

AN ACT PRESCRIBING INCENTIVES AND GUARANTEES TO INVESTMENTS IN THE PHILIPPINES, CREATING A BOARD OF INVESTMENTS, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND FOR OTHER PURPOSES.

REPUBLIC ACT NO. 5186, September 16, 1967

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

SECTION 1. Short Title.—This Act shall be known and cited as the Investment Incentives Act.

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

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

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

(b) "Registered enterprise" shall mean a corporation (1) incorporated, organized and existing under Philippine laws, (2) of which, except as provided in Section nineteen of this Act, at least sixty per cent of the capital stock outstanding and entitled to vote is owned and held by Philippine Nationals, and at least sixty per cent of the members of the Board of Directors are citizens of the Philippines, (3) engaged in a preferred area of investment, and (4) duly registered with the Board of investments; Provided, however, That the terra registered enterprise shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, development banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumers cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions; neither shall the term include business organizations whose exclusive or principal purpose is to provide services or buy goods and merchandise and resell the same in substantially the same form in which bought,

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

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

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

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

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

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

(i) "Measured capacity" shall mean the estimated additional volume of production which the Board determines to be desirable in each preferred and pioneer area of investment, in order to supply the needs of the economy at reasonable prices, taking into account the export potential of the area. Measured capacity shall not be less than the amount by which the measurable market demand exceeds the existing productive capacity in said preferred and pioneer areas nor shall measured capacity be so much in excess of measurable market demand as to foster or encourage overcrowding in any such area. For export market industries, the Board shall base measured capacity on the availability of domestic raw materials after deducting the needs of the domestic market therefor. In no case shall measured capacity be construed so as to result in a monopoly in any preferred or pioneer area of investment.

(j) "Tax credit" shall mean any of the credits against taxes extended to a registered enterprise by this Act, to evidence which a tax credit certificate shall be issued by the Bureau of Internal Revenue. Unless otherwise provided herein, the tax credit certificate may be used by the registered enterprise to pay taxes, duties, charges and fees due to the national government in connection with its registered operations. A tax credit certificate shall be non-transferrable; it may be used by the registered enterprise only for as long as it enjoys the benefits and incentives provided for in this Act, but may not be used so as to result in a refund.

(k) "Investments Priorities Plan" shall mean the plan prepared by the Board and approved by the President upon recommendation of the National Economic Council, which shall contain the analysis, synthesis, and projections of

data collected by the Board from public and private sources, and which measures and indicates:

- (1)The existing and prospective demand for specific products and commodities, final and intermediate, in the light of the level and structure of income, production, trade, prices and relevant economic and technical factors;
- (2)The existing capacities for producing specific products and commodities;
- (3)The gaps between prospective demand and existing supply for specific products and commodities, and the additional production capacities that must be induced where such gaps exist;
- (4)The specific products and commodities, manufactured out of or with the use of domestic raw materials, the export of which should be encouraged;
- (5)The specific areas of economic activity to be declared preferred and pioneer areas of investment and the corresponding measured capacities thereof;
- (6)The capital investments necessary to bring such additional capacities into existence;
- (7)The raw material input requirements of the additional production capacities needed, and the sources thereof, whether domestic or imported;
- (8)The manpower requirements of existing and new industries;
- (9)The regions where such additional capacities can be located considering the presence of natural resources, labor, transport facilities, power, water supply, and the like;
- (10)The respective roles and responsibilities of the private sector and the government in bringing such additional capacities into existence;
- (11)The specific public works projects that need to be undertaken by the government and the capital investment required therefor, to make private investments in preferred and pioneer areas feasible;
- (12)The prospective impact of the projected investments on prices, the exchange rate and the balance of payments;
- (13)The changes in tariffs that would be required for the protection of industry during its infant state;
- (14)The minimum requirements for maintaining conditions of competition in any industry; and
- (15)Other similar or relevant factors which the Board considers desirable to include.

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

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

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

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

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

(e)Requisition of Investment.—There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

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

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

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

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

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

date of disposition.

(b)Capital Gains Tax Exemption.—Exemption from income tax on the portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of, or in the purchase of stock owned by foreigners in, pioneer enterprises, within six months from the date the gains were realized: Provided, (1) That such sale, disposition or transfer and the investment of the proceeds thereof are registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned or conveyed for a period of three (3) years from the date the investment was made. If said shares of stock are disposed of within the said period of three (3) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

(c) Exemption on Sale of Stock Dividends.—Exemption from income tax on all gains realized from the sale, disposition, or transfer of stock dividends received from a pioneer enterprise: Provided, That the sale, disposition or transfer occurs within seven years from the date of registration of the enterprise.

SEC. 7. Incentives to a Registered Enterprise.—A registered enterprise, to the extent engaged in a preferred area of investment, shall be granted the following incentive benefits:

(a)Deduction of Organization and Pre-Operating Expenses.—All capitalized organizational and pre-operating expenses attributable to the establishment of a registered enterprise may be deducted from its taxable income over a period of not more than ten years beginning with the month the enterprise begins operations, provided the taxpayer indicates the desired amortization period at the time of the filing of income tax returns for the first taxable year. For the purpose of this provision, organizational and pre-operating expenses shall include expenses for pre investment studies, start up costs, costs of initial recruitment and training, and similar expenses.

(b)Accelerated Depreciation.—At the option of the taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets may be (1) depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten years or less; or (2) depreciated over any number of years between five years and expected life if the latter is more than ten (10) years; and the depreciation thereon allowed as a deduction from taxable income: Provided, That the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it.

(c)Net Operating Loss Carry-over.—A net operating loss incurred in any of the first ten years of operations may be carried over as a deduction from taxable income for the six years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the six taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining five years. The net operating loss shall be computed in accordance with the provisions of the National Internal Revenue Code, any provision of this Act to the contrary notwithstanding, except that income not taxable either in whole or in part under this or other laws shall be included in gross income.

(d)Tax Exemption on Imported Capital Equipment.— Within seven years from the date of registration of the enterprise, importation of machinery and equipment, and spare parts shipped with such machinery and equipment, shall not be subject to tariff- duties and compensating tax: Provided, That said machinery, equipment and spare parts: (1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its

products: (3) are covered by shipping documents in the name of the registered enterprise to whom the shipment will be delivered direct by customs authorities; (4) the prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts; and (5) the registered enterprise chooses not to avail of the privileges granted by Republic Act Numbered Thirty-one hundred twenty-seven, as amended. If the registered enterprise sells, transfers, or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it.

However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five (5) years if made: (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise.

(e) Tax Credit on Domestic Capital Equipment.—A tax credit equivalent to one hundred per cent (100%) of the value of the compensating tax and customs duties that would have been paid on the machinery, equipment and spare parts had these items been imported shall be given to the registered enterprise who purchases machinery, equipment and spare parts from a domestic manufacturer, and another tax credit equivalent to fifty per cent (50%) thereof shall be given to the said manufacturer: Provided, (1) That the said machinery, equipment and spare parts are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products; (2) that the prior approval of the Board was obtained by the local manufacturer concerned; and (3) that the sale is made within seven years from the date of registration of the registered enterprise. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five years from the date of acquisition, then it shall pay twice the amount of the tax credit given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five years if made (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise.

(e) Tax Credit for Withholding Tax on Interest.—A tax credit for taxes withheld on interest payments on foreign loans shall be given a registered enterprise when (1) no such credit is enjoyed by the lender-remittee in his country and (2) the registered enterprise has assumed the liability for payment of the tax due from the lender-remittee.

(g) Employment of Foreign Nationals.—Subject to the provisions of Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, as amended, an enterprise may, within five years from registration, employ foreign nationals in supervisory, technical or advisory positions not in excess of five per centum of its total personnel in each such category: Provided, That in no case shall each employment exceed five years. The employment of foreign nationals after five years from registration, or within such five years but in excess of the proportion herein provided, shall be governed by Section twenty of Commonwealth Act Numbered Six hundred thirteen, as amended.

Foreign nationals under employment contract within the purview of this Act, their spouse and unmarried children under twenty-one years of age, who are not excluded by Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

A registered enterprise shall train Filipinos in administrative, supervisory, and technical skills and shall submit annual reports on such training to the Board of Investments.

(h) Deduction for Expansion Reinvestment.—When a registered enterprise reinvests its undistributed profit or surplus by actual transfer thereof to the capital stock of the corporation for procurement of machinery, equipment

and spare parts previously approved by the Board under Subsections "d" and "e" hereof or for the expansion of machinery and equipment used in production or for the construction of the buildings, improvements or other facilities for the installation of the said machinery and equipment, the amount so reinvested shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made: Provided,

(1) That prior approval by the Board of such reinvestment was obtained by the registered enterprise planning such reinvestment, and (2) that the registered enterprise does not reduce its capital stock represented by the reinvestment within seven years from the date such reinvestment was made. In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reinvestment was made or reduces its capital stock represented by the reinvestment within a period of seven years from the date of reinvestment, a recomputation of the income tax liability therefor shall be made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest.

(i) Anti-Dumping Protection.—Upon recommendation of the Board, made after notice and hearing, the President shall issue a directive banning for a limited period the importation of goods or commodities which, as provided in Section three hundred one (a) of the Tariff and Customs Code of the Philippines, unfairly or unnecessarily compete with those produced by registered enterprises: Provided, (1) That the Board certifies to the satisfactory quality of the goods or commodities produced or manufactured by the registered enterprises; and (2) that the enterprises agree not to increase the price of these goods or commodities during- this period, unless for good cause, the Board allows such an increase.

(j) Protection from Government Competition.—No agency or instrumentality of the government shall import or allow the importation tax and duty free of products or items that are being produced or manufactured by registered enterprises, except when the President determines that the national interest so requires or when international commitments require international competitive bidding.

SEC. 8. Incentives to a Pioneer Enterprise.—In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentives benefits:

(a)Tax Exemptions.—Exemption from all taxes under the National Internal Revenue Code, except income tax, to the following extent:

- (1) One hundred per cent up to December 31, 1972;
- (2) Seventy-five per cent up to December 31, 1975;
- (3) Fifty per cent up to December 31, 1977;
- (4) Twenty per cent up to December 31, 1979;
- (5) Ten per cent up to December 31, 1981.

(b)Employment of Foreign. Nationals.—Subject to the provisions of Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, as amended, to employ and bring into the Philippines foreign nationals under the following conditions:

(1)That all such foreign nationals shall register with the Board;

(2)That the employment of all foreign nationals shall cease and they shall be repatriated five years after the registered enterprise has begun operating: Provided, That when the majority of the capital stock of the pioneer enterprise is owned by foreign investors, the positions of president, treasurer and general manager, or their equivalents, may be retained by foreign nationals. In exceptional cases, the Board may allow employment of foreign nationals in other positions that cannot be filled by Philippine nationals, but in such cases the limitations

of Section seven paragraph (g) of this Act shall apply.

Foreign nationals under employment contract within the purview of this Act, their spouse and unmarried children under twenty-one years of age, who are not excluded by Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

(c)Post-Operative Tariff Protection.—Upon recommendation of the Board, the President, with or without the recommendation of the Tariff Commission or the National Economic Council, shall issue a certification that a pioneer industry shall be entitled to post-operative tariff protection to an extent not exceeding fifty per cent of the dutiable value of imported items similar to those being manufactured or produced by a pioneer enterprise, unless a higher rate or amount is provided for in the Tariff Code or pertinent laws. Said tariff shall take effect automatically upon certification by the Board that the pioneer enterprise is operating on a commercial scale: Provided, That said tariff, once operative, may be modified in accordance with Section four hundred one of the Tariff and Customs Code.

SEC. 9. Special Export Incentives for Registered Enterprises.—Registered enterprises shall be entitled to the following special incentives for exports of their completely finished products and commodities:

(a)Double Deduction of Promotional Expenses.—To deduct from taxable income twice the amount of the ordinary and necessary expenses incurred for the purpose of promoting the sale of their products abroad;

(b)Double Deduction of Shipping Costs.—To deduct from taxable income twice the amount of shipping freight incurred in connection with the export of their products, if the shipments are made in vessels of Philippine registry to their regular ports of call; and to deduct one hundred fifty per cent (150%) of the freight when shipments are made in vessels of foreign registry to a port which is not a regular port of call of Philippine vessels;

(c)Special Tax Credit on Rate Materials.—A tax credit equivalent to seven per cent (7%) of the total cost of the raw materials and supplies purchased by registered enterprises or an amount equivalent to the taxes actually paid by registered enterprises on said raw materials, whichever is higher, to the extent used in manufacturing exported products and commodities.

Before registered enterprises may avail themselves of the foregoing exports incentives benefits, they shall apply first with the Board, which shall approve the application upon proof: (1) that the enterprise proposes to engage in good faith in creating a market for its products abroad; (2) that the product to be exported is one included in the government priorities plan as suitable for export, or if not so included that its export will not adversely affect the needs of the domestic market for the finished product to be exported or for the domestic raw materials used in its manufacture; (3) that the enterprise has or v/ll set up an adequate accounting system to segregate revenues, purchases and expenses of its export market operations from those of its domestic market operations; and (4) that the exported products and commodities meet the standards of quality established by the Bureau of Standards or, in default thereof, by the Board.

SEC. 10. Preference in Grant of Government Loans.— Government financial institutions such as the Development Bank of the Philippines, Philippine National Bank, Government Service Insurance System, Social Security System, Land Bank, and such other government institutions as are now engaged or may hereafter engage in financing or investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to applications for financial assistance submitted by pioneer and other registered enterprises, whether such financial assistance be in the form of equity participation in preferred, common, or preferred convertible shares of stock, or in loans and guarantees, and shall

facilitate the processing thereof and the release of the funds therefor. However, no financial assistance shall be extended under this section to any investor or enterprise that is not a Philippine National.

The above-mentioned financial institutions, to the extent allowed by their respective charters or applicable laws, shall contribute to the capital of a registered enterprise whenever the said contribution would enable the formation of a pioneer or other registered enterprise with at least sixty percent control by Philippine

Nationals: Provided, That the capital contribution of the said financial institutions shall be limited to the amount that cannot be contributed by private Filipino investors, and shall in no case exceed thirty per cent of the total capitalization of the pioneer or other registered enterprises. The shares representing the contribution of the said financial institutions shall be offered for public sale to Philippine Nationals through all the members of a registered Philippine stock exchange.

To facilitate the implementation of the provisions of this Section, all the said financial institutions shall coordinate their financial assistance programs with each other, exchange relevant information about applicants and applications, and submit a monthly report to the Board showing the amount of funds available for financial assistance to pioneer or other registered enterprises. The Board shall recommend to the Board of Directors of each such financial institution what order of priority shall be given the applications of pioneer and other registered enterprises, or of applicants that propose to seek registration as such.

SEC. 11. Private Financial Assistance.—Any provision of existing laws to the contrary notwithstanding, the Insurance Commissioner is hereby authorized to allow insurance companies, under such rules and regulations as he may issue to invest in new issues of stock of registered enterprises, notwithstanding that said enterprises may not have paid regular dividends, to the extent set out in section two hundred, paragraphs (c) and (f) of the Insurance Act, as amended: Provided, that said investments are diversified.

SEC. 12. Loans for Investment.—The Government Service Insurance System and the Social Security System shall extend to their respective members five-year loans at a rate of interest not to exceed six per cent per annum for the purchase of shares of stock in any registered enterprise: Provided, That (1) the shares so purchased shall be deposited in escrow with the lending institution for the full five-year term of the loan; partial releases of the shares shall, however, be allowed to the extent of the payment of amortization made therefor; (2) such loans shall be amortized in sixty equal monthly installments which shall be withheld by the employer from the monthly salary of the employee concerned and remitted to the lending institution by the employer; but any and all dividends earned by shares of stock while they are held in escrow shall be delivered to the employee; and (3) the maximum loan available to each employee in any one calendar year shall not exceed fifty per centum of the employee's annual gross income: Provided, further, That the total investment of the government financial institution concerned, consisting of its direct investment in the registered enterprise and the loans it has extended to its respective members which have been invested by the members in a registered enterprise, shall not be more than forty-nine per cent (49%) of the total capitalization of the registered enterprise in which the investments have been made.

SEC. 13. Board of Investments.—To carry out the purposes of this Act, there is hereby created a Board of Investments which shall be organized within sixty days after the approval of this Act, composed of five full-time members to be appointed by the President of the Philippines with the consent of the Commission on Appointments, from a list of nominees submitted by the Chamber of Commerce of the Philippines, the Chamber of Industries, Base Metals Producers Association, Gold Producers Association, Chamber of Agriculture and Natural Resources of the Philippines, the Bankers Association of the Philippines and other similar business organizations as well as from duly organized and existing labor confederations, federations and other organizations of national standing in the Philippines from which the President may request nominees: Provided, That each association shall submit a list of not less than three (3) but not more than five (5) nominees and that no

association shall have more than one member in the Board at any particular time: And provided, further, That the President may appoint as members of the Board qualified persons who have not been so nominated. The Board shall elect a Chairman from among themselves. The tenure of office of each member shall be six (6) years: Provided, however, That the members of the Board first appointed shall hold office for two (2) years, three (3) years, four (4) years five (5) years and six (6) years as fixed in their respective appointments: Provided, further, That upon the expiration of his term, a member shall serve as such until his successor shall have been appointed and qualified: Provided, finally, That no vacancy shall be filled except for the unexpired portion of any term, and that no one may be designated to be a member of the Board in an acting capacity, but all appointments shall be ad interim or permanent. For administrative purposes, the Board shall be under the Office of the President of the Philippines.

SEC. 14. Qualifications of Members of the Board.—The members of the Board shall be citizens of the Philippines, at least thirty (30) years old, of good moral character, and of recognized competence in the field of economics, finance, banking, commerce, industry, agriculture, engineering, management, law or labor, such competence to be certified by the association making the nomination or by the association whose members belong to the same profession, calling or occupation as the person appointed. No member of the Board may be a candidate for any elective office during his incumbency and within four (4) years from the date he ceases to be a member of the Board; nor shall he during his incumbency and for a period of seven (7) years thereafter invest or have any financial interest, direct or indirect, in any enterprise registered during his incumbency, except where such interest was acquired by intestate succession or as a compulsory heir in a testate succession.

SEC. 15. Compensation of the Chairman and Members of the Board.—The Chairman shall receive an annual salary of fifty thousand pesos (P50,000.00) and a monthly commutable allowance of two thousand pesos (P2,000.00), and each member shall receive an annual salary of forty thousand pesos (P40,000.00) and a monthly commutable allowance of one thousand five hundred pesos (P1,500.00).

SEC. 16. Powers and Duties of the Board.—The Board shall meet as often as may be necessary, but not less than once each week on such day as it may fix. Notice of special meetings shall be given all members of the Board and proof of such notice shall be spread upon the minutes. The presence of three (3) members shall constitute a quorum; and the affirmative vote of three (3) members in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:

- (a) Draw up annually an investments priorities plan in the manner prescribed in Section eighteen which shall be the basis for the implementation of this Act;
- (b) Promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act, which rules and regulations shall take effect thirty (30) days after their publication in two (2) newspapers of general circulation in the Philippines;
- (c) Process and approve, imposing such terms and conditions as it may deem necessary to promote the objectives of this Act, applications for registration under this Act, and issue the proper certificate of registration upon payment of the necessary fees, which shall not exceed two hundred pesos;
- (d) After due hearing, decide controversies concerning the implementation of this Act that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: Provided, That the investor or the registered enterprise may appeal from the decision of the Board within fifteen (15) days from receipt thereof to the Court of First Instance of the City of Manila or of the city or province where the principal office of the registered enterprise is located, in the manner provided for by the Rules of Court in cases of this nature;

- (e) Recommend to the Commissioner of Immigration the entry into the Philippines for employment of foreign nationals as permitted in Sections seven and eight of this Act;
- (f) Periodically check and verify, either by inspection of the books or by requiring regular reports, the proportion of the participation of Philippine Nationals in a registered enterprise to ascertain compliance with its qualification to retain registration under this Act;
- (g) Periodically check and verify the compliance by registered enterprises with the provisions of this Act, with the rules and regulations promulgated under this Act and with the terms and conditions of registration;
- (h) After notice and hearing, cancel the registration or suspend the enjoyment of incentive benefits of any registered enterprise for (1) failure to maintain the qualifications required by this Act for registration or (2) for wilfull or grossly negligent violation of any provision of this Act, of the rules and regulations issued under this Act, or the terms and conditions of registration, or of laws for the protection of labor or of the consuming public; Provided, That the registered enterprise affected by the order of cancellation or suspension may appeal within fifteen (15) days from the receipt of the order to the Court of First Instance of the City of Manila or of the city or province where the principal office of the registered enterprise is located;
- (i) Appoint, discipline and remove, and determine the compensation of, its technical staff and other personnel: Provided, That, except as to the technical staff and such other positions as the Board may declare to be highly technical or primarily confidential, all positions in the Board are subject to the provisions of the Civil Service Law and Rules, but are exempt from the regulations of the Wage and Position Classification Office;
- (j) Prepare or contract for the preparation of feasibility and other pre-investment studies for pioneer areas either upon its own initiative or upon the request of Philippine Nationals who commit themselves to invest therein and show the capability of doing so, and upon condition that in no case shall the expenditure of the Board exceed one hundred twenty-five thousand pesos (P125,000) per study: Provided, That if the venture is implemented, then the amount advanced by the Board should be repaid within five (5) years from the date the commercial operation of said enterprise starts;
- (k) Within four (4) months after the close of the fiscal year, submit annual reports to the President and Congress, with copies to each member thereof, which shall cover its activities in the administration of this Act, including recommendations on investment policies; and
- (l) Generally, exercise all the powers necessary or incidental to attain the purposes of this Act.

SEC. 17. Powers and Duties of the Chairman.—The Chairman shall also be the Managing Head of the Board, and shall have the following powers and duties:

- (a) Prepare the agenda for the meetings of the Board and submit for its consideration and approval the policies and measures which he deems necessary and proper to carry out the provisions of this Act;
- (b) Manage the affairs of the Board subject to the policies of the Board;
- (c) Gather and compile statistical data required for the effective implementation of this Act;
- (d) Provide, through Philippine diplomatic missions, such information as may be of interest to prospective foreign investors;
- (e) Collate, analyze and compile pertinent information and studies concerning areas that have been or may be declared preferred or pioneer areas of investment;
- (f) Assist registered enterprises and prospective investors to have their papers processed with dispatch by all government offices, agencies, instrumentalities and financial institutions;
- (g) Act as liaison between investors seeking joint venture arrangements in particular areas of investment; and

(h) Perform such other duties as may be assigned to him by the Board.

SEC. 18. Preferred and Pioneer Areas of Investment.— Within one hundred twenty (120) days after its organization and not later than the end of January of every year thereafter, the Board of Investments shall submit to the President, through the National Economic Council, an Investments Priorities Plan as defined in Section three, paragraph (k) of this Act.

In determining the preferred and pioneer areas of investment and their corresponding measured capacities, the Board shall determine which areas of investment best accomplish the policy declared in this Act, including those which will economically produce goods for domestic use in substitution for goods being imported in large quantities, and especially those which will process further and thereby increase the value of agricultural, mining and timber products already being produced for export or which will make products at costs low enough to be sold competitively in export markets. Any area of investment where an enterprise: (1) Is engaged in the exportation of finished products completely processed and manufactured in the Philippines with at least seventy (70%) per cent of the peso value of its total raw material content being Philippine raw material; (2) is exporting more than fifty (50%) per cent of its total production; and (3) does not enjoy any preferential treatment arising from any agreement or arrangement between the Philippine government and the importing country; shall be considered a preferred area of investment and included in the Investment Priorities Plan.

The Board shall take into account all the following criteria:

- (a) The gaps between prospective demand and existing supply for specific products, commodities and services, and the additional production capacities that must be induced where such gaps exist;
- (b) The potential of such areas of investments for creating new markets both domestic and foreign, for domestic suppliers of raw materials and/or intermediate goods, or new sources of supply for domestic consumers of the products;
- (c) The potential of such areas of investment for creating productive employment, considering the necessity for the dispersal of industries in the country on a planned and balanced basis to the extent that is economically feasible and practicable;
- (d) The extent to which investment in such areas will integrate existing production, facilities;
- (e) The amounts of import substitution or of new exports such areas of investment will promote;
- (f) The amount of capital normally needed thereby;
- (g) The nature of the risks, commercial or otherwise, which may be entailed;
- (h) The proportion of the required capital, raw material and labor inputs of indigenous origin;
- (i) The rate of profitability;
- (j) The rate of return to the economy;
- (k) The maintenance of competition; and
- (l) Such other criteria as the Board may adopt. Considering the amount of Investment capital which the Board may estimate to be available during any given year, the Board shall give priority to projects with the highest rates of return to the national economy. No project shall be included in the Investment Priorities Plan, nor declared a preferred area of investment, nor designated a pioneer area, unless it is shown to be economically, technically and financially sound after thorough investigation and analysis by the Board. In any of the areas

declared preferred areas of investment, the Board may designate as pioneer areas the specific products and commodities that meet the requirements of Section three, paragraph (h) of this Act.

The National Economic Council, within sixty (60) days from receipt of the plan from the Board, shall evaluate and submit the same, with its' recommendation on the entire plan or portions of it, to the President for his approval. If the National Economic Council fails to act on the plan within the said period of sixty (60) days, it shall automatically be submitted to the President for approval.

Upon approval, the President shall proclaim the whole or part of such plan as in effect; or alternatively, return the whole or part of the plan to the Board of Investments for revision. Portions not returned to the Board of Investments shall be proclaimed in effect.

Upon the effectivity of the plan or portions thereof, the President shall issue all necessary directives to all departments, bureaus, agencies and instrumentalities of the government to ensure the implementation of the plan by the agencies concerned in a synchronized and integrated manner. No government body shall adopt any policy or take any course of action contrary to or inconsistent with the plan.

The Board of Investments may, after notice and public hearing, amend the whole or any part of the plan, alter any of the terms of the declaration of an investment area, or the designation of measured capacities, or terminate the status of preference or pioneer: Provided, That in all such cases the procedures outlined in this section are observed to the extent that they are applicable. In no case, however, shall any amendment of the plan impair whatever rights may have already been legally vested in qualified enterprises which shall continue to enjoy such rights to the full extent allowed under this Act. The Board shall not accept applications in an area of investment prior to the approval of the same as a preferred or pioneer area by the President nor after approval of its deletion as a preferred or pioneer area of investment. Upon approval of the plan, in whole or in part, or upon approval of an amendment thereof, the plan or the amendment, specifying and declaring the preferred and pioneer areas of investment and their corresponding measured capacity shall be published in the Official Gazette and in at least two newspapers of general circulation, and all such areas shall be open for application until publication of an amendment or deletion thereof, or until the Board approves registration of enterprises which fill the measured capacity.

SEC. 19. Qualification of Applicants.—To be entitled to registration, an applicant must satisfy the Board that:

(a) It possesses the qualifications prescribed for registered enterprises in Section three, paragraph (b) of this Act; or if it does not possess the required degree of ownership by Philippine Nationals, the following circumstances must be satisfactorily established:

(1) That it is otherwise qualified under Section three, paragraph (b) of this Act;

(2) That it proposes to engage in a pioneer project as defined in Section three, paragraph (h) of this Act which, considering the nature and extent of capital requirements, processes, technical skills and relative business risks involved, is in the opinion of the Board of such a nature that the available measured capacity thereof cannot be readily and adequately filled by Philippine Nationals;

(3) That it obligates itself to attain the status of a Philippine National as defined in Section three, paragraph (f) of this Act by: (1) having its shares of stock listed with a Philippine stock exchange within ten (10) years from the date of registration; and (2) actually offering for sale the said shares to Philippine Nationals not later than the beginning of the eleventh year from the date of its registration. In any event, a sufficient number of shares must be disposed of within a period of twenty (20) years from the date of its registration to enable Philippine Nationals to hold and own at least sixty per cent (60%) of the capital stock outstanding and entitled to vote of said enterprise: Provided, however, That the Board may extend this period for another period not to exceed twenty years, subject to such conditions as it may impose in the national interest, and upon proof by the

registered enterprise (1) that it has made a bona fide offer to sell the required number of shares to Philippine Nationals as required by this Section but Philippine Nationals have not bought the same; and (2) that it has not offered to buy and has not bought shares of stock from Philippine Nationals; or (3) that such other cause exists as the Board may deem sufficient to justify the extension of the period.

(4) That the pioneer area it will engage in is one that is not within the activities reserved by the Constitution or other laws of the Philippines to Filipino citizens or corporations owned and controlled by Filipino citizens.

(b) The enterprise is proposing to start and operate a preferred or pioneer project, or only a pioneer project in the case of non-Philippine enterprises, within a reasonable time to be fixed by the Board;

(c) The enterprise is capable of operating on a sound and efficient basis and of contributing to the national development of the preferred or pioneer area in particular and of the national economy in general;

(d) If the enterprise is engaged or proposes to engage in undertakings or activities other than preferred or pioneer projects in addition to the project mentioned in subsection (b) hereof, it has installed or undertake to install an accounting system adequate to identify the investments, revenues, costs, and profits or losses of each preferred or pioneer project undertaken by the enterprise separately from the aggregate investment, revenues, costs, and profits or losses of the whole enterprise or to establish a separate corporation for each preferred or pioneer project if the Board should so require to facilitate proper implementation of this Act.

Notwithstanding the provisions of paragraphs (a) and (b) of this Section, if the measured capacity of any preferred, non-pioneer area is not filled within three years from the date of its declaration as a preferred, non-pioneer area, the Board shall allow enterprises not possessing the required percentage of Philippine ownership and control, but otherwise qualified, to be registered in such areas, under the conditions prescribed above for pioneer areas.

SEC. 20. Application,—Applications shall be recorded in a registration book and shall be processed in the order in which they are filed; and for this purpose the date appearing on the registration book and stamped on the application shall be considered the date of filing. The Board shall cease to register any enterprise in a preferred or pioneer area of investment when the measured capacity therein has been filled; but all enterprises registered within the measured capacity shall enjoy the status of preferred or pioneer enterprises, as the case may be. Where several qualified enterprises apply for registration with the Board but the total of their proposed combined production capacities exceeds the available measured capacity of the preferred or pioneer area of investment in which they are proposing to engage, the Board shall approve and register only those that can be accommodated within the available measured capacity and are better suited to achieve the objectives of this Act. The Board shall base its choice on the following criteria:

- (a) The extent of ownership and control by Philippine Nationals of the enterprises;
- (b) The manner in which the enterprises are integrated, and the length of their experience in the preferred area of investment or in areas closely related to it;
- (c) The cost factors and the economies of scale involved in their processes;
- (d) The amount of foreign exchange earned, used, or saved in their operations;
- (e) The extent to which they employ labor, materials and other resources obtained from indigenous sources;
- (f) The amount of their equity, and the degree to which the ownership of such equity is spread out and diversified;
- (g) The extent to which they shall insure the maintenance of competition within the industry; and

(h) The extent of public participation in the enterprise.

In making a choice between two or more enterprises applying for registration and proposing to produce identical or substantially identical products or commodities, both possessing the required degree of Filipino ownership and control, the Board shall give preference to projects that constitute an expansion of, or addition to or integration of existing facilities whenever these enjoy the advantages of lower costs and economies of scale over projects undertaken in isolation from technically related facilities; and other things being equal, the Board shall give preference to enterprises where the degree of ownership and control by Philippine Nationals is greater.

Nothing in this Section shall be construed to exclude any non-registered enterprises from freely engaging, within existing constitutional and statutory limitations, and without enjoying the incentives benefits provided in this Act, in any line of economic activity or endeavor that has been declared a preferred area of investment: Provided, That a non-Philippine National may engage, without incentives, in preferred areas of investment where Philippine Nationals are already engaged only after three (3) years from the date of declaration of the area as preferred if the measured capacity has not been filled within the said period, except where such non-Philippine National shall engage, without incentives, in the manufacture of finished products primarily for export. The Board shall fix the percentage of production that must be exported by a non-Philippine National in order to be deemed to be engaged in manufacture primarily for export, which percentage shall not be less than seventy per cent (70%) of its total production.

Any order or decision of the Board under this Section may be appealed within thirty (30) days from receipt of said order or decision to the National Economic Council. Upon failure on the part of the National Economic Council to act within the said period of ninety (90) days, the decision of the Board shall be deemed upheld. The Board or the enterprise applying for registration under this Act may appeal the decision of the National Economic Council to the President within thirty (30) days from its promulgation.

SEC. 21. Certification of Registration.—All enterprises registered under this Act shall be issued a certificate of registration under the seal of the Board of Investments and the signature of its chairman and, or such other officer or employee of the Board as it may empower and designate for the purpose. The certificate shall be in such form and style as the Board may determine, and shall state, among other matters:

- (a) The name of the registered enterprise;
- (b) The preferred area of investment in which the registered enterprise is proposing to engage;
- (c) The nature of the activity it is undertaking or proposing to undertake, whether preferred or pioneer, and the registered capacity of the enterprise: and
- (d) The other terms and conditions to be observed by the registered enterprise by virtue of the registration.

SEC. 22. General Provisions.—Notwithstanding any provision of law to the contrary:

- (a) Number of Directors.—Registered enterprises may fix the number of their Directors at any number not in excess of fifteen ;
- (b) Types of Stock.—For purposes of transferability, registered enterprises shall issue two types of voting shares of capital stock: one type which may be transferable only to Philippine Nationals and which shall at all times be not less than sixty per cent of the stock entitled to vote; and another which may be transferred to Philippine or foreign nationals, and which shall at no time be more than forty per cent of the voting stock. Each share shall have its type clearly designated on the face of the certificate.
- (c) Marketing Affiliate.—Philippine Nationals who are stockholders in a registered enterprise in which

non-Philippine Nationals hold stock may establish a marketing corporation to handle and distribute exclusively the product of the registered enterprise in its preferred area of investment: Provided, (1) That the said marketing company is wholly owned by, with entire beneficial ownership and control vested in, Philippine citizens; (2) That the stock of said marketing company is available for acquisition by other citizens of the Philippines who may desire to invest therein; (3) That Philippine Nationals hold at least twenty-one per cent of the voting stock of the registered enterprise; and (4) That the Board approves the creation of the marketing corporation for reasons of economy and practicability.

SEC. 23. Other Incentives Acts.—After the promulgation and designation of the preferred areas of investments and/ or pioneer industries under this Act, the Board of Industries created by Republic Act Numbered Three thousand one hundred twenty-seven, as amended, shall not accept any application for the exemptions provided for in the said Act, except (1) from persons, firms, or corporations that had been granted tax exemptions under the said Act prior to the effective date of this Act; (2) from persons, firms or corporations whose applications were pending approval at the time of the approval of this Act; (3) from persons, firms or corporations with applications which are necessary implementations or necessary consequences of Nos. 1 and 2; and (4) from persons, firms or corporations who are engaged in industries entitled to the benefits of said Republic Act Numbered Three thousand one hundred twenty-seven, which are not within the preferred areas of investments under this Act.

(b) A registered enterprise under this Act which is entitled to benefits under other laws shall be entitled, to the extent of its registered capacity, to such of the benefits granted under this Act as are not granted by said other laws and to such benefits granted under the latter as are not granted under the former.

SEC. 24. Penal Clause.— (a) Any violation of the provisions of this Act or of the terms or conditions of registration shall be punished by a fine not to exceed fifty thousand pesos (P50,000.00) or imprisonment for not more than three (3) years or both, at the discretion of the Court. If the offender is not a citizen of the Philippines, he shall be deported without further proceedings on the part of the Deportation Board in addition to the penalty prescribed herein and after service of the sentence therefor.

(b) No official or employee of the government, its subdivisions or instrumentalities shall appear as counsel for or act as agent or representative of, or in any manner intervene or intercede, directly or indirectly, in behalf of any party in any transaction with the Board regarding the availment of incentives benefits under this Act. Violation of this subsection shall be subject to the same penalty provided for in subsection (a) hereof. If the guilty party is an appointive official or employee, he shall, in addition, be dismissed from the service with prejudice to reinstatement and subsequent appointment to any public office. If the violation is committed by a member of the Board, such member shall be punished with double the penalty herein provided.

SEC. 25. Applicability and Interpretation.—In interpreting and applying the provisions of this Act, the following rules shall be observed:

(a)Applicability to Existing Enterprises.—An enterprise which satisfies the definition of a "Philippine National" engaged at the time of passage of this Act in an area of investment declared by the Board as a preferred area of investment, shall be entitled to registration as to its present capacity, as well as to such an expansion or enlargement thereof requiring new or additional machinery and equipment as shall be within the unfilled measured capacity of the area; so also, an investor in such an existing enterprise shall be entitled to benefits and incentives to the extent of his present as well as new or additional investment therein: Provided, That the benefits of this Act, so far as may be applicable to such existing enterprises and investors in such existing enterprises, shall be given prospective effect only from the date of registration.

(b)Benefits of Multiple Area Enterprises.—When a registered enterprise engages in activities or endeavors that have not been declared preferred or pioneer areas of investment, the benefits and incentives accruing under this Act to registered enterprises and investors therein shall be limited to the portion of the activities of such

registered enterprise as is a preferred or pioneer area of investment.

(c)Resolving Doubts.—All doubts concerning the benefits and incentives granted enterprises and investors by this Act shall be resolved in favor of investors and registered enterprises.

SEC. 26. Separability Clause.—The provisions of this Act are hereby declared to be separable, and in the event one or more of such provisions are held unconstitutional, the validity of other provisions shall not be affected.

SEC. 27. Appropriation.—To carry out the purposes of this Act, there is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, the sum of Two million pesos for the fiscal year nineteen hundred sixty-seven-nineteen hundred sixty-eight. Thereafter, the appropriations for the Board of Investments shall be included in the annual General Appropriations Act.

SEC. 28. Repealing Clause.—All Acts, parts of Acts, executive orders and regulations inconsistent herewith, are hereby repealed or modified accordingly.

SEC. 29. Effectivity.—This Act shall take effect upon its approval.

Approved, September 16, 1967.

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