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GUIDELINES TO IMPLEMENT REPUBLIC ACT NO. 7103 OTHERWISE KNOWN AS THE IRON AND STEEL INDUSTRY ACT

BOIN, October 03, 1991

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Pursuant to Sec. 15 of Republic Act. No. 7103 otherwise known as the Iron and Steel Industry Act, the following guidelines are hereby promulgated to implement the intent and provisions of said Act.

Rule I
Definition of Terms

SECTION 1. For Purposes of these Guidelines -

a. Act refers to the Iron and Steel Industry Act.

b. Board refers to the Board of Investments.

c. Certificate of Eligibility refers to the document/certificate issued by the Board to enterprises eligible for incentives under the Act.

d. Certified Enterprise refers to a Filipino citizen or a juridical entity organized under Philippine laws who/which has been issued a Certificate of Eligibility.

e. Certified Activity shall mean any activity falling within the purview of Sec. 1(b), Rule II hereof.

f. Non-Certified Activity shall mean any activity or project being undertaken by a certified enterprise, but which activity/project does not fall within the coverage of Sec. 1(b), Rule II hereof.

g. Integrated Iron and Steel Mill shall refer to a manufacturing facility which shall produce iron from iron ore for conversion to pig iron and/or steel which may or may not include rolling facilities for the manufacture of intermediate steel products.

h. Internationally Competitive as applied to an Iron and Steel Mill shall refer to a manufacturing facility whose product quality and cost of production are within the range attained by internationally recognized steel producers.

i. Primary Steel shall refer to the following steel products produced from iron ore in the following forms:

- Ingots - steel produced in cast form made by teeming or pouring of liquid steel into static molds for further hot processing into primary flat and/or long steel products.

- Slabs - rectangular in cross-section and normally range from 35-300 mm in thickness and 610 mm or greater in width.

- Blooms - with square or rectangular cross-sections ranging in size from 152-305 mm square and above.

- Billets - have cross-sections smaller than bloom and normally range from 51-127 mm square.

j. Intermediate Steel shall refer to the following steel products processed from primary steel:

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- Hot Rolled Coils - steel strip in coil form rolled from slabs in the hot strip mill and normally range from 1.2 mm to 12 mm in thickness and 300 mm to 3,000 mm in width.

- Plates - is a rectangular shaped form rolled from slabs in the hot strip mill to the plating mill and normally range from 6 mm to 76.2 mm in thickness and 1,220-1,900 mm in width.

- Cold Rolled Coils - steel strip in coil form rolled from hot rolled coils in the cold mill and normally range from .18 mm to 1.6 mm in thickness and 300 mm to 1,800 mm in width.

- Bars and Rods - plain surfaced long products rolled from blooms/billets in round or non-round shapes and in straight lengths or in coil form.

k. Finished Steel shall refer to steel produced for end-use from primary or intermediate steel by metalforming, metalworking and heat or surface treatment processes.

l. Tax Credit shall refer to any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Board. Tax credit certificates issued under the Act shall be used to pay taxes, duties, charges and fees due to the National Government; provided that said tax credits shall not form part of the gross income of the grantee/transferee for income tax purposes under the National Internal Revenue Code, as amended, and are therefore not taxable: provided, further, that such tax credit certificates shall be valid only for a period of ten (10) years from date of issuance.

Rule II
Requirements for the Issuance of a
Certificate of Eligibility

SECTION 1. To be entitled to the issuance of a Certificate of Eligibility under the Act, an applicant must comply with the following:

a. Nationality Requirement. - The enterprise shall be undertaken by a citizen of the Philippines or a corporation, partnership, or other association organized under the laws of the Philippines at least thirty five percent (35%) of the Capital of which is owned and controlled by citizens of the Philippines. As a matter of principle, and whenever possible, Filipino investors will be given preference in investing up to one hundred percent (100%) in the equity capital of an enterprise.

b. The enterprise shall engage in the following manufacturing activities:

- The production of primary steel products or intermediate steel products; or

- Manufacture or processing of products or provision of infrastructure such as roads, auxiliary facilities such as ports and harbors; and industrial services, primarily for the direct use of enterprises engaged in the activities referred to in 1 above; or

- Refinement or treatment of by-product or waste-products predominantly of the enterprise mentioned in 1 above.

c. Technical and Economic Capability. - The enterprise shall be capable of operating and establishing on a technologically up-to-date, economically efficient and internationally competitive basis and of contributing to national development, taking into account the markets proposed to be addressed by the enterprise.

For purposes of evaluating the technical and economic viability of enterprises seeking certificates of eligibility under the Act, the Board may if deemed necessary, consult the appropriate government agencies and/or engage the services of independent local and/or foreign consultants/experts.

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For enterprises proposing to engage in the activities described under Section 1(b)(1) of this rule, the following shall be the minimum requirements:

1. The enterprise applying for a certificate of eligibility as a primary steel producer should be able to produce slabs or blooms/billets from which the following range of steel products could be derived:

A. From Slabs

1) Hot Rolled Flat Products
- Hot Rolled Plates
- Hot Rolled Coils

2) Cold Rolled Flat Products

- CRC for GI Sheets
- CRC for deep drawing applications
- CRC for automotive, appliances, etc.
- Tin Mill Black Plate for Tinplates

B. From Blooms and Billets

1) Structurals
2) Wire Rods
3) Merchant Bars

2. The enterprise applying for a certificate of eligibility as an intermediate steel producer should be able to produce plates, hot or cold rolled flat products for GI sheets, deep drawing applications, automotive and appliance, and tin mill black plates for tinplates; or bars/rods which are plain surfaced long products in round or non-round shapes and in straight lengths or coiled, the types of which are not currently produced in the Philippines, for use in drawing, extrusion or forging.

3. Construction of the Project should commence within two years after certification by the Board.

4. The Certified Project shall start its operation not later than the 6th year after certification by the Board.

Start of operation shall refer to the date when the enterprise begins production from its certified activity for commercial purposes. Subject to verification, such date shall be reported in writing by the enterprise to the Board within ten (10) calendar days from start of operations.

5. Minimum Output Standards and Specifications:

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The products of the Certified Enterprise should be able to meet Philippine and/or international standards, which in the case of flat steel products, shall consist of surface quality, shape and dimensional accuracy as well as the necessary chemical composition, metallurgical structure and mechanical properties such as strength, temper, deep drawing qualities, etc. In the case of long products, these should comply with dimensional accuracy, and the necessary chemical composition, metallurgical structure and mechanical properties such as strength, ductility, drawing properties, etc.

Preferably, the applicant enterprise proposing to engage in activities under Sec. 1(b)1 of this Rule should source its manufacturing/production equipment from manufacturers/builders who have constructed or supplied iron and steelmaking machinery/equipment to at least three (3) existing commercially operating steel plants which are internationally competitive and who can provide experts of internationally proven qualifications for

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engineering/technical consultation and supervision.

d. Separate Accounts - If the enterprise is engaged or proposes to engage in non-certified activities, said enterprise has installed or undertakes to install an accounting system adequate to record and identify the investments, revenues, costs, profits and losses of the certified activities separate from those arising from non-certified activities.

e. Environmental Protection. - The enterprise shall comply with all laws and regulations on environmental protection. Whenever deemed necessary, the Board shall require the enterprise to submit clearances and/or other documents from the environmental Management Bureau tasked with environmental protection.

Consistent with the Board's Industrial Location Policy, enterprises locating in Metro Manila shall not be entitled to certification under this Act.

The Board may grant exemption from the above Industrial Location Policy in cases of:

(a) Certified enterprises locating within government industrial estates or resettlement areas in Metro Manila; or

(b) Industrial service-type projects of certified enterprises with no manufacturing facilities.

SECTION 2. Filing of Application. - Applications for the issuance of a certificate of eligibility shall be filed with the Board of Investments.

SECTION 3. 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 4. Incomplete Papers. - Within five (5) working days from receipt of application, the Board shall notify the applicant of all pertinent requirements not complied with. Upon completion of the deficiencies, the applications shall be officially accepted immediately.

SECTION 5. 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 6. Burden of Proof . - In every case, the applicant enterprise will have the burden of proving that it has complied with all the requirements that will entitle it to the issuance of a certificate of eligibility.

Rule III
Incentives to Enterprises with
Certificates of Eligibility

SECTION 1. As a general rule, the issuance by the Board of a certificate of eligibility entitles a certified enterprise to the Incentives provided for under the Act. However, fiscal incentives sought to be availed of shall require prior Board approval under conditions set forth in Rule IV hereof.

SECTION 2. All certified enterprises are entitled to the following incentives:

a. Power Infrastructure and Auxiliary Facilities;

b. Financing under the Official Development Assistance (ODA) program;

c. Tax and Duty Exemption of Imported Capital Equipment;

d. Tax Credit on Domestic Capital Equipment;

e. Other Loans from Foreign Private Financial Institutions or Fund Sources;

f. Rational Tariff Incentive and Protection Scheme.

SECTION 3. No entitlement to any incentive under the Act shall accrue to any certified enterprise prior to the date of issuance appearing in its certificate of eligibility.

SECTION 4. The incentives enumerated in Section 2 of this rule shall be in addition to such other incentives as may be available to the certified enterprise under the Omnibus Investments Code, laws creating export processing zones and other laws; provided, however, that enjoyment of incentives shall not be automatic under laws other than the Act. Enjoyment of incentives under laws other than this Act shall be subject to the provisions thereunder and the applicable rules and regulations thereof.

Rule IV
Incentives on Capital Equipment

SECTION 1. Tax and Duty Exemption on Imported Capital Equipment. - Certified 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 percent (100%) subject to the following conditions:

a. 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 certified enterprise at the time of need or within a reasonable period. In determining whether quality is comparable, the test, 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 percent (15%) mark-up.

b. That the machinery or equipment to be imported are reasonably needed and will be used exclusively by the certified enterprise in the manufacture, rolling or processing of primary iron and steel products or for the power generation requirement of its facilities.

The Board may, however, authorize the temporary or permanent use of machinery or equipment for a non-certified activity to maximize usage thereof or its permanent use for non-certified activities upon payment of proportionate taxes and duties thereon.

c. That the approval of the Board is obtained by the certified 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.

d. Subject to reasonable allowance, the rated capacity of the machinery or equipment to be imported is not grossly in excess of the projected capacity of the certified enterprise.

e. 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 not more than those 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 percent (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 Sec. 6(c) of the Act.

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f. The certificate of authority to import issued under Sec. 6(c) of the Act shall be valid for a period stated in said certificate of authority. Extension of validity may be granted in meritorious cases, Provided, that the request for such extension shall be filed before the expiration of the period sought to be extended.

g. 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.

h. The certificate of authority indicating the final Board approval of the importation of the equipment/machinery shall be supported by the following:

(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 of authority to import issued by the Board. 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;

(3)

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.

i. The capital equipment shall be installed and/or used in the site indicated by the applicant and shall not be used nor transferred elsewhere without the prior approval of the Board.

j. 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.

k. The Board if it deems necessary may require any certified firm to post a performance bond to answer for whatever commitments it may have made to the Board.

l. After the equipment has been withdrawn from the Customs premises, the certified 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 certified enterprise in the production or manufacture of its steel products.

m. 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 of 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.

n. Any sale, transfer or disposition of capital equipment (imported tax and duty free under Sec. 6-c of the Act) within five (5) years from date of acquisition shall require prior approval from the Board, otherwise, both the vendor and the transferee or assignee shall be solidarity liable to pay twice the amount of taxes and duties waived on the importation of said capital equipment. The Board may grant prior approval for the sale, transfer or disposition of capital equipment, within five (5) years from acquisition thereof, without refund of taxes and duties waived on the importation of the same, if such sale, transfer or disposition is made:

- to another certified enterprise enjoying similar incentives;

- for reasons of proven technical obsolescence as determined by the Board; or

- for purposes of replacement to improve and/or expand the operations of the certified enterprise.

Nothing herein shall preclude the Board from exercising its sound discretion in allowing the sale, transfer or disposition of capital equipment within five (5) years from acquisition thereof if taxes and duties are paid thereon.

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 2. Tax Credit on Domestic Capital Equipment. - A certified enterprise shall be entitled, on all purchases of domestically manufactured machinery, equipment and accompanying spare parts directly used in the certified activity, 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 Sec. 6(c) of the Act. The conditions governing the sale of imported capital equipment shall apply in the sale, transfer of disposition of capital equipment purchased (with incentives under Sec. 6(d) of the Act) from domestic manufacturers.

Rule V
Benefits to Enterprises Utilizing Products
of Integrated Iron and Steel Mills
SECTION 1. For purposes of Sec. 12 of the Act, enterprises utilizing the products produced by certified integrated iron and steel mills in the Philippines shall likewise be entitled to the benefits granted to said integrated iron and steel mills provided prior BOI approval is obtained.

SECTION 2. The Board approval required under the immediately preceding section shall be granted upon request if the following conditions are present:

a) The enterprise is utilizing as raw materials, products produced by an integrated iron and steel mill in the Philippines which had been issued a certificate of eligibility under the Act.

b) The project of the enterprise is described/listed/included in the Investments Priorities Plan of the Board and the plan to be formulated by NEDA within one year upon effectivity of the Act for the development and establishment of upstream and downstream industries identified with the iron and steel industry or the promotion of steel industry linkages.

Rule VI
Duration of Incentives

SECTION 1. Generally, all incentives enumerated under Sec. 2, Rule III hereof shall be available to certified enterprises for a period of fifteen (15) years reckoned from the date of effectivity of the Act unless the enjoyment of said incentives is sooner revoked by reason of cancellation of the certificate of eligibility or suspended under the pertinent provisions hereof.

SECTION 2. The provisions of the immediately preceding section, notwithstanding, the enjoyment of capital equipment incentives under Sec. 6(c) & (d) of the Act shall be available only up to August 10, 1992, unless the certified enterprise shall undertake its certified activity in a less-developed area included in the list prepared by the Board in consultation with NEDA and other appropriate government agencies, in which case the period of enjoyment shall likewise be fifteen (15) years reckoned from the date of effectivity of the Act.

Rule VII
Community Program Commitments to
be Undertaken by Certified Enterprises

SECTION 1. Community Programs. - The certified enterprise shall commit to the Board that it shall undertake community programs in the locality where it shall operate. These programs shall include the establishment of a center that would promote steel industry related enterprises nationwide and grants to schools that would develop their teaching capability and upgrade technical courses relevant to the steel Industry.

Rule VIII
Penalties

SECTION 1. The imposition of fines and imprisonment for smuggling prescribed under Sec. 10 of the Act shall be at the discretion of the Court of competent jurisdiction.

SECTION 2. The imposition of any penalty for smuggling under Sec. 10 of the Act shall be without prejudice to the Board's authority to:

a) Cancel the certificate of eligibility under Rule X hereof should the offender be a certified enterprise; and

b) In appropriate cases, require the refund of incentives or suspend the enjoyment thereof.

Rule IX
Violations of the Provisions of the Act
and These Guidelines

SECTION 1. Grounds for Cancellation. - Certificates of Eligibility issued under the Act may be cancelled under any of the following grounds:

(a) Failure to maintain the qualifications of a Certified Enterprise as required by the Act;

(b) Violation of any provision of the Act;

(c) Violation of any of these Guidelines or Policies adopted by the Board pursuant to its mandate under the Act;

(d) Violation of any of the terms and conditions stipulated under the Certificate of Eligibility.

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 certified enterprise depending upon the gravity of the offense committed.

SECTION 3. Nothing herein shall be construed as to prohibit the Board from imposing whatever fines it may deem appropriate for failure of the certified enterprise to comply with reportorial requirements and violations of

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certain provisions of the Act, these guidelines and the terms and conditions stipulated in the certificate of eligibility.

Rule X
Effects of Withdrawal from Business
or Suspension of Operations

SECTION 1. Non-Implementation of Project Timetable. - A delay of two (2) years in the implementation of project timetable as approved by the Board shall automatically cancel the certificate of eligibility. Unless otherwise reinstated by the Board, the certified enterprise shall surrender its certificate of eligibility within fifteen (15) days from receipt of the notice of automatic cancellation.

SECTION 2. Withdrawal from Business; Cessation of Operations. - Whenever a certified enterprise decides to withdraw from business or suspend its certified activity/operations 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 certified activity shall automatically cancel the certificate of eligibility, which shall then be turned over to the Board within the period stated in Section 1 hereof. Upon such withdrawal, the enterprise shall cease to be entitled to the incentives provided under this Act.

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

Rule XI
Reportorial Requirements

SECTION 1. Every certified enterprise shall, for each of the certified activity, submit to the Board the following reports and/or documents within the time herein prescribed:

a) Quarterly Production and Sales Report (Form S1-3) — one (1) month after end of each quarter:

b) Annual Report of Operation (Form S-1) — January 31 of each year;

c) Income Tax Returns — thirty (30) calendar days from the filing thereof;

d) Audited Financial Statements, viz.:

(1) profit and loss statement; and

(2) balance sheets — one month from date of filing with the Bureau of Internal Revenue of the annual income tax return for the preceding calendar/fiscal year;

e) Other reports the Board may require.

SECTION 2. Failure to comply with any of the foregoing reportorial requirements shall be construed as ground for the imposition of fines in such amount as may, in the discretion of the Board, be deemed appropriate; provided, however, that habitual or inexcusable failure to comply with reportorial requirements shall also be construed as a ground for suspension of enjoyment of incentives or cancellation of the certificate of eligibility.

Rule XII
Fees

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SECTION 1. The following fees shall be collected by the Board:

1. Filing fee for application for Certificate of Eligibility:

a) If the project cost does not exceed P4 million P1,100.00

b) If the project cost exceeds P4 million P2,200.00

2. Fee for the issuance of Certificate of Eligibility:

a) If the project cost does not exceed P4 million
P1,100.00

b) If the project cost exceeds P4 million P2,200.00

3. Other Certifications P200.00

4. Applications for enjoyment of incentives P1,100.00

5. Fee for the issuance of the Certificate of Authority:

a) If the project cost does not exceed P4 million P1,100.00

b) If the project cost exceeds P4 million P2,200.00

SECTION 2. For projects which will necessitate the Board's engagement of the services of independent local and/or foreign consultants/experts, the Board may require the applicant to pay, in addition to the application fee in Sec. 1(1) hereof, a technical evaluation fee in such amount as may be deemed appropriate by the Board but not to exceed ½ of 1% of the entire project cost.

Rule XIII
Suppletory Effect of Existing Board Policies

SECTION 1. Existing Board policies shall have suppletory applicability on certified enterprises unless application thereof shall be inconsistent with the provisions of the Act or the guidelines.

Rule XIVL
Effectivity

SECTION 1. These guidelines shall take effect after fifteen (15) days following the publication thereof in a newspaper of general circulation in the Philippines.

Adopted 3 October 1991

(SGD.) JOSEFINA C. PATIÑO
Acting Board Secretary

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