terms and conditions and limited incentives as the Board may determine, e.g. non-enjoyment of income tax holiday: *Provided*, That in no case shall such reduction be lower than fifty percent (50%) of actual production.

Export traders and service exporters shall at all times be at least sixty percent (60%) owned by Philippine nationals.

SECTION 2. **Specific Requirements.** — Additionally, the applicant must show:

- a. If the area of investment in which it is engaged or proposes to engage in is nationalized by the Constitution or by law, the ownership requirement of the Constitution and/or such law has been complied with.
- b. If there is a law requiring a minimum percentage of its directors to be Philippine citizens, the same has been complied with. To determine compliance with the citizenship requirement for members of the Board of Directors, the basis shall be the positions actually filled, exclusive of vacancies, unless there is a specific rule to the contrary.
- c. That the area of investment in which applicant is engaged is within its corporate powers and is not otherwise prohibited by law.

SECTION 3. **Burden of Proof.** — In every case, the applicant will have the burden of proving that it is qualified for registration.

RULE III APPLICATION FOR REGISTRATION

SECTION 1. ***Filing of Application.*** — Applications for registration may be filed with the Board of Investments. In the provinces, applications may be filed with regional offices of the Department offices of the Department of Trade and Industry. In such case, all applications received by regional offices shall be forwarded to the Board of Investments within forty-eight (48) hours from receipt thereof and they are considered officially accepted upon their being recorded in the Registration Book of the Board of Investments. However, for producer enterprises primarily for the domestic market or for traditional export products, applications will only be received if the activity is listed in the current Investment Priorities Plan.

SECTION 2. ***Form.*** — All applications shall be made upon forms prescribed by the Board, accomplished in two (2) copies and sworn to before a notary public.

SECTION 3. ***Incomplete Papers.*** — Within twenty-four (24) hours from receipt of application, the Board shall notify the applicant of all pertinent requirements not complied with. Upon completion of the deficiencies, the application shall be officially accepted immediately.

SECTION 4. ***Publication of Application.*** — Upon the official acceptance of the application, notice thereof shall be published once in a newspaper of general circulation or in any manner that the Board may require, at applicant's expense, in a format indicating the name of the applicant, the area of investment, the capacity applied for and the plant site, if any.

SECTION 5. ***Automatic Approval.*** — Within twenty (20) working days from official acceptance thereof, the Board shall act on the application, otherwise, the same shall be considered automatically approved.

RULE IV BOARD ACTION

SECTION 1. ***Board Decision, Notice to Applicant.*** — The Board shall render its decision within twenty (20) working days after official acceptance of the application. The decision of the Board on every application for registration as well as the terms and conditions of registration shall be communicated in writing to the applicant. Where an application for registration is not acted upon by the Board within the said period of time, the same shall be considered automatically approved without prejudice to the Board imposing the usual normal conditions as well as additional specific terms and conditions. From date of receipt of said notice, the applicant shall have thirty (30) calendar days within which to submit its acceptance and comply with the pre-registration requirements, if any. Failure to accept or comply with the requirements

within said period may be construed as a rejection of the proposed registration or abandonment of the project and Board approval will be accordingly withdrawn. No right to any incentive is vested in an enterprise unless the Certificate of Registration is finally issued.

RULE V CERTIFICATE OF REGISTRATION

SECTION 1. ***Conditions Precedent for Issuance of Certificate.*** — Before the issuance of the certificate of registration, the following requirements shall be submitted and/or complied with:

- a. Payment of registration fee;
- b. Letter, or if a corporation, resolution of the applicant's board of directors formally accepting the proposed terms and conditions of registration;
- c. Sworn statement authorized by the board of directors/partners or by the individual adopting and/or affirming all representations and commitments made by the applicant to the Board, and stating that with the exception of those which the Board has been duly advised in writing, all information and data heretofore submitted by it to the Board are still correct; and
- d. All pre-registration requirements, if any, imposed by the Board.

SECTION 2. ***Issuance of Certificate.*** — Upon fulfillment of the foregoing conditions precedent, the certificate of registration shall be issued.

RULE VI INCENTIVES TO REGISTERED ENTERPRISES

SECTION 1. ***Applications for Availment of Incentives.*** — All applications for availment of incentives shall be filed with the Board.

SECTION 2. ***Income Tax Holiday.*** —

- a. ***Period of Availment.*** — Only registered enterprises engaged or proposing to engage in new and expanding projects may avail of the income tax holiday incentive.

Availment shall be as follows:

- 1) New registered pioneer firms - 6 years from commercial operations.

2) New registered non-pioneer firms - 4 years from commercial operations.

3) Expanding firms - 3 years from commercial operations of the expansion.

In exceptional cases, existing firms undertaking new activities distinct from existing operations may qualify as new projects subject to the setting up of separate books of account. In such cases, only sales of such registered products shall be entitled to income tax holiday exemption. Export traders and service exporters shall be entitled to the income tax holiday if they will export products and services which are new export for the Philippines or will serve new export markets.

b. *Computation of Rate of Exemption:*

Expanding firms shall be entitled to the income tax holiday incentive only to the extent of their actual increase in production. The rate of exemption from income tax shall be computed as follows:

$$\text{Rate of Exemption} = \frac{\text{Incremental Sales of the registered product}}{\text{Total Sales of the Registered Product}}$$

The term "sales" as indicated in the above formula shall be expressed in volume in cases of homogeneous products and value in case of heterogeneous products.

In general, modernization or rehabilitation shall not be entitled to income tax holiday if indicated in the IPP.

Where the start of commercial operation does not coincide with the first month of the registered enterprise's taxable year, the rate of exemption from income tax shall be computed in the following manner:

- (aa) Get the total sales for the whole taxable year.
- (bb) Deduct the base figure from total sales (1) to get the incremental sales.
- (cc) The rate of exemption is determined by dividing the incremental sales (2) by total sales (1).
- (dd) The rate of exemption shall apply only on the total income tax due arising from sales of the registered product.

The rate of exemption for the last taxable year of availment in the above-mentioned case shall be computed in the same manner as above except that the rate of tax exemption shall be applied on the income tax due on the sales during the months that the enterprise is still entitled to income tax holiday.

- c. *Criteria for Additional Period for Availment.* — For new registered firms the income tax holiday incentive may be extended for an extra year for each of the following cases, but in no case to exceed the total period of eight (8) years for pioneer registered enterprises.
- 1) If the ratio of the total imported and domestic capital equipment to the number of workers for the project does not exceed US\$10,000.00 to one (1) worker.
 - 2) If the average cost of indigenous raw materials used in the manufacture of the registered product is at least fifty percent (50%) of the total cost of raw materials for the preceding years prior to the extension unless the Board prescribes a higher percentage.
 - 3) if the net foreign exchange savings or earnings amount to at least US\$500,000.00 annually during the first three (3) years of operation to be determined by the Board at the end of such three-year period: *Provided*, That the foreign exchange savings criterion shall apply as a general rule, to registered firms whose products are totally imported into the country at the time of registration and duly indicated as imports substituting in the firm's certificate of registration.

For purposes of availment of this incentive, the registered firm shall file a letter-request to the Board applying for the additional period and shall submit proofs of compliance of the criteria above-indicated.

SECTION 3. *Additional Deduction for Labor Expense.* — For a period of five (5) years from registration, a registered enterprise shall be allowed to deduct from its taxable income an amount equivalent to fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers subject to the following conditions:

- a. That the ratio of imported and domestic capital equipment to the number of workers of the firm does not exceed US\$10,000.00 to one (1) worker;
- b. That the registered firm does not avail of this incentive simultaneously with the income tax holiday incentive;
- c. The allowable deduction shall be based on the increment in the number of direct labor for skilled and unskilled workers in the year of availment as against the previous year; and

- d. That in the event the registered firm except those engaged in mining and forestry based activities should locate in a less-developed area as defined in Title IV of the Code, it shall be allowed to deduct one hundred percent (100%) of the wages above mentioned.

SECTION 4. *Tax and Duty Exemption on Imported Capital Equipment*¹. —

- a. Within five (5) years from the date of effectivity of the Code — August 13, 1987 — registered new or expanding enterprises may be authorized by the Board to import machinery, equipment and accompanying spare parts exempt from the tariff duties and taxes payable thereon to the extent of one hundred per cent (100%) subject to the following conditions:
 - 1) That the machinery or equipment to be imported is not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices. Machineries and equipment shall not be considered available in sufficient quantity if they cannot be made available to the registered enterprise at the time of need or within a reasonable period. In determining whether quality is comparable, the rest, among others, will be whether or not production process and efficiency will be adversely affected or will result in poor quality products or increased cost of production. In determining reasonableness of the prices quoted by the domestic manufacturers, the Board may be guided by the acquisition cost of similar machinery, equipment and/or spare parts imported into the Philippines, if all applicable taxes and duties were paid thereon, plus fifteen per cent (15%) mark-up.
 - 2) That the machinery or equipment to be imported are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products or in the operation of its registered activity. The Board may, however, authorize the temporary use of machinery or equipment for a non-registered activity to maximize usage thereof or its permanent use for non-registered activities upon payment of proportionate taxes and duties thereon.
 - 3) That the approval of the Board is obtained by the registered enterprise before the purchase order is made or before the corresponding letters of credit are opened. Advance authority to open letters of credit for the importation of machinery or equipment may be allowed subject to the discretion of the Board which shall take into account the urgent need and the financial capability of the applicant.

¹ Department of Trade and Industry-Board of Investments (DTI-BOI) ADMINISTRATIVE ORDER NO. 12-01, Series of 2012, dated 10 May 2012, provides the Implementing Rules and Regulations of Executive Order No. 70, entitled "Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by Board Of Investments (BOI) Registered New or Expanding Enterprises"

- 4) Subject to reasonable allowance, the rated capacity of the machinery or equipment to be imported is within the registered capacity of the registered enterprise.
- b. Spare Parts. — The importation of "spare parts" shall be restricted to spare parts for the specific machinery and/or equipment authorized to be imported and shall cover no more than those as normally accompanying the original shipment and highly essential to the functioning of the machinery and/or equipment: Provided, That as a general rule, the cost of such spare parts shall not exceed ten per cent (10%) of the cost of the machinery or equipment where they will be used. Spare parts imported in excess of the said quantity or purchased separately from the machinery and/or equipment shall not be entitled to tax exemption under Article 39(c) of the Code but may be entitled to incentives under Article 39(m) of the Code, if qualified.
- c. Validity of Authority to Import. — The certificate of authority to import issued under Article 39(c) of the Code, shall be valid for a period of one (1) year from the date of issuance unless otherwise provided. Extension of validity may be granted in meritorious cases. The request for such extension should be filed before the expiration of the period sought to be extended.
- d. Publication. — The Board may require publication, in a newspaper of general circulation, of a notice to purchase machinery and equipment which may be domestically manufactured together with a list of capital equipment proposed to be imported, for the information of all domestic companies concerned. Domestic manufacturers of machinery, equipment and spare parts shall submit to the Board, within fifteen (15) calendar days from the date of publication, their offer to supply the equipment and/or spare parts proposed to be imported.
- e. Conditions for Importation. — Final Board approval of the importation of the equipment shall be covered by a certificate of authority, subject to the following conditions:
- 1) The importation should be covered by shipping documents in the name of the applicant as consignee to whom the shipment will be delivered directly by Customs authorities;
 - 2) For purposes of the issuance of the release certificate, the applicant shall submit to the Department of Finance official import documents indicating the description, quantity and price of the capital equipment imported, the names of the supplier and carrying vessel, and its anticipated or actual date of arrival, together with the certificate mentioned in Section 4(a) (3) hereof. Copies of the release certificate issued by the Department of Finance and pertinent documents shall be furnished to the Board for monitoring and statistical purposes;

For purposes of issuance of Central Bank Release Certificate, the applicant firm shall submit to the Central Bank copies of shipping and other related documents.

- 3) The capital equipment shall be installed and/or used in the site indicated by the applicant and shall not be used or transferred elsewhere without the prior approval of the Board.
- f. Notice of Board Action. — The action of the board on the application, whether it be approval or disapproval, shall be communicated in writing to the applicant. Copies of certificates of authority to import shall also be sent to the Department of Finance/Bureau of Customs and the Bureau of Internal Revenue.
- g. Performance Bond. — The posting of performance bond equivalent to the taxes and duties waived on imported capital equipment shall be a pre-condition to the exemption in cases of registered enterprises with export commitments where such companies have no track record of exports yet. In lieu of the bond, the Board may require a guarantee from the principal stockholder(s) or other form of guarantee to ensure performance. The Bond and/or guarantee shall be forfeited if the registered firm fails to meet any of its export commitment to the Board. The Board if it deems necessary may require registered firm to post performance bond to answer for its other commitments to the Board; e.g. value added, regional dispersal of industry.
- h. Advice of Withdrawal; Periodic Inspection of Equipment. — After the equipment has been withdrawn from the Customs premises, the registered enterprise shall give written notice thereof to the Board. Thereafter, the enterprise shall inform the Board of the date of installation and the date of commercial operation. For importation of additional equipment, the Board shall be informed of the installation date within ten (10) days therefrom. Such equipment shall, at any reasonable time, be subject to inspection by the Board for the purpose of verifying whether it has been actually installed and is being used by the registered enterprise in the production or manufacture of its products in the preferred area.
- i. International Canvassing. — In order to ensure a fair and reasonable price of the imported capital equipment, the Board may require international canvassing. However, if the total cost of capital equipment or industrial plant exceeds US\$5,000,000.00, the applicant-enterprise is required to comply with the provisions of P.D. 1764 on international competitive bidding.
- j. Prior Approval of Sale or Disposition of Equipment. — Any sale, transfer or disposition of capital equipment purchased under this Section within five (5) years from date of acquisition shall require prior approval from the Board, which approval shall be granted if the sale is made:

- 1) to another registered enterprise enjoying similar incentives;
- 2) for reasons of proven technical obsolescence as determined by the Board;
and
- 3) for purposes of replacement to improve and/or expand the operations of the registered enterprise.

Provided, however, that if the sale, transfer or disposition was made without prior Board approval, both the vendor and the transferee or assignee shall be solidarily liable to pay twice the amount of taxes and duties waived. Notice of the actions taken by the Board shall be furnished the Bureau of Internal Revenue.

Any sale, transfer or disposition made after five (5) years from date of acquisition shall not require prior Board approval but notice thereof shall be made within ten (10) days from the sale, transfer or disposition thereof.

SECTION 5. ***Tax Credit on Domestic Capital Equipment.*** —

- a. Within five (5) years from date of effectivity of the Code, registered enterprises shall be entitled, on all purchases of domestically manufactured machinery, equipment and accompanying spare parts, to a tax credit equivalent to the value of the tariff duties and taxes that would have been waived had the same been imported under Article 39(c) of the Code: *Provided*, That at the time E.O. 273 took effect, the registered company may opt to get a tax credit under either E.O. 273 or E.O. 226 for the tax portion: *Provided, further*, That if the registered company opts to get full tax credit under E.O. 226, the same shall be communicated to the Bureau of Internal Revenue.
- b. To be eligible for tax credit under this Section, the domestically manufactured equipment must have a local content and value added acceptable to the Board, the extent of which will depend on the present state of the industry.
- c. The conditions governing the sale of imported capital equipment shall apply in the sale of capital equipment purchased from domestic manufacturers.

SECTION 6. ***Exemption from Contractor's Tax.*** — Enterprises registered under the Code are exempt from contractor's tax, whether national² or local with respect to their registered operations.

SECTION 7. ***Simplification of Customs Procedures.*** — The Board and the Bureau of Customs shall simplify the procedures involved in the importation of capital equipment, spare parts, raw materials and supplies and exportation of registered products by registered enterprises in the operation of their bonded warehouses.

² The contractor's tax is now equated with the Value Added Tax (VAT) and BOI registered enterprises may be exempted or zero-rated.

SECTION 8. *Unrestricted Use of Consigned Equipment.* — The use of consigned machinery, equipment and spare parts which are reasonably needed in the registered operations and for the exclusive use of the registered enterprise beyond the period permitted under other laws, rules and regulations may be authorized by the Board for an unlimited period subject to the posting of a re-export bond, unless the same are authorized tax and duty-free under Article 39(c) of the Code.

Subject to the provisions of Section 4, Rule VI and Monetary Board Resolution No. 763, as amended, the Certificate of Authority to cover consigned machinery, equipment and spare parts under Article 39(g) shall be issued by the BOI which shall then be the basis of the exemption from the posting of the re-export bond.

The waiver of the re-export bond for "consignment" imports, as an exception to the provisions of Article 39(g) of the Omnibus Investments Code of 1987, of machinery, equipment and spare parts to be supplied by foreign suppliers strictly under "no-charge" basis may be granted, subject to the following conditions:

- a. An affidavit shall be executed by the foreign supplier represented by the President or Operating Head, duly acknowledged or authenticated by the nearest Philippine Embassy/Consulate abroad, with an attestation, as follows:
 - 1) That the machinery, equipment and spare parts to be shipped will be used by the consignee to manufacture products for export to the consignor;
 - 2) That the decision to consign said machinery, equipment and spare parts is a business decision unilaterally taken by the consignor and does not affect any contractual arrangement previously agreed upon between consignor and consignee such as processing fee, and
 - 3) That since title remains with the consignor, depreciation of consigned machinery and equipment will be reflected in the books of accounts of the consignor.
- b. Eligible imports shall be restricted to capital goods and spare parts to be supplied by the foreign principal to its local subsidiary/affiliate and covered by Certificates of Authority duly issued by the BOI which shall then be construed as a "no-dollar" transaction and as such, shall constitute an exception to the pertinent provisions of CB Circular No. 1029 prohibiting commercial importations under no-dollar basis.
- c. Machinery, equipment and spare parts imported under the next preceding paragraph shall be reflected in the consignee's books of accounts as consigned through a memorandum entry.

- d. The Central Bank reserves the right to examine pertinent books of accounts for which purpose it shall be periodically provided with audited financial statements of the local subsidiary/affiliate.
- e. Compliance with applicable laws, rules and regulations.

Transfers of consigned machinery, equipment, accessories and spare parts will be subject to Section 4(j) of this Rule. The transfer of consigned machinery, equipment accessories and spare parts not covered by a Certificate of Authority under the provisions of Article 39(c) and (m) shall be subject to the posting of the appropriate re-export bond by the transferee.

The registered enterprise shall notify the Board in writing when any consigned machinery, equipment, accessories and spare parts thereof are re-exported.

SECTION 9. ***Employment of Foreign Nationals.*** —

- a. ***Application and Accompanying Documents.*** — A registered enterprise, pioneer or non-pioneer, may avail of the incentive to employ foreign nationals under Article 39(h) of the Code by filing a sworn application thereof with the Board.

The application shall be accompanied by the following documents:

- 1) Certified copy of any written contract or agreement entered into by the registered enterprise for the services of the foreign national, indicating, among others, the willingness to train at least two (2) Filipino understudies to whom the alien will impart his skills required by the enterprise in as short a time as possible and not longer than his authorized stay;
- 2) Copy of the latest organizational chart of the registered enterprise, including or accompanied by a listing of the nationalities, positions and wages as well as other forms of compensation, of all the personnel employed in the same category as the foreign national, if the same has not been submitted; and
- 3) Curriculum vitae of the foreign national and other documents that the Board may require.

- b. ***Length of Employment.*** —

- 1) Every foreign national employed by authority of the Board under Article 39(h) of the Code shall be granted a period of not exceeding five (5) years and extendible from year to year depending upon the necessity of the registered enterprise: *Provided*, That no extension of stay herein shall be recommended by the Board to the Commissioner of Immigration and Deportation unless the training program required under the last paragraph

of Article 39(h) of the Code has been complied with satisfactorily: *Provided, further*, That the request for extension shall be filed with the Board at least thirty (30) days before the expiry date of the authorized stay.

- 2) Regardless of the foregoing length of employment authorized by the Board, when the majority of the capital stock of the enterprise is owned by foreign nationals, the positions of president, treasurer and general manager or their equivalents may be retained by foreign nationals.

The equivalents of president, treasurer and general manager shall be limited to persons actually performing the duties and responsibilities of president, treasurer and general manager, as the case may be, as shown in the organizational chart.

- c. *Training Program; Annual Reports.* — A registered enterprise employing foreign nationals with supervisory, technical or advisory functions shall provide a training program for Filipinos to be conducted by said foreign nationals each in his own specialized field; *Provided*, That every foreign national shall have at least two (2) Filipino understudies, and such training shall be done regularly during office hours; *Provided, further*, That the registered enterprise shall submit its training program within thirty (30) calendar days from arrival of the foreign national or from the day he reports for duty or from the date of registration in case the foreign national was employed before registration; and *Provided, finally*, That it shall submit an annual progress report to the Board on such training program within the month of June of every year containing the following data:

- 1) Name of foreign national and his field of specialization as prescribed in the program;
 - 2) Names and addresses of Filipino understudies under him;
 - 3) Number of hours of actual training for each understudy and specific subject(s) covered; and
 - 4) Reasons why Filipino understudies cannot yet take over the work of the foreign national, if such be the case.
- d. The spouse and unmarried children under twenty-one (21) years of age of the foreign national employed under the provisions of the Code shall be permitted to enter as dependents of the foreign national employee and reside in the Philippines during the period of employment of such foreign national in the registered enterprise.

For this purpose, an application for their entry as dependents of the foreign national must be filed with the Board, accompanied by a copy of the marriage

certificate and the birth certificate of each of the children desiring to enter and reside in the Philippines.

- e. *Registration with the Board.* — Every foreign national employed under the provisions of the code shall register with the Board within sixty (60) days from his arrival in the country or within thirty (30) days after commencement of employment. For this purpose, the foreign national shall present his passport and other travel documents; his alien certificate of registration and certificate of residence issued by the Commission on Immigration and Deportation; and submit two (2) copies of his recent photograph.

SECTION 10. *Tax and Duty Free Importation of Breeding Stocks and Genetic Materials.* — Within ten (10) years from date of registration or commercial operation, the exemption from payment of tariff duties and taxes on importation of breeding stocks and genetic materials under Art. 39(i) of the Code shall be available to registered enterprises, pioneer and non-pioneer. Such importation shall cover breeding stocks and genetic materials necessary for expansion or improvement or for replacement of proven unproductive breeding stock and genetic materials.

- a. *Conditions on Importation of Breeding Stocks and Genetic Materials.* — Tax-free importation of breeding stocks and genetic materials shall be authorized under the following conditions:

- 1) That the strains/breeding stocks to be imported are not domestically available at reasonable prices;
- 2) That they shall be used exclusively by the registered producer for the improvement of the strains/breeding stocks of its livestock, poultry, fish and/or plants; and
- 3) That prior approval of the Board must have been obtained by the registered enterprise before the purchase order was made or before the opening of the corresponding letters of credit.

- b. *Prior Approval of Sale or Disposition of Breeding Stocks and Genetic Materials.* — Any sales, transfer or disposition of the breeding stocks and genetic materials purchased under Art. 39(i) of the Code within: (a) four (4) years from date of acquisition in cases of large cattle as the term is understood in agriculture or (b) two (2) years from date of acquisition in cases of poultry as the term is understood in agriculture, shall require prior Board approval.

SECTION 11. *Tax Credit on Domestic Breeding Stocks and Genetic Materials.* —

- a. Within ten (10) years from date of registration or commercial operation, registered enterprises shall be entitled, on all purchases of domestic breeding stocks and genetic materials reasonably needed in its registered operations, to a

tax credit equivalent to one hundred percent (100%) of the value of the tariff duties and taxes that would have been paid had the same been imported under Article 39(j) of the Code.

- b. The conditions governing the sale of imported breeding stocks and genetic materials as provided in the preceding Section shall apply in the sale of breeding stocks and genetic materials purchased from domestic manufacturers.

SECTION 12. *Tax Credit for Taxes and Duties on Raw Materials of Export Products.* —

The tax credit that may be enjoyed by a registered enterprise under Article 39(k) of the Code refers to the tariff duties and internal revenue taxes actually paid by it on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its registered export products and forming part thereof. A tax credit certificate shall be issued in accordance with Article 21 of the Code.

The tax credit application shall be filed within one (1) year from actual exportation of the final export product in cases of direct exportation and two (2) years in cases of indirect exportation. Raw materials and semi-manufactured products covered by the tax credit must have been purchased for not more than two (2) years from date of exportation. In meritorious cases, the Board may extend said period after consultation with the Bureau of Internal Revenue: *Provided*, That at the time E.O. 273 took effect, the registered company may opt to get a tax credit under either E.O. 273 or E.O. 226 for the tax portion: *Provided, further*, That if the registered company opts to get full tax credit under E.O. 226, the same shall be communicated to the Bureau of Internal Revenue.

SECTION 13. *Exemption from Taxes and Duties on Imported Supplies and Spare Parts in a Bonded Manufacturing Warehouse.* —

- a. A registered enterprise operating a bonded manufacturing warehouse may import tax and duty-free supplies and spare parts for machineries and equipment reasonably needed in its registered operation.
- b. All importations of supplies and spare parts shall immediately be authorized by the Bureau of Customs to be transferred to the bonded manufacturing warehouse subject to the following conditions:
 - 1) Within 15 days from date of transfer of the shipment to the bonded manufacturing warehouse, the registered enterprise shall file an application with the Board for tax and duty exemption certificates for such spare parts and supplies.

Firms who failed to file applications within 15 days shall be liable to pay the basic and daily fines provided herein.

- 2) After due evaluation, the Board shall issue a tax and duty exemption certificate to the registered enterprise. Such certificate shall cover spare parts and supplies that are found to be reasonably needed by the applicant in its registered operation.
- 3) The Customs duty and internal revenue tax shall be collected on all spare parts and supplies not covered by a tax and duty exemption certificate.

SECTION 14. **Wharfage Dues and Export Tax Exemption.** — A registered enterprise shall be entitled to exemption from wharfage dues and any export tax, impost or fee on the exportation of its registered export products produced by it or bought from a registered export producer qualified to avail itself of exemption from said tax, if it were to export such product directly or through another export producer.

SECTION 15. **Existing Enterprises.** — Unless otherwise indicated herein or in the Investment Priorities Plan, existing enterprises registered under the Code, if qualified therefor, may avail of all applicable incentives except income tax holiday and capital equipment incentives.

SECTION 16. **Restricting Availment of Certain Incentives.** — The Board may restrict availment of certain incentives not needed by a project by indicating such restriction in the Investment Priorities Plan, by publication after due consultation with the private sector, or by provisions of the terms and conditions of registration. Any such restriction shall apply prospectively.

RULE VII TRANSFERABILITY OF TAX CREDIT CERTIFICATE

Tax credit certificates for taxes and duties that would have been paid on domestic capital equipment purchased, and on raw materials, supplies and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof shall be issued by the Secretary of Finance or his representative, or by the Board, if so delegated by the Secretary of Finance.

Said certificate may be transferred in accordance with the memorandum of agreement between the Department of Finance and the Board of Investments dated October 5, 1982. However, for tax credits not covered by the said memorandum, i.e., net value earned and net local content tax credit certificates issued under P.D. 1789, as amended, they shall be transferable only to domestic raw materials or component suppliers of the registered enterprise.

RULE VIII PUBLIC PARTICIPATION REQUIREMENT

SECTION 1. **General Rule.** — A registered enterprise, unless otherwise exempt under the following section shall, at anytime within ten (10) years from date of registration, be required by the Board to offer for sale to the public ten percent (10%) or more of its total subscribed capital stock, voting and non-voting, and any increase thereof. The term "public" shall include Filipino and alien investors and that the period of public offering shall be at least six (6) months from the date of publication of the offer.

SECTION 2. **Exemption** – The rules does not apply to the following registered enterprises:

- a. Sole Proprietorship
- b. Partnership
- c. Close Corporations

SECTION 3. **Deferments.** — On a case to case basis, the Board may defer compliance by the following registered enterprises:

- a. Pioneer registered enterprise;
- b. Registered enterprises experiencing financial distress; and
- c. Such other enterprises which by reason of their peculiar circumstances are not deemed ready for public participation taking into account the nature, structure and/or other condition of the enterprise.

SECTION 4. **Substantial Compliance.** — For purposes of this Rule, the following registered enterprises shall be deemed to have substantially complied with the objectives of public participation:

- a. Those that are publicly held such as those listed in any of the duly accredited stock exchanges and are actively traded therein;
- b. Those that are wholly owned or at least seventy percent (70%) owned and controlled by publicly-held corporations;
- c. Those exporting one hundred percent (100%) of their production;
- d. Registered enterprises, the stocks of which are held by a substantial number of rank-and-file employees who are not related within the third civil degree of consanguinity or affinity with the majority stockholders;
- e. Registered enterprises, the stocks of which are held by employees' trust funds or retirement or pension funds: *Provided*, That the trustee is a "Philippine National"

as defined in Article 15 of the Code and sixty percent (60%) of the trust fund must accrue to the benefit of Philippine nationals: *Provided, further*, That both the retirement plan and the trust fund shall first be approved by the Board.

In the last two foregoing cases, the Board may still require a public offering if the stock purchases do not fully constitute the required minimum public participation.

SECTION 5. *Shares to be Offered.* — For purposes of this Rule, the shares to be offered must be convertible to voting shares within five (5) years at the option of the stockholders. The shares need not be new or original issue.

The shares shall be offered on a non-callable basis: *Provided*, That they may be redeemable by the corporation not earlier than five (5) years from date of issue.

SECTION 6. *Price and Terms of Public Offering.* — The price and terms of the public offering shall be submitted to the Board who shall determine the fair and reasonable price considering the historical and future earnings of the corporation, and the amount and frequency of stock or cash dividend: *Provided*, That for preferred shares, the Board reserves the right to set minimum dividend returns in no case less than twelve percent (12%) per annum and/or require that such shares be participating.

If a minimum amount of subscription is required of each individual purchaser, the same shall be within the reach of small investors as determined by the Board and the total subscription price may be payable in installments.

SECTION 7. *Procedural Requirements.* — One (1) month before the date the registered enterprise is required by the Board, to comply with the ten percent (10%) public participation requirement either by virtue of original registration, or approval of increase in its capital stock, the registered enterprise shall submit for Board approval its prospectus for public offering indicating, among others, the following:

- a. pertinent data about the registered enterprise;
- b. description of shares to be issued, whether voting or non-voting, with or without par value, and other features;
- c. terms of offering and mode of payment;
- d. highlights of operations and financial position for the past five (5) years;
- e. management profile of the registered enterprise;
- f. current ratio and other financial relationships;
- g. earnings per share including total dividends paid, either in cash or property;

- h. debt-equity ratio, present and projected;
- i. statement of BOI incentives available to the registered enterprise and its stockholders;
- j. statement of SEC registration or exemption from the sale of securities.

Upon approval of the prospectus, the same shall be published once in a newspaper of general circulation and an announcement of the public offering shall be posted at GSIS, SSS and banks with investible trust funds: *Provided*, That if the SEC requires publication of the sale or offering of securities, the publication herein prescribed need not be complied with.

If the offering is limited to trust funds or rank-and-file employees of the corporation, in lieu of a prospectus, the registered enterprise may submit the terms of said offering for BOI approval. Sufficient notices in the office and factory premises of the company shall be posted if the offering is made direct to employees.

RULE IX CONDITIONS FOR AVAILMENT OF INCENTIVES IN GENERAL

SECTION 1. ***Compliance with Obligations.*** — The enterprise shall observe and abide by the provisions of the Code and its implementing rules and regulations, and take adequate measures to ensure that its obligations thereunder as well as those of its officers, employees, and stockholders are faithfully discharged.

SECTION 2. ***Compliance with Directives.*** — The enterprise shall comply with the directives and instructions which the Board may issue from time to time in pursuance of its authority under the law.

SECTION 3. ***Visitorial Powers.*** — The enterprise shall allow the duly authorized representatives of the Board to inspect and examine its books of accounts and other pertinent records and documents to ascertain compliance with the Code and its implementing rules and regulations, and the terms and conditions of its registration.

SECTION 4. ***Taxes and Duties Waived.*** — Registered enterprises shall submit to the Board of Investments certified true copies or xerox copies of all papers or documents evidencing their availment of incentives such as taxes, duties, charges, fees or dues as determined and computed by the Bureau of Internal Revenue, Bureau of Customs, or government agency concerned, of which said enterprises are exempt from payment thereof under the Code. Said papers or documents should be submitted within fifteen (15) days after official action thereon by the government agency concerned has been completed.

SECTION 5. ***Delinquent Enterprises.*** — No availment of incentives may be allowed an enterprise delinquent in compliance with any of the terms and conditions of registration, including such reports and statistical data which may be required by the Board.

RULE X DURATION OF INCENTIVES

SECTION 1. All incentives in favor of registered enterprises and investors therein, as long as they remain so and commit no violation of the Code, these rules and regulations, or the terms and conditions of their certificate of registration shall continue, unless otherwise provided for in the Code, rules and regulations and/or certificate of registration. However, the period of availment of incentives shall in no case exceed ten (10) years.

SECTION 2. Upon the filing of a petition for cancellation or suspension of availment of incentives with the Board, all applications for availment of incentives shall be suspended until the final determination of the petition by the Board.

RULE XI SUBMISSION OF REPORTS AND OTHER DOCUMENTS

Every registered enterprise shall, for each preferred area of investment, submit to the Board the following reports and/or documents within the time herein prescribed:

- a. Amendment of articles of incorporation or by-laws — within thirty (30) calendar days from the date of registration of said amendments with the Securities and Exchange Commission;
- b. Replacement of any director or other principal officers, with an indication of the nationality of each new officer, and accompanied by a copy of his certificate of citizenship, if a naturalized Filipino — within thirty (30) calendar days after said replacement;
- c. List of alien officers and employees, their nationalities and positions, together with a copy of its plantilla — within the month of January every year;
- d. If the enterprise has alien employees discharging supervisory, technical or advisory functions, its programs for training Filipinos in said functions — within thirty (30) calendar days from registration of the enterprise; otherwise, within thirty (30) calendar days from the date the alien employee was employed;
- e. Report on the implementation of the above training program — within the month of June every year;

- f. Change of address or principal place of business — within ten (10) calendar days after such change;
- g. Change of its authorized representative to the Board — within ten (10) calendar days after such change;
- h. Notice of the date the enterprise began operation — within ten (10) calendar days from said date;
- i. Notice of projected investment abroad — not later than thirty (30) calendar days before any such investment is made;
- j. Income tax returns — thirty (30) calendar days from the filing thereof;
- k. Audited annual financial statements, viz.: (1) profit and loss statement; and (2) balance sheets — one (1) month from date of filing with the Bureau of Internal Revenue of the annual income tax return for the preceding calendar/fiscal year;
- l. Quarterly production and sales report — one (1) month after the end of each quarter;
- m. Form S-1 — January 31 of each year;
- n. Chart of Accounts — Three (3) months after issuance of certificate of registration;
- o. Statement of the total peso value of incentives availed of under the Code during the previous calendar year — not later than January 31 of the current year;
- p. The enterprise shall submit to the BOI an environmental compliance certificate (ECC) from the E.I.A. System from time to time, as may be required by the BOI after sufficient notice.

RULE XII
AUTOMATIC CANCELLATION, WITHDRAWAL FROM BUSINESS OR SUSPENSION
OF OPERATIONS

SECTION 1. ***Non-Implementation of Project Timetable.*** — A delay of one (1) year in the implementation of the project timetable as set by the Board shall automatically cancel the registration unless otherwise reinstated by the Board. Within fifteen (15) days from receipt of notice of automatic cancellation, the registered firm shall surrender its Certificate of Registration.

SECTION 2. ***Withdrawal from Business; Cessation of Operations.*** — Whenever a registered enterprise decides to withdraw from business, or suspend its operations in the preferred area for at least six (6) months, a written notice thereof shall be sent to the Board before the decision is implemented.

Withdrawal from business operations in the preferred area shall automatically cancel the certificate of registration, which shall then be turned over to the Board. Upon such withdrawals, the enterprise and its stockholders shall cease to be entitled to the incentives provided in the Code, except the basic rights and guarantees provided in Title II of the Code.

The effect of withdrawal or suspension of operations in the preferred area shall, in each particular instance, be determined by the Board, taking into account the reasons therefor and the condition of the enterprise concerned. The Board may, in appropriate cases, require refund of incentives in whole or in part, with or without interest or penalties.

RULE XIII NON-REGISTERED ACTIVITIES

An enterprise engaged or proposing to engage in non-registered activities shall install an adequate accounting system segregating the investments, revenues, sales, receipts, purchases, payrolls, costs, expenses and profits and losses of its registered operations from those of its non-registered domestic and export operations; or the Board may, in appropriate cases, require the establishment of a separate entity for the registered activity in order to facilitate the proper implementation of this Code.

PART III

BOOK II FOREIGN INVESTMENTS WITHOUT INCENTIVES

Book II of the Omnibus Investment Code has been repealed by Republic Act no. 7042, otherwise known as the “Foreign Investment Act of 1991”

PART IV MULTINATIONAL COMPANIES ESTABLISHING REGIONAL OR AREA HEADQUARTERS OR REGIONAL OPERATING HEADQUARTERS IN THE PHILIPPINES

**RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 8756
AMENDING BOOKS III & IV OF EXECUTIVE ORDER NO. 226, OTHERWISE
KNOWN AS THE OMNIBUS INVESTMENTS CODE, AS AMENDED**

RULE XVII

APPLICATION FOR REGISTRATION

A. REGIONAL OR AREA HEADQUARTERS (RHQ)

SECTION 1. **Filing of Application.** - Any multinational company may file, upon payment of filing fee, an application with the Securities and Exchange Commission (SEC) through the Registration Division of the Board of Investments for the establishment of the regional or area headquarters in the Philippines, in accordance with the form prescribed for the purpose, accompanied by the following documents:

- a. A certification from the Philippine Consulate/Embassy, or the Philippine Commercial Office or from the equivalent office of the Philippine Department of Trade and Industry in the applicant's home country that said foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia-Pacific Region and other foreign markets. In case the certification is issued by the equivalent office of the Philippine Department of Trade and Industry, the same shall be authenticated by the Philippine Consulate/Embassy.
- b. A duly authenticated certification from the principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its Board of Directors or governing body to establish its regional or area headquarters in the Philippines, specifying that:
 - 1) The activities of the regional or area headquarters shall be limited to acting as a supervisory, communications and coordinating center for its subsidiaries, affiliates and branches in the region;
 - 2) The regional or area headquarters will not derive any income from sources within the Philippines and will not participate in any manner in the management of any subsidiary or branch office it might have in the Philippines nor shall it solicit or market goods and services whether on behalf of its mother company or its branches, affiliates, subsidiaries or any other company; and
 - 3) The regional or area headquarters shall notify the Board of Investments and the Securities and Exchange Commission of any decision to close down or suspend operations of its headquarters at least fifteen (15) days before the same is effected.
- c. An undertaking that the multinational company will remit into the country, through an authorized agent bank, such amount as may be necessary to cover its operations in the Philippines but which amount will not be less than fifty thousand United States dollars (US\$ 50,000.00) or its equivalent in other foreign currencies annually. Within thirty (30) days from receipt of Certificate of Registration from the Securities and Exchange Commission, the multinational company will submit to the Securities and Exchange Commission a certificate of inward remittance

from a local bank showing that it has remitted to the Philippines the amount of at least fifty thousand United States dollars (\$50,000.00) or its equivalent in other foreign currencies and converted the same to Philippine currency. Annually, within thirty (30) days from the anniversary date of the multinational company's registration as a regional or area headquarters with the Securities and Exchange Commission, it will submit proof to the Securities and Exchange Commission of inward remittance amounting to at least fifty thousand United States dollars (\$50,000.00) or its equivalent in other foreign currencies converted to Philippine currency through an authorized agent bank during the past year.

SECTION 2. *Issuance of Certificate of Registration and License.* - Upon submission of all the required documents and the application having been favorably endorsed by the Board of Investments, the Securities and Exchange Commission shall issue to the applicant company a Certificate of Registration and License authorizing it to establish a regional or area headquarters in the Philippines.

SECTION 3. *Reporting Requirements.* - Every registered regional or area headquarters of a multinational company shall submit to the Board of Investments and the Securities and Exchange Commission the following reports:

- a. A general information sheet in the prescribed form showing, among others, the names, positions, titles and salaries of all the officers and personnel of the regional or area headquarters in the Philippines, within thirty (30) days after the issuance of the Certificate of Registration and License.
- b. An annual report showing its operation in the Philippines, including proofs of inward remittance amounting to at least fifty thousand United States dollars (US\$ 50,000.00) or its equivalent in other foreign currencies converted into Philippine Pesos, and its expenditures in the Philippines during the past year. All funds of the Regional Headquarters shall be utilized for salaries and other emoluments, including fringe benefits of personnel, rental of offices, transportation expenses, communication fees and similar costs for the maintenance of the regional or area headquarters in the Philippines.

B. REGIONAL OPERATING HEADQUARTERS (ROHQ)

SECTION 4. *Filing of Application.* - Any multinational company may file, upon payment of filing fee, an application with the Securities and Exchange Commission through the Registration Division of the Board of Investments for the establishment of the regional operating headquarters in the Philippines, in accordance with the form prescribed for the purpose, accompanied by the following documents:

- a. A certification from the Philippine Consulate/Embassy, or the Philippine Commercial Office, or from the equivalent office of the Philippine Department of Trade and Industry in the applicant's home country that said foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices

in the Asia-Pacific Region and other foreign markets. In case the certification is issued by the equivalent office of the Philippine Department of Trade and Industry, the same shall be authenticated by the Philippine Consulate/Embassy.

- b. A duly authenticated certification from the principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its Board of Directors or governing body to establish its regional operating headquarters in the Philippines:

1) Specifying any of the qualifying services it will render:

- general administration and planning;
- business planning and coordination;
- sourcing/procurement of raw materials and components;
- corporate finance advisory services;
- marketing control and sales promotion;
- training and personnel management;
- logistics services;
- research and development services, and product development;
- technical support and maintenance;
- data processing and communication; and
- business development.

The ROHQ shall not offer qualifying services to entities other than its affiliates, branches or subsidiaries, as declared in its registration with the Securities and Exchange Commission nor shall it directly and indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company.

ROHQs cannot directly or indirectly engage in the sale and distribution of goods and services of its mother company, branches, affiliates, subsidiaries or any other company.

2) The regional operating headquarters shall notify the Board of Investments, the Securities and Exchange Commission and in the case of ROHQ's of banking and quasi-banking institutions the *Bangko Sentral ng Pilipinas*, of any decision to close down or suspend operations of its headquarters at least fifteen (15) days before the same is effected.

- c. An undertaking that the multinational company will initially remit into the country within thirty (30) days from receipt of the certificate of registration with the SEC through the BOI such amount as may be necessary to cover its operations in the Philippines but which amount will not be less than two hundred thousand United States dollars (\$200,000.00) or its equivalent in other foreign currencies.

SECTION 5. *Issuance of Certificate of Registration and License.* - Upon submission of all the required documents and the application having been favorably endorsed by the Board of Investments, and the Bangko Sentral ng Pilipinas (BSP) in case of ROHQs of banking or quasi-banking institutions, the SEC shall issue to the applicant company a Certificate of Registration and License authorizing it to establish a regional operating headquarters in the Philippines.

After securing the SEC Certificate of Registration and License, ROHQs of banking or quasi-banking institutions shall obtain a license from the BSP in accordance with the prescribed form.

Within thirty (30) days from receipt of Certificate of Registration, the multinational company will submit to the Securities and Exchange Commission a certificate of inward remittance from a local bank showing that it has remitted to the Philippines the amount of at least two hundred thousand United States dollars (\$200,000.00) or its equivalent in other foreign currency converted the same to Philippine currency.

SECTION 6. *Reporting Requirements.* - Every registered operating headquarters of a multinational company shall submit to the Board of Investments and the Securities and Exchange Commission the following reports:

- a. A general information sheet in the prescribed form showing, among others, the names, positions, titles and salaries of all the officers and personnel of the regional operating headquarters in the Philippines, within thirty (30) days after the issuance of the Certificate of Registration and License and annually thereafter.
- b. An annual financial report together with an audited financial statement and income tax return.

C. CONVERSION OF EXISTING REGIONAL OR AREA HEADQUARTERS TO REGIONAL OPERATING HEADQUARTERS

SECTION 7. *Filing of Application for Conversion.* - A regional or area headquarters may file its application for conversion into a regional operating headquarters with the Securities and Exchange Commission through the Registration Division of the Board of Investments, in accordance with the prescribed form, accompanied by the following documents:

- a. A petition under oath to amend license signed by the Resident Agent or duly authorized officer of the regional or area headquarters requesting conversion into a regional operating headquarters and indicating the qualifying services to be rendered by the applicant;
- b. A duly authenticated certification from the principal officer of the foreign entity to the effect that said foreign entity has been authorized by its Board of Directors or governing body to convert its regional headquarters to a regional operating

headquarters specifying the qualifying services it will render as provided for under Section 4 of the Rules; and

- c. Proof by means of a bank certification that at the time of conversion it has at least two hundred thousand United States dollars (\$200,000.00) or more.

The ROHQ shall not offer qualifying services to entities other than its affiliates, branches or subsidiaries, as declared in its registration with the Securities and Exchange Commission nor shall it directly and indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company.

The ROHQ cannot directly and indirectly engage in the sales and distribution of goods and services of its mother company, branches, affiliates, subsidiaries or any other company.

SECTION 8. *Issuance of Certificate of Registration and License.* - Upon submission of all the required documents and the application having been favorably endorsed by the Board of Investments and the Bangko Sentral ng Pilipinas in case of ROHQs of banking and quasi-banking institutions, the SEC shall issue to the applicant company an amended Certificate of Registration and License authorizing it to establish a regional operating headquarters in the Philippines.

The Certificate of Registration and License for the establishment and operation of the regional or area headquarters of the multinational company shall be surrendered to the SEC for cancellation.

ROHQs of banking and financial institutions, in addition to the foregoing application, shall also obtain licenses from the Bangko Sentral ng Pilipinas in accordance with its prescribed rules and regulations.

D. INCENTIVES TO EXPATRIATES

SECTION 9. *Multiple Entry Visa.* - Upon submission of all necessary documents, the Bureau of Immigration shall issue the multiple entry special visa to foreign personnel of regional or area headquarters and regional operating headquarters of multinational companies, their respective spouses and unmarried children under twenty-one (21) years of age, if accompanying them or if following to join them after their admission into the Philippines as nonimmigrant within seventy-two (72) hours upon submission of all required documents. This is without prejudice to the authority of the Department of Foreign Affairs to issue visas.

The foregoing documents shall include a duly authenticated certificate issued by a responsible officer of the applicant company stating to the effect that the person who seeks entry into the Philippines is an executive of the applicant company and will work exclusively for applicant's regional or area headquarters or regional operating

headquarters which is duly licensed to operate in the Philippines, and that he will receive a salary and will be paid by the headquarters in the Philippines an amount equivalent to at least twelve thousand United States dollars (\$12,000.00), or the equivalent in other foreign currencies per annum.

The visa shall be valid for a period of three (3) years to enter the Philippines.

The admission and stay shall be co-terminus with the validity of the multiple entry special visa. The stay, however, is extendible for three (3) years upon submission to the Bureau of Immigration of a sworn certification by a responsible officer of the regional or area headquarters or regional operating headquarters: that its license to operate remains valid and subsisting and that the regional headquarters or regional operating headquarters has withheld tax due on compensation and the same has been paid to the Bureau of Internal Revenue.

Non-immigrants who have been admitted under the multiple entry special visa, as well as their respective spouses and dependents, shall be exempt from: the payment of all fees due under immigration and alien registration laws; securing alien certificates of registration; and obtaining emigration clearance certificates, except reasonable administrative costs. They are also exempt from all types of clearances required by any government department or agency, except that upon final departure from the Philippines the employer of the said nonimmigrants shall so advise in writing the Bureau of Immigration at least five (5) working days prior to the non-immigrant's departure and the finally departing non-immigrant employee shall be required to submit to the said office a tax clearance from the Bureau of Internal Revenue.

SECTION 10. *Withholding Tax of 15% on Compensation Income.* - Alien executives occupying managerial and technical positions employed by the regional or area headquarters and regional operating headquarters of multinational companies shall be subject for each taxable year upon their gross income received as salaries, wages, annuities, compensations, remunerations and emoluments to a final tax equal to fifteen percentum (15%) of such gross income.

The same tax treatment is applicable to Filipinos employed and occupying the same positions as those aliens employed by multinational companies, regardless of whether or not there is an alien executive occupying the same position.

Qualified Filipino employees shall have the option to be taxed at either 15% of gross income or at the regular tax rate on their taxable income in accordance with the National Internal Revenue Code, as amended by RA 8424.

SECTION 11. *Tax and Duty Free Importation of Personal and Household Effects.* - This privilege may be enjoyed by an alien executive of the regional or area headquarters and regional operating headquarters of a multinational company provided that the personal and household effects shall arrive in the Philippines within ninety (90)

days before or after conversion of the alien executive's admission category to multiple entry visa issued.

SECTION 12. *Travel Tax Exemption.* - Travel tax exemption shall be granted by the Philippine Tourism Authority (PTA) upon recommendation of the BOI, to personnel of regional or area headquarters and regional operating headquarters of multinational companies and the dependents of such foreign personnel if joining them during the period of their assignment in the Philippines, as certified by the Board of Investments.

For this purpose, the regional or area headquarters or regional operating headquarters shall submit a certification as to the purpose, duration and destination of travel.

E. INCENTIVES TO REGIONAL OR AREA HEADQUARTERS AND REGIONAL OPERATING HEADQUARTERS

SECTION 13. *Corporate Income Tax.* - Regional or area headquarters are exempt from payment of corporate income taxes. However, they shall file an annual information return of a tax exempt corporation in accordance with the provisions of National Internal Revenue Code, as amended and its Implementing Rules and Regulations Income derived by ROHQs from performing the qualifying services shall be subject to the preferential rate of 10% on taxable income in accordance with the provisions of the National Internal Revenue Code, as amended. Moreover, any income derived from Philippine sources by the ROHQ when remitted to the parent company shall be subject to the tax on branch profit remittances as provided for in Section 28 (a) (5) of the National Internal Revenue Code, as amended.

SECTION 14. *Value-Added Tax.* - Regional or area headquarters shall be exempted from the value-added tax. The sale or lease of goods and property and the rendition of services to regional or area headquarters shall be subject to zero percent (0%) VAT rate as provided for in the National Internal Revenue Code, as amended or other existing laws.

The regional or area headquarters shall not be required to obtain or secure a prior permit from the Bureau of Internal Revenue for Zero-Rating of the suppliers sale of goods and services to them.

In general, the regional operating headquarters shall be subject to the ten percent (10%) value-added tax unless otherwise provided under the National Internal Revenue Code, as amended or other existing laws.

SECTION 15. *Exemption from All Kinds of Local Taxes, Fees, or Charges.* - The regional or area headquarters and regional operating headquarters of multinational companies shall be exempt from all kinds of local taxes, fees, or charges imposed by a local government unit except real property tax on land improvements and equipment.

SECTION 16. *Tax and Duty Free Importation of Training Materials and Equipment.*

- Regional or area headquarters and regional operating headquarters shall enjoy tax and duty free importation of equipment and materials for training and conferences which are needed and used solely for their functions as regional or area headquarters or regional operating headquarters and which are not locally available subject to the prior approval of the Board of Investments.

Training materials shall refer to equipment and materials exclusively appropriate and shall be used in holding seminars and conferences, such as video equipment, slides, printed materials and other visual aids.

The sale or disposition of equipment within two years after importation, entered tax and duty free, shall require prior approval of the Board of Investments and prior payment of applicable taxes and duties waived in favor of RHQ/ROHQ.

SECTION 17. *Importation of Motor Vehicles.* - Regional or area headquarters and regional operating headquarters shall be entitled to the importation of new motor vehicles subject to the payment of the corresponding taxes and duties.

SECTION 18. *Suspension of Availment of Incentives.* - No availment of incentives by regional or area headquarters or regional operating headquarters shall be allowed if found delinquent in the compliance of any of the terms and conditions for registration including such reports and statistical data which may be required by the SEC or the BOI.

SECTION 19. *Visitorial Powers.* - In the public interest and/or for the enforcement of any applicable law, rules and regulations, the BOI, SEC or any government office having jurisdiction on the matter may, through any of its duly authorized representatives, conduct necessary examination of records and books of accounts of the regional or area headquarters and regional operating headquarters in the Philippines, make pertinent inquiries from its officials and take such action as may be necessary for the proper exercise of its authority.

SECTION 20. *Withdrawal/Closure of Regional Headquarters and Regional Operating Headquarters.* - Applications for withdrawal or closure of regional or area headquarters and regional operating headquarters shall be filed with the Securities and Exchange Commission for appropriate consideration provided that a favorable recommendation is obtained from the Board of Investments.

SECTION 21. *Penalties.* - Any violation by the regional or area headquarters or regional operating headquarters in the Philippines of any of the provisions of Book III of the Omnibus Investments Code of 1987, as amended or these rules and regulations, or other terms and conditions of its registration, or any provision of any existing applicable laws shall constitute a sufficient cause for the cancellation of its Certificate of Registration and License.

RULE XVIII
MULTINATIONAL COMPANIES ESTABLISHING REGIONAL WAREHOUSES

SECTION 1. ***Application for the Establishment of a Regional Warehouse.*** - Multinational Companies who have established regional or area headquarters or regional operating headquarters under Book III of the Omnibus Investments Code of 1987, as amended, shall file an application for the establishment of regional warehouse(s) with Philippine Economic Zone Authority or the concerned ecozone authority in a form prescribed for this purpose, describing the premises, the location and capacity of the regional warehouse and the purpose for which the building is to be used, accompanied by the following documents:

- a. A certification from the Philippine Consulate/Embassy, or the Philippine Commercial Office or from the equivalent office of the Philippine Department of Trade and Industry in the applicant's home country that said foreign firm is an entity engaged in international trade and supplies spare parts, components, semi-finished products and raw materials to its distributors or markets in the Asia-Pacific Region and other foreign markets. In case the certification is issued by the equivalent office of the Philippine Department of Trade and Industry, the same shall be authenticated by the Philippine Consulate/Embassy.
- b. A certification from the principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its Board of Directors or governing body to establish its regional warehouse in the Philippines, specifying that:
 - 1) The activity of the regional warehouse shall be limited to serving as a supply depot for the storage, deposit, safekeeping of its spare parts, components, semi-finished products and raw materials including the packing, covering, putting up, marking, labelling and cutting or altering to customers specification, mounting and/or packaging into kits or marketable lots thereof, to fill up transactions and sales made by its head offices or parent companies and to serving as a storage or warehouse of goods purchased locally by the home office of the multinational for export abroad;
 - 2) The articles to be stored in the warehouse are spare parts, components, semi-finished products and raw materials of the multinational company operator for distribution and supply to its Asia Pacific and other foreign markets including packaging, coverings, brands, labels and warehouse equipment as provided in Article 69(a) of R.A. 8756;
 - 3) That the entry or importation, storage or re-export of the goods destined for or to be stored in the regional warehouse will not involve any dollar outlay from Philippine sources;

- 4) That they are of such character as to be readily identifiable for re-export; and in case of local distribution they shall be subject to Article 68 (1), Article 69 paragraph (b).
- 5) That for a Regional Warehouse operating outside the ecozone, it shall file an ordinary warehousing bond in an amount equal to one hundred percent (100%) of the ascertained customs duties on the articles imported without prejudice to its filing a general warehousing bond in lieu of the ordinary warehousing bond;

For a regional warehouse operating inside the ecozone, it shall comply with all rules, regulations and procedures of PEZA or the concerned ecozone authority, and the Bureau of Customs in regard to the movement of goods into and from the regional warehouse in the ecozone.

- 6) The regional warehouse shall not directly engage in trade nor directly solicit business, promote any sale, nor enter into any contract for the sale or disposition of goods in the Philippines, *Provided* that a regional warehouse may be allowed to withdraw imported goods from said warehouse/s for delivery to an authorized distributor in the Philippines: *Provided, however*, that the corresponding taxes, customs duties and charges under the Tariff and Customs Code and value-added tax (VAT) have been paid by the headquarters of the said multinational upon arrival of such goods.
- 7) The regional warehouse shall maintain a separate book of accounts of its delivery of said goods to the aforesaid distributor in the Philippines which shall be treated as a sale made by the headquarters rather than that of its head office, any representation as to who is the seller to the contrary notwithstanding, *Provided*, That the aforementioned sale shall be governed by the provisions of value-added tax in accordance with the National Internal Revenue Code as amended by R.A. 8424 Provide, furthermore, that the income from the aforementioned sale to the said distributor shall be treated as income derived by the said headquarters from sources within the Philippines and shall be subject to the corporate income tax of a resident foreign corporation under the NIRC as amended, the provision of any law to the contrary notwithstanding.
- 8) The personnel of a regional warehouse will not participate in any manner in the management of any subsidiary, affiliate or branch office it might have in the Philippines other than the activities allowed under the law and shall be responsible for the operation of the regional warehouse subject to the provisions of this Code.

SECTION 2. *Multinational Companies without Regional Headquarters or Regional Operating Headquarters.* - Multinational companies who have not established regional

or area headquarters or regional operating headquarters in the Philippines under Book III hereof shall be allowed to file simultaneously an application to establish a regional warehouse(s) under Book IV of the Code in a form prescribed for the purpose accompanied by the documents mentioned in the preceding section and under Section I, Rule XVII of these Implementing Rules and Regulations.

The application for the establishment of the regional warehouse by the applicant with the PEZA or concerned ecozone authority shall be processed upon receipt thereof. Issuance of the license for the regional warehouse shall, however, be held in abeyance until the Certificate of Registration and License to establish regional headquarters or regional operating headquarters under Book III of the Code is issued by the Securities and Exchange Commission.

SECTION 3. *Due Course Letters.* - The PEZA or concerned ecozone authority, upon submission by the applicant of all the documents required in Section 1 hereof and said documents having been found satisfactory, shall issue in favor of the applicant a Due Course Letter, specifying the terms and conditions for compliance.

SECTION 4. *Certificate of Registration and License.* - Upon acceptance of the terms and conditions and compliance with pre-registration requirements, the PEZA or concerned ecozone authority shall issue in favor of the applicant company a Certificate of Registration and License authorizing it to establish regional warehouse(s). Payment of license fees and other fees/charges shall be determined by PEZA or the concerned ecozone authority.

SECTION 5. *List of Articles to be Imported.* - Only articles authorized by the concerned agency to be imported shall be transferred and stored at the regional warehouse. For this purpose, the concerned agency shall furnish the Collector of Customs a list of importable articles as well as amendatory or supplemental lists.

SECTION 6. *Period of Storage in the Regional Warehouse.* - The provision of the law in Section 1908 of the Tariff and Customs Code of the Philippines, as amended, to the contrary notwithstanding, articles duly entered for warehousing may remain in the regional warehouses for a period of two (2) years from the time of transfer to the regional warehouse, which period may be extended with the approval of the PEZA or the concerned ecozone authority with respect to regional warehouses in ecozones, or of the Board of Investments with respect to existing regional warehouse outside ecozones for an additional period of one (1) year upon payment of the corresponding storage fee on the unexported articles, as provided for under Article 68(4), for each extension until they are re-exported in accordance with the guidelines implementing Book IV of this Code. Articles not withdrawn within the reglementary period shall be examined, assessed and the corresponding duties and taxes thereon collected, *Provided*, articles withdrawn, released or removed contrary to the provisions of existing laws shall be forfeited pursuant to Article 69(b) of R.A. 8756.

SECTION 7. *Rules and Regulations on the Jurisdiction, Operation and Control Over Qualified Goods in the Regional Warehouse.* - The Board of Investments, the PEZA, concerned Ecozone authorities and the Bureau of Customs shall jointly issue special rules and regulations on the receiving, handling, custody, entry, examination, classifications, delivery, storage, warehousing, manipulation and packaging, release for re-exportation or for importation and delivery to a Philippine distributor and for the safekeeping, recording, inventory and liquidation of said qualified goods, any existing law notwithstanding. Such rules and regulations shall be formulated in consultation with the applicants/operators of regional warehouses, provided that pending the issuance thereof, existing rules and regulations shall be observed.

SECTION 8. *Manipulation of Articles in the Warehouse.* - All works on articles shall be done inside the warehouse. The articles being prepared for reexport or for local consumption may be repacked, packaged, covered, put up, marked, labeled, cut or otherwise altered but in no case shall processing be undertaken unless authorized by the concerned Agency.

SECTION 9. *Limitations on Withdrawals for Domestic Use.* - The percentage of annual allowable withdrawal for domestic use from warehouses located outside ecozones shall be subject to the approval of the Board of Investments, or of the PEZA or concerned ecozone authorities with respect to warehouses located within the ecozones: *Provided, however,* That in the case of existing warehouses, in no case shall their withdrawals exceed thirty percent (30%) of the value of goods they have brought in for any given year and the payment of the corresponding taxes and duties shall have been made upon the arrival of such goods imported: *Provided, further,* that the PEZA or concerned ecozone authorities may allow withdrawal exceeding thirty percent (30%) of the value of goods under such terms and conditions the PEZA or concerned ecozone authorities may impose, *Provided, finally,* that the sale of goods to the domestic market beyond the allowed percentage described above shall be subject to the taxes and duties imposed under existing laws.

Only goods for which taxes and duties have been paid thereon upon arrival shall be allowed to be withdrawn for domestic sale.

SECTION 10. *Tax Treatment of Income derived from Sale to the Domestic Market.* - The income derived from the sale to the distributor shall be treated as income derived by the said headquarters from sources within the Philippines and shall be subject to the corporate income tax of a resident foreign corporation under the National Internal Revenue Code, as amended, the provision of any law to the contrary notwithstanding.

SECTION 11. *Storage of Locally Purchased Goods for Export.* - The regional warehouse may also serve as a storage or warehouse of goods purchased locally by the present company or home office for export provided that such purchases shall be stored separately from importations.

SECTION 12. **Assignment of Customs Personnel to the Regional Warehouses.** - The Collector of Customs shall assign such customs personnel as may be necessary to supervise the operations of regional warehouses outside ecozones. The operator shall provide customs personnel with suitable working space complete with the supplies and equipment.

SECTION 13. **Books and Records.** - Books of account and other records as may be prescribed by the PEZA or the concerned ecozone authority with respect to regional warehouses in ecozones, or by the Bureau of Customs with respect to regional warehouses outside ecozones, shall be maintained by the operator and kept at all times in their places of business and shall be made available, as required, to duly authorized representatives of the concerned agency.

SECTION 14. **Visitorial Power.** - In the public interest and/or for the effective implementation of Book IV of this Code, the Board of Investments, the PEZA or concerned ecozone authority and the Bureau of Customs may, through any of its duly authorized representatives, exercise the following functions:

- a. Conduct such investigations as it deems necessary to determine whether or not a multinational company which has registered its regional warehouse in the Philippines is complying with the provisions of Book IV of this Code or of any applicable laws, rules and regulations, including but not limited to :
 - 1) Conducting necessary examination of the books and records of accounts of the regional warehouse;
 - 2) Determining all the facts and circumstances concerning the matter to be investigated, including making inquiries from its personnel; and
 - 3) Taking such action as may be necessary for the proper exercise of its authority.
- b. Request such other reports, financial or otherwise, as may be necessary in the public interest or for the proper compliance of this Code: *Provided*, That such requirement shall be applicable to all those similarly situated; and
- c. Take such proper proceedings to recommend the revocation or cancellation of the license or registration of the regional headquarters or regional operating headquarters of the multinational company which has established a regional warehouse in the Philippines in case the same is found to have willfully violated any provisions of this Code and these implementing rules and regulations.

SECTION 15. **Cancellation of License or Registration.** - Any willful violation by the regional or area headquarters or regional operating headquarters of a multinational company which has established a regional warehouse or warehouses contrary to or in violation of the provisions of existing laws and the implementing guidelines of Book IV of

this Code shall constitute a sufficient cause for the cancellation of its license or registration in addition to the penalties herein-above provided in Article 69, paragraph (b) hereof.

The Board of Investments, the PEZA or concerned ecozone authorities, as the case maybe, shall have the authority to impose such fines in amounts that are just and reasonable in cases of late submission or non-compliance on the part of registered enterprises, with reporting and other requirements under this Code and its implementing rules and regulations.

RULE XIX REPEALING AND EFFECTIVITY CLAUSES

SECTION 1. All other rules and regulations or parts thereof, inconsistent with the foregoing rules and regulations are repealed, amended or modified accordingly.

SECTION 2. These Rules shall take effect thirty (30) days following complete publication in a newspaper of general circulation in the Philippines.

PART V SPECIAL INVESTOR'S RESIDENT VISA

RULE XX NATURE OF THE VISA

SECTION 1. ***Nature of Visa*** - The Special Investor's Resident Visa (SIRV), issued pursuant to the provisions of the Omnibus Investments Code of 1987, as amended and these Implementing Rules and Regulations, shall entitle the holder to reside in the Philippines for an indefinite period as long as the required qualifications and investments are maintained as provided for in Article 74 of the Code.

The visa when issued by the Philippine Embassy or Consulate shall be issued with the following notation: "Special Investor's Resident Visa under the Omnibus Investments Code of 1987," (Principal or Dependent, as the case may be) and shall appear as follows:

VISA No. _____
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FOREIGN AFFAIRS
FOR JOURNEY TO THE PHILIPPINES OF

Visa includes
DATE OF ISSUE _____

Probationary Status Valid for

Six (6) months from date of issue
Special Investor's Resident Visa
Under the Omnibus Investments Code of 1987, AS AMENDED

When issued by the Bureau of Immigration (BI) and stamped on the passport of the applicant, the probationary visa shall appear as follows:

Republic of the Philippines
Department of Justice
BUREAU OF IMMIGRATION
Makati City

SPECIAL INVESTOR'S RESIDENT VISA NO. _____
Under the Omnibus Investments Code of 1987, as amended

_____ SPECIAL INVESTOR'S RESIDENT VISA UNDER
EXECUTIVE ORDER NO. 226 (OMNIBUS INVESTMENTS CODE OF 1987, AS
AMENDED) UPON RECOMMENDATION OF THE BOARD OF INVESTMENTS WITH
AUTHORIZED STAY UP TO _____ WITH MULTIPLE ENTRY PRIVILEGE

O.R. NO. _____ AMT. _____ DATE OF ISSUE _____
O.R. NO. _____ DATE OF ISSUE _____

When the probationary visa is converted into indefinite, the same shall be issued by the Bureau of Immigration in a security sticker and shall appear as follows:

| | | |
|--|-------------|-------------------------|
| Republic of the Philippines Department of Justice BUREAU OF IMMIGRATION Makati City | | |
| SPECIAL INVESTOR'S RESIDENT VISA (SIRV) NO. _____ Under the Omnibus Investments Code of 1987 (Executive Order 226), as amended | | |
| Surname | Nationality | Birthdate |
| Given Name | Sex | Expiry Date: Indefinite |
| Entries: Multiple | Issue Date: | |
| _____ Authorized Signatory | | |
| O.R. No. _____ | Amt. _____ | |
| O.R. No. _____ | Amt. _____ | |
| SIRV | | |
| Control No. _____ | | SN 000001 |

SECTION 2. **Persons Entitled to the Visa.** - Any alien, at least twenty-one (21) years of age, who meets the qualifications provided in Article 74 of the Code and these Implementing Rules may be issued the Special Investor's Resident Visa, except

nationals of countries determined by the Department of Foreign Affairs not entitled to the visa.

The spouse and the unmarried children under twenty-one (21) years of age of the applicant may also be issued the same visa.

SECTION 3. *Allowable Forms of Investment.* – For purposes of securing an SIRV, only ownership of shares of stocks in the following shall be accepted as eligible forms of investment, to wit:

- a. in existing corporations:
 - 1) publicly listed companies,
 - 2) companies engaged in Investment Priorities Plan (IPP) projects, or
 - 3) companies engaged in the manufacturing and service sectors.
- b. in new corporations:
 - 1) companies to be engaged in the manufacturing and service sectors, or
 - 2) companies to be engaged in IPP projects.

RULE XXI APPLICATION AND ISSUANCE OF VISA

SECTION 1. *Filing of Applications.* – The application for a Special Investor's Resident Visa may be filed with:

- a. The Philippine Embassy or Consulate in the applicant's home country or place of residence; or
- b. The embassy or consulate nearest thereto in the absence of the foregoing; or
- c. The Board of Investments if the investor is already in the Philippines.

All applications must be accompanied by all required supporting documents, otherwise the same shall not be officially accepted for processing.

SECTION 2. *Documentary Requirements.* – The following documents shall be attached to every application for SIRV:

- a. Application form duly filled up and notarized, with recent photographs;

- b. Clearance from the National Intelligence Coordinating Agency (NICA), together with either a clearance from the central government agency of the applicant's country or place of residence, competent to give information about any criminal record that applicant may have, duly authenticated by the Philippine Embassy, or the Interpol Division of the National Bureau of Investigation (NBI) indicating that the applicant has not been convicted by final judgment of a crime involving moral turpitude;

The NICA shall issue an initial clearance within five (5) working days from receipt of the BOI endorsement, and a more thorough verification to cover the Armed Forces of the Philippines and the Philippine National Police should be within three (3) months after the grant of the probationary visa. Any derogatory record may be the basis for revocation of the SIRV holder's visa;

The expiration date of said clearances should not be before six (6) months from date of filing of application;

- c. Medical certificate issued by the Department of Health (DOH), any government hospital or health facility, or any licensed and accredited hospital, medical center, or laboratory or the equivalent thereof in the applicant's home country, certifying that the applicant is physically and mentally fit;

The expiration date of said certification should not be before six (6) months from date of filing of application;

- d. Certification under oath from the duly authorized officer(s) of any accredited depository bank in the Philippines as to the amount of foreign exchange inwardly remitted by applicant, and its conversion to pesos through the said bank, in the prescribed form. Should the inward remittance be sent through non-accredited correspondent banks, the total amount of remitted money should be immediately transferred to the accredited banks;

For purposes of Book V and these rules and regulations, only banks accredited by the BOI shall serve as the depository banks;

In all cases, inward remittances shall not be made earlier than one (1) year prior to the filing of the application;

- e. Certified true copy of the certificate of peso time deposit with a maturity period of at least thirty (30) days;

The original copy of the certificate of time deposit shall remain with the depository bank for safekeeping;

- f. Birth certificate/family registry/household registry duly authenticated by the Philippine Consulate/Embassy located in the applicant's home country or the applicant's embassy in the Philippines; and
- g. If applicable, marriage contract duly authenticated by the Philippine Consulate/Embassy located in the applicant's home country or the applicant's embassy in the Philippines.

SECTION 3. *Endorsement of Applications Filed with Philippine Embassy/Consulate to BOI.* – An application, and its attachments filed with the Philippine Embassy/Consulate shall be endorsed by said Embassy/Consulate to the Board of Investments for evaluation. After evaluation, the same shall be re-endorsed to the Philippine Embassy/Consulate concerned through the DFA Consular Office for issuance of a probationary multiple entry visa.

SECTION 4. *Endorsements of Applications Filed with the BOI to BI.* – An application and its attachments filed with the BOI, including the original passport shall be endorsed to the BI for the grant of a provisional multiple entry visa.

SECTION 5. *Grant of Visa.* - Upon compliance with the requirements of Book V of the Code and these rules:

- a. The applicant, who filed an application with the Philippine Embassy/Consulate, and who has not made an actual investment at the time his application is re-endorsed by the BOI to the concerned Philippine Embassy/Consulate shall be issued a probationary multiple entry SIRV valid for a period of six (6) months;
- b. The applicant, who filed an application with the BOI, and who has not made an actual investment at the time his application is endorsed by the BOI to the Bureau of Immigration shall be granted a probationary multiple entry SIRV valid for six (6) months;
- c. Only upon submission by the applicant of all required documents to prove actual investments shall the BOI endorse to the BI his application for issuance of an indefinite multiple entry SIRV;

For investments made in existing corporations, the indefinite multiple entry visa shall be granted only after validation of the same by the BI; and

- d. From receipt of the BOI endorsement, the BI shall issue the probationary visa within a period of five (5) working days. For conversion to indefinite visa, the BI shall issue the visa within a period of fourteen (14) working days from receipt of the BOI endorsement if investment is made in existing corporations; and five (5) working days if in new corporations.

SECTION 6. **Release of Passports.** – The Bureau of Immigration shall release passports with the SIRV only to an authorized officer or representative of the BOI.

The applicant shall personally claim his passport from the BOI. He shall then be required to undergo a briefing as an SIRV holder.

SECTION 7. **Issuance of SIRV ID** – The BOI shall issue SIRV identification cards only to applicants with actual investments, valid for one (1) year, renewable yearly. Such ID shall exempt the holder from securing the Special Return Certificate (SRC), Alien Certificate of Registration (ACR) and Emigration Clearance Certificate (ECC) from the Bureau of Immigration for purposes of travel abroad.

RULE XXII CONVERSION OF DEPOSIT TO INVESTMENTS

SECTION 1. **Prior Board Approval.** - The SIRV holder may not withdraw his deposit from the accredited bank unless authorized by the BOI.

The Board may allow a partial conversion of deposit to investments, *provided* that the total deposit is converted to investments within the one hundred eighty (180) day period from date of issuance of probationary SIRV.

SECTION 2. **Application for Conversion of Deposit to Investments.** – Before a peso time deposit may be invested, an application in the prescribed form for conversion of time deposit to investments shall be filed with the Board of Investments.

SECTION 3. **Evaluation and Withdrawal of Time Deposit.** – Upon submission of all of the foregoing documents and evaluation thereof, the Board shall authorize the SIRV applicant to withdraw time deposit from the accredited bank and invest the same.

After securing prior BOI approval, the depository bank shall issue a check payable to the corporation.

SECTION 4. **Submission of Proof of Investment.** – At least thirty (30) days prior to the expiration of the one hundred eighty (180) day period to make the investment, the probationary SIRV holder shall show proof of investment as follows:

For investment in new corporation_–

- a. Duplicate copies of articles of incorporation and by-laws;
- b. Treasurer's affidavit;
- c. Certified true copy of official receipt issued by the treasurer-in-trust;

- d. Certified true copy of Securities and Exchange Commission (SEC) registration;
- e. Certified true copy of stock certificate issued in favor of the applicant.

For investment in existing corporation not publicly listed –

- a. Certified true copy of business/mayor's permit;
- b. Certified true copies of articles of incorporation, by-laws and SEC registration;
- c. BOI registration, if any;
- d. Latest audited financial statement, list of officers and directors;
- e. Secretary's certificate;
- f. Waiver of pre-emptive rights of existing stockholders;
- g. Certified true copy of the resolution from SEC authorizing the issuance of shares from the unsubscribed portion and exempting said shares from registration;
- h. BIR certificate of registration of official receipts;
- i. Certified true copy of stock certificate issued in favor of applicant;
- j. Certified true copy of SEC certificate of change of stockholders;
- k. Lease contract or proof of ownership of office or factory/plant sites.

Additional documents for shares purchased from existing stockholders-

- a. Corporate Secretary's certificate;
- b. Certified true copy of stock certificate issued to selling stockholder;
- c. Deed of assignment between buyer and the seller of the stock;

For investment in shares in publicly listed corporations-

- a. Certified true copy of stock certificate to be submitted within three (3) months from date of investments;
- b. Certified true copy of official receipts and buy invoice;
- c. Sworn certification of stock broker.

The Board from time to time may require submission of other proofs of investment as it may deem necessary.

SECTION 5. *Annotation of SIRV Investment; BOI Approval.* – Stock Certificates issued to SIRV holders shall bear the annotation that the owner thereof is a holder of the Special Investors Resident Visa and that the same shall not be sold, transferred, or conveyed without prior BOI approval.

SECTION 6. *Ocular Inspection of Investment.* – The BI together with the BOI, shall conduct a one-time inspection of the companies of SIRV applicants or SIRV holders prior to the grant of indefinite SIRV. The inspection shall be done in accordance with the following:

- a. For investments in existing corporations – inspection by BI together with BOI, within six (6) working days from submission of proof of investment. The BI shall process the conversion of the probationary to indefinite SIRV within fourteen (14) working days;
- b. For investments in new corporations – one year from date of issuance of indefinite visa or before expiration of the holder’s identification card.

In case of investments in publicly listed firms – verification thereof may be secured from the firm’s Corporate Secretary.

In case of investment in IPP - listed project and investment is approved by the BOI, no inspection shall be necessary.

The BOI may assess the SIRV holder a nominal fee to cover the cost of inspection.

SECTION 7. *Registration of Investment with BSP.* – The SIRV applicant/holder shall register his investments with the Bangko Sentral Ng Pilipinas (BSP) only if the foreign exchange needed to service the repatriation of capital and the outward remittance of dividends, profits and earnings which accrue thereon shall be sourced from the local banking system.

SECTION 8. *Registry of Investment.* – The BOI shall keep a registry of all SIRV investments and shall report any withdrawal or transfer thereof to the BI. The BOI shall likewise furnish the BSP a monthly report of SIRV investments registered by the BOI.

RULE XXIII MONITORING REQUIREMENTS

SECTION 1. ***Period to Invest.*** - The investor shall have one hundred eighty (180) days from date of issuance of probationary visa to make the investment in an eligible domestic enterprise and report such investment to the Board of Investments.

Failure to make investments within the prescribed period shall constitute a ground for automatic cancellation of the SIRV and/or inclusion in the blacklist of the Bureau of Immigration.

SECTION 2. ***Book of Registry; Tracking System.*** - The Board of Investments shall maintain a registry of all SIRV deposits/investments.

SECTION 3. ***Annual Report.*** – At least one month before his SIRV identification card expires, a SIRV holder shall file a sworn report with the Board, supported by the following documents:

- a. Certified true copy of the latest current audited financial statement of the business filed with the BIR;
- b. Certification from the Securities and Exchange Commission that the business is existing;
- c. Certification under oath from the Corporate Secretary that the SIRV holder is a stockholder of record and is in good standing and the amount of investments has not been reduced below the amount provided in the Code;
- d. Business/mayor's permit;
- e. Proof of registration with the BIR;
- f. Copy of corporate income tax return filed with the BIR with official receipt of income tax payment, if applicable;
- g. Copy of the individual tax return of the SIRV holder filed with the BIR with official receipt of income tax payment, if applicable.

Failure to timely file the foregoing documents/reports shall subject a SIRV holder to a fine/penalty and/or constitute a ground for the cancellation of his visa and/or his inclusion in the BI's blacklist. Furthermore, his identification card shall not be renewed.

SECTION 4. ***Outsource Inspection/Audit of Investments.*** – The BOI shall accredit firms to conduct annual audit and inspection of the investments of indefinite SIRV holders.

The BOI-accredited firms shall inspect the investment of the SIRV holder at the expense of the latter and submit a certificate of inspection on the validity of investments.

**RULE XXIV
VOLUNTARY TERMINATION OF INVESTMENT/TIME DEPOSIT**

SECTION 1. ***Applications for Withdrawal of Investment/Time Deposit.*** – All applications for voluntary withdrawal of investment/time deposit shall be filed with the BOI together with the original copy of the passport and SIRV identification card.

The Board may conduct an exit interview of the applicant-SIRV holder.

SECTION 2. ***Endorsement to BI for Cancellation/Downgrading of Visa.*** – The BOI shall endorse to the Bureau of Immigration all applications for voluntary withdrawal of investment/time deposit for the proper cancellation or downgrading of the visa.

With respect to voluntary withdrawal of time deposit, the BOI shall endorse the cancellation of the time deposit to the depository bank only upon submission of the original passport with the cancelled visa, in the proper case.

**RULE XXV
DISAPPROVAL OF APPLICATION**

SECTION 1. ***Grounds for Disapproval of Application –***

- a. Failure to meet any of the minimum qualification requirements provided by law and these rules.
- b. Fraudulent misrepresentation on the part of the applicant or his authorized agent relative to the data submitted in support of his/her application.
- c. Submission of falsified or spurious documents in support of his/her application.

**RULE XXVI
CANCELLATION/REVOCAION OF VISA**

SECTION 1. ***Grounds for Cancellation/Revocation of SIRV-***

- a. Failure to maintain the qualifications as a holder of the Special Investor's Resident Visa as provided in E.O. 226 and these rules.
- b. Violation of any of the provisions of Book V of the Code (Special Investor's Resident Visa) and these rules.
- c. Violation of existing laws.

SECTION 2. **Cancellation of Dependent Visa** - The visa of a dependent of the SIRV holder shall be co-terminus with that of the principal and/or be automatically cancelled upon his reaching 21 years of age and/or marriage.

RULE XXVII FEES, FINES AND PENALTIES

SECTION 1. **Fees and Fines** - The following schedule of filing fees and fines for late and/or non-submission of reports shall be collected by the Board:

Schedule of Fees

- | | |
|--|---|
| a. Application Fee | US\$300.00 each (equivalent to Phil. Peso) |
| SIRV Principal and dependents/ Inclusion of dependents | |
| b. Reinstatement of SIRV | Php5,000.00 each |
| c. Conversion of Time Deposit to Investments | Php1,000.00 |
| d. Conversion of Probationary to Indefinite SIRV | Php2,000.00 each |
| e. Issuance of SIRV Identification Card | Php2,000.00 each |
| f. Certifications/other requests which need documentary outputs | Php750.00 |
| g. Inspection fee pursuant to Rule XXII, Section 6, of the Rules and Regulations Implementing Book V of Executive Order No. 226, as amended. | Actual Cost |

Fine

For failure to invest within the prescribed period and/or submit annual reports on time - Basic fine of one thousand pesos (Php1,000.00) plus a daily fine of one hundred pesos (Php100.00) until compliance

The above fees and fines are without prejudice to the imposition of other fees, fines and penalties the Bureau of Immigration and Deportation (BID) and the Department of Foreign Affairs (DFA) are authorized to impose under their respective mandates.

RULE XXVIII TRANSITORY PROVISIONS

SECTION 1. All pending SIRV applications received prior to effectivity of these Rules and Regulations shall continue to be processed under the existing provisions of Book V of E.O. 226 and its implementing rules and regulations; Provided, however, that investments made in partnerships shall no longer be allowed.

SECTION 2. The BOI, in consultation with Inter-Agency Committee members on SIRV, is hereby authorized to formulate policy guidelines to facilitate the processing of all pending applications.

SECTION 3. ***Transitory Provisions.*** - During the processing of all pending applications which shall be completed on or before December 31, 2001, the following rules shall apply:

- a) For applications pending with the BOI, Actual Investments must be validated;
- b) For applications pending with the Bureau of Immigration and Deportation (BID) for the issuance of probationary visa, or inclusion of the dependents, the BID shall process the same under the existing rules and regulations prior to the effectivity of these amendments;
- c) For conversion of probationary to indefinite, the BID shall require BOI endorsement prior to processing the same under the existing rules and regulations prior the effectivity of the same amendments.

SECTION 4. ***Revalidation of SIRV.*** - All holders of SIRVs granted under the old rules and regulations shall be required to revalidate their visas within the period to be announced by the BOI in a newspaper of general circulation.

Only upon revalidation of his visa shall the holder or a SIRV under the old rules and regulations be issued his/her SIRV identification card.

Failure to revalidate the same shall constitute a ground for automatic revocation of the SIRV.

RULE XXIX REPEALING AND EFFECTIVITY CLAUSES

SECTION 1. All other rules and regulations or part thereof, inconsistent with the foregoing rules and regulations are repealed, amended or modified accordingly.

These rules shall take effect thirty (30) days following publication in a newspaper of general circulation in the Philippines.

PART VI FINAL PROVISIONS

RULE XXX

SCOPE OF THESE RULES

SECTION 1. **Applicability.** — Whenever appropriate, the rules herein shall apply to enterprises registered under P.D. 1789, as amended, R.A. 5186, R.A. 6135 and P.D. 1159, unless their application would prejudice any right acquired by the registered enterprise under the said laws.

SECTION 2. **Transitory Provisions.** — Pending the effectivity of these rules, the implementing rules and regulations of P.D. 1789, as amended, shall apply unless inconsistent with the provisions of Executive Order No. 226.

All applications not acted upon by the Board on the date of effectivity of the Code should be refiled to avail of the benefits of automatic registration.

RULE XXXI APPEAL

SECTION 1. **General Rules.** — All actions by the Board under this Code shall become final and executory after the expiration of the period within which to appeal and no appeal has been taken therefor. And no appeal therefrom by any party adversely affected thereby shall stay any or all of such actions taken, except in cases of cancellations of registration initiated either by the Board or by a private party, in which case, it shall be governed by the rules and regulations on Hearing of Cases for Cancellation for Violations of the Provisions of this Code.

SECTION 2. **Applications for Registration.** — In cases of applications for registration filed, any order or decision by the Board shall be final and executory after thirty (30) days from receipt thereof. Where an appeal has been filed with the Office of the President, such order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.

SECTION 3. **Controversies.** — In cases of controversies that may arise between registered enterprises or investors therein and government agencies concerning the implementation of the Code, any decision thereon shall be final and executory after thirty (30) days from receipt thereof unless an appeal to the President has been made. Where an appeal has been filed, such decision shall become final and executory ninety (90) days after perfection of the appeal, unless reversed.

RULE XXXII CANCELLATION UNDER BOOK II

In cases of cancellation of Certificate of Authority to do business, any order or decision of the Board shall become final and executory after thirty (30) days from receipt thereof

by the enterprise, unless an appeal has been filed with the Office of the President. Finality of such order or decision shall be governed by Section 2 of Rule XXI.

In cases of actions for cancellation of license issued irregularly or contrary to law, filed with the Regional Trial Court, any proceedings for review shall be taken directly to the Supreme Court.

RULE XXXIII VESTED RIGHTS

SECTION 1. Registered enterprises already existing before December 1, 1986, which are enjoying incentives under the laws repealed by Book One and Six of this Code shall continue to enjoy such incentives for the period therein stated.

SECTION 2. New or expansion projects approved or registered by the Board or the Authority on or after December 1, 1986 but before the effectivity of the Code, shall be governed by the law under which they are registered or their application has been approved, unless they waived their privilege to avail of the incentives thereunder and opt to be governed by this Code, in which case, the period of availment of incentives shall be reckoned from the original date of their registration under the old law. The Board or the Authority must be notified in writing within thirty (30) days after the effectivity date of this Rules and Regulations.

Unless otherwise allowed by the Board, in meritorious cases, firms may no longer be allowed to exercise this option after the lapse of the above prescribed thirty (30) day period.

SECTION 3. Enterprises exercising the option under Article 80 of the Code which have already availed of tax and duty-free importation under the law of their registration shall no longer be required to repay the taxes and duties waived on capital equipment imported during the said period: *Provided, however,* That registered enterprises which have availed of the net local content and net value earned incentives under their original law of registration shall be required to refund said incentives availed of and/or surrender any tax credit certificate already issued by the Board.

SECTION 4. Export processing zone enterprises approved and registered after the effectivity of this Code shall be governed by Book VI of the Code and shall no longer be entitled to the incentives provided under Section 16, 17, and 18 of P.D. 66, as amended.

RULE XXXIV VIOLATIONS OF THE PROVISIONS OF THE CODE

SECTION 1. **Grounds for Cancellation.** — Registration may be cancelled for any of the following grounds:

- a. Failure to maintain the qualifications for registration as required by the Code;
- b. Violation of any provision of the Code;
- c. Violation of any of these Rules and Regulations or any of the general and specific terms and conditions of registration; or
- d. Violation of any law for the protection of labor or of the consuming public.

SECTION 2. **Grounds for Suspension.** — For the same grounds enumerated in the next preceding section, the Board may suspend the enjoyment of one or more incentives enjoyed by a registered enterprise depending upon the gravity of the offense committed.

SECTION 3. **Automatic Cancellation.** — Delay as set by the Board for a period of one (1) year by the registered enterprise in the implementation of the timetable of the project shall result in the automatic cancellation of the certificate of registration unless reinstated as a registered enterprise by the Board.

SECTION 4. **Hearing of Violations of the Code.** — For the purpose of conducting hearing and investigations involving violations of the provisions of the Code, its rules and regulations, and terms and conditions or registration of registered enterprises, the Board hereby adopts its existing rules of procedure governing the same as approved on March 24, 1981 and duly published on July 27, 1981.

RULE XXXV RECKONING OF DATES

Whenever the Code or these rules and regulations prescribe a period within which an act shall or shall not be performed, the first day shall be excluded and the last day included in the computation thereof, unless otherwise provided. But when the last day falls on a Saturday or holiday, the deadline shall be extended to the next succeeding business day. Saturdays and holidays within the prescribed period shall be included, unless otherwise indicated.

RULE XXXVI NOTICES

Notices sent by the Board shall be addressed to the applicant for registration or registered enterprise at its principal place of business. Such notices may, with like

effect, be delivered to its authorized representative as appearing in the records of the Board.

**RULE XXXVII
SCHEDULE OF FEES**

Pursuant to Executive Order No. 197 Series of 2000 entitled “Directing all Departments, Bureaus, Commissions, Agencies, Offices and Instrumentalities of the National Government, including Government-Owned or Controlled Corporations, to increase their rates of fees and charges by not less than 20 percent” the BOI Governing Board adopted the following revised rates of fees and charges.

1. Filing Fee for Application for Registration

a. Book I

- 1. Project costs not exceeding P4 million P 1,500.00
- 2. Project costs exceeding P4million but not over P20 million P 3,000.00
- 3. Project costs exceeding P20 million but not over P50 million....P 4,500.00
- 4. Project costs exceeding P50 millionP 6,000.00

*Additional P 10.00 per P.D. 200 as amended by P.D. 1856

b. Book III

- 1. Regional Headquarters..... P 4,500.00
- 2. Regional Operating Headquarters P 4,500.00

c. Book V

- 1. Application fee.....US\$300.00 each
SIRV Principal and dependents/inclusion of dependents (equivalent to Phil.
Pesos)
- 2. Reinstatement of SIRV..... P 5,000.00 each
- 3. Conversion of Time Deposit to Investment P 1,000.00 each
- 4. Conversion of Probationary to indefinite SIRV..... P 2,000.00 each
- 5. Issuance of SIRV Identification Card P 2,000.00 each
- 6. Certifications/Other requests which need documentary outputP 750.00
- 7. Inspection Fee pursuant to Rule XXII, Section 6, the Rules and Regulations
Implementing Book V of Executive Order No. 226, as Amended...Actual Cost

FINES

For failure to invest..... Basic Fine

2. Application under the Motor Vehicle Development Program

- a. Application for registration for Participation under CVDP, CDP..... P 50,000.00
- b. Application for Participation to the Program under E.O. 224..... P 50,000.00
- c. Application for registration for Participation under MDP..... P 30,000.00

- d. Application for registration of Participating Model of CVDP, CDP..... P 5,000.00
- e. Application for registration of Participating Model of MDP P 3,000.00
(per basic and or variant model of Motor vehicle)
- f. Certification for non-local availability P 1,500.00
- g. Application for amendment extension
of certificate of authority CB 1348 E.O.224
(AEP)..... P 1,500.00
- h. Processing fee for application for
accreditation of Foreign Exchange Earnings as
Committed prior for the Phased-Out NFEE, as provided for
under MO 73..... P 1,500.00
- i. Certification of BOI Registration & Incentives
granted Certification relative to
BOI firm's Registration) P 1,500.00
- j. Certified reproduced copy (Certificate of Registration)..... P 750.00
- k. Application for availment of Incentives
Certification, Endorsement (General)..... P 1,500.00
- l. Amendments, Modification of Terms and Conditions..... P 1,500.00
- m. Penalty for Late Filing of Reporting Requirements
- n. For inclusion in the IPP Certificate
- o. Others

3. Fee for Certificate of Registration

- a) Book 1 1/10 of 1% project cost but not less than
P 3,000.00 and not to exceed P 15,000.00
- b) Book III and IV P 4,500.00
- c) Replacement Fee for Certificate of Registration of Books 1 to IV
and MVDP Enterprises P 2,250.00

4. Applications under Jewelry Act

The Board shall collect accreditation fee based on the following categories:

| (A) First Time Applications | | FEE |
|---|----------------------------|---------|
| a) Micro Jewelry Enterprise | less than P 1,500,001 | P 1,500 |
| b) Small Scale Jewelry Enterprise | P 1,500,001 – P 15,000,000 | P 3,000 |
| c) Medium Scale Jewelry Enterprise | P 15,000,001–P 60,000,000 | P 4,500 |
| d) Large Scale Jewelry Enterprise | P 60,000,001 and above | P 6,000 |
| (B) Applications for Renewal of Accreditation | | FEE |
| a) Micro Jewelry Enterprise | less than P 1,500,001 | P 750 |
| b) Small Scale Jewelry Enterprise | P 1,500,001 - P 15,000,000 | P 1,500 |
| c) Medium Scale Jewelry Enterprise | P 15,000,001 –P 60,000,000 | P 2,250 |
| d) Large Scale Jewelry Enterprise | P 60,000,001 and above | P 3,000 |

5. Certifications

- a) Certified True Copy of BOI Certificate of Registration P 750.00
 - b) Certification of BOI Registration & Incentives Granted P 750.00
 - c) Other Certifications relative to a BOI-firm's Registration P 750.00
- 6. Filing Fee of Request/Motion for Reconsideration/Re-filing of Application under the Rule XXVII (6) (b) of Rules and Regulation to Implement E.O. 226.....P 10,000.00**
- 7. Application for Availment of Incentives**
- a) Certifications/Endorsements (General) P 1,500.00
 - b) Request for Recon/Re-filing of Application P 1,500.00
 - c) Endorsement for Travel Tax Exemptions (RHQ) P 750.00
 - d) Endorsement of BOI for Importation of Motor Vehicle by RHQ P 750.00
 - e) Endorsement for Renewal of Motor Vehicle License P 750.00
 - f) Endorsement for importation of household goods and personal effects..... P 1,500.00
 - g) Endorsement for the importation of training materials P 1,500.00
- 8. Amendments/Modifications of Terms and Conditions P 1,500.00**
- 9. Issuance of Certificates of Authority/Tax Credit Certificates/Endorsements/ Certifications of Income Tax Holiday (ITH) and Tax and Duty Exemption on Imported Spare Parts Incentives 1/2 of 1% of the taxes and duties waived but not less than P 300.00 & not to exceed P15, 000.00**
- 10. Annual License Fee: Regional Warehouse P 15,000.00**
- 11. Miscellaneous Fees:**
- a. For Certified Lists of BOI Firms and Other Statistical Data
 - i. For BOI Firms and Other Business Enterprises
 - (132-column paper)..... P 15.00/page
 - (80-column paper) P 8.00/page
 - ii. For Educational Institutions, NGOs, Students and other Non-Profit Organizations50% less
 - iii. Electronic copy P100.00/request
Data..... P 81.00/kilobyte
 - iv. For Certified True Copies of BOI Endorsement Letters... P 75.00/page
 - b. Request for Tax Debit Memo P 750.00
 - c. Request for Issuance of new Tax Credit Certificate P 1,500.00
 - d. Request for Transfer of Tax Credit Certificates P 1,500.00

Government agencies, foreign embassies and consulates, domestic and international donor institutions are exempted from the payment of these miscellaneous fees.

The additional P 10.00 fee under P.D. 200 as amended by P.D. 1856 which is imposed on the filing of Book I enterprises is hereby re-affirmed and re-stated.

RULES XXXVIII FINES

The following schedule of fines for the late and/or non-submission of report shall apply to all enterprises registered/licensed to do business or establish regional headquarters/warehouse under the Code:

- I. For late filing of Annual Reports, i.e., Audited Financial Statements, Income Tax Returns and Annual Report on Commercial Operations:

| | Basic Fine | Maximum Daily Fine |
|---|------------|--------------------|
| 1st Violation | P 25.00 | P 5.00 |
| 2nd Violation | 50.00 | 10.00 |
| 3rd Violation and subsequent violations | 100.00 | 20.00 |

- II. For late filing of Quarterly Reports:

| | | |
|---|--------|--------|
| 1st Violation | P25.00 | P 5.00 |
| 2nd Violation | 50.00 | 10.00 |
| 3rd Violation and subsequent violations | 100.00 | 20.00 |

- III. For late submission of the environmental compliance certificate (ECC) from E.I.A. System. - Basic fine of P 50.00 and a daily fine of P 1.00.

- IV. For late compliance with the 10% public participation requirement - Basic fine of P 500.00 and a daily fine of P 25.00.

- V. For late filing of bonds - Basic fine of P 100.00 and a daily fine of P 20.00.

- VI. Fine for the late implementation of project - A basic fine of 1% per project cost and a daily fine of P 100.00 but not to exceed P100,000.00 without prejudice to automatic cancellation.

- VII. Fine for cessation of operations or withdrawal from registered operations without prior Board approval --- same as in no. VI without prejudice to cancellation.

- VIII. For the transfer, conveyance or assignment of imported capital equipment with incentives without prior Board approval as required, the fine shall be 1% of the

acquisition cost appearing in the invoice without prejudice to cancellation of Certification of Registration.

- IX. For violations of the provisions of Rule VI, Section 13 (c) of these rules, a basic fee of P 200.00 and a daily fine of P 50.00.
- X. For the late filings or submission of other requirements not mentioned herein, but otherwise required in connection with the registration of an enterprise and for other violations of these rules or the law not covered by this rule, a reasonable fine shall be imposed by the Board.

SERIOUS OFFENSES:

- 1) For claiming tax credit on sales tax added to the invoice price where such sales tax has not previously been reflected by the seller.

Forfeiture of the entire claim for the first violation and forfeiture of the entire claim plus cancellation of the claimant's registration for the second offense.

- 2) For claiming tax credit on raw materials/supplies which has been subject of previous tax credit availment.

Deduction of 25% of allowable amount for first offense; deduction of 50% of allowable amount for second offense; and forfeiture of entire claim plus cancellation of registration for third offense.

- 3) For claiming tax credit on raw materials/supplies purchased after date of exportation of the export product.

Deduction of 25% of allowable amount for first offense; deduction of 50% of allowable amount for second offense; and forfeiture of entire claim plus cancellation of registration for third offense.

LIGHT OFFENSES:

- 1) For repetitious commission of errors which favor claimant such as a) mathematical and unit conversion errors, and b) over-statement of raw materials usage.

- 2) For filing applications after one (1) year from date of actual exportation for direct exports or two (2) years for indirect exports.

Deduction of 10% from the allowable claim for every application unless there are mitigating circumstances that will justify the non-imposition of penalty.

- 3) For claiming tax credit for raw materials not forming part of export product or purchased for more than two (2) years.

**RULE XXXIX
EFFECTIVITY**

These Rules shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.