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

*BOI, January 30, 2004*

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

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

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

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

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

RULE I
General Provisions

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

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

- Delay of the project timetable by one (1) year unless otherwise reinstated as a registered enterprise by the Board [Art. 7(8), E.O. 226; Sec. 1, Rule XII, Implementing Rules and Regulations];

- Withdrawal from business/cessation of operations (Sec. 2, Rule XII, supra);

- Suspension of business operations for more than one (1) year or beyond the period allowed by the Board;

- Voluntary surrender of certificate of registration;

- By graduation, which refers to the state in which a BOI registered enterprise has reached the end of the useful life of its entitlement to incentives;

- Failure to maintain the qualifications for registration as required by the Code [Sec. 1(a), Rule XXIV, supra];

- Violation of any provision of the Code [Sec. 1 (b), Rule XXIV, supra];

- Violation of the Implementing Rules and Regulations or any of the general and specific terms and conditions of registration [Sec. 1(c), Rule XXIV, supra];

- Violation of any law for the protection of labor or of the consuming public [Sec. 1(d), Rule XXIV, supra];

- Misrepresentation or false statements made by the registered enterprise in any documents submitted in connection with its registration with the Board; or

- Acts or omissions by the registered enterprise or its officers in violation of any law, decree, executive order, letter of instructions, or rules and regulations the implementation of which is entrusted to the Board or under which any of the aforementioned issuances the Board is called upon to perform certain acts or is a party in interest.

RULE II
Cancellation of Registration

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

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

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

a) The status of registration of the enterprise;
b) The grounds for the cancellation of registration, a statement of the acts or omissions constituting the same, a statement of facts to establish compliance by the Board with the due notice requirement mandated under Article 7 of E.O. 226, the law and evidence in support of its findings and a recommendation for the cancellation of registration including:

(i) The imposition of fines and penalties, including the payment of interest, with basis therefor;
(ii) A recommendation for an order of refund, if warranted by the facts/evidence at hand.

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

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

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

a) Ground/s for the cancellation of the registration;


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

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

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

RULE III
Service of Notice

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

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

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

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

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

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

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

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

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


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

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

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

RULE IV
Reply

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

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

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

Section 2. Enterprise in Default; when; effect. If the registered enterprise fails to file a Reply within the fifteen (15) day period, the same shall be deemed in default. Thereupon, the Department shall proceed to make the proper recommendation to the MANCOM.

RULE V
Action on the Reply

Section 1. Action by the Department Concerned. Within a reasonable period from receipt of the Reply of the BOI registered enterprise, or from the date the latter was deemed in default, the Department concerned shall make the proper recommendation to the MANCOM.

In addition to what is enumerated in Sec. 2, Rule II of these Rules, the Memorandum shall contain a statement of facts necessary to establish that the BOARD has complied with the due notice requirement mandated under Article 7 of E.O. 226.

Section 2. Resolution by the MANCOM. After examining the Memorandum and other pertinent documents submitted to it by the Department, the MANCOM shall, within a reasonable time from receipt thereof, issue a resolution either affirming, modifying, or reversing the recommendation/s contained in the Memorandum. In all cases, such resolution shall be subject to the confirmation by the BOARD.

RULE VI
Decision by the Board

Section 1. Action by the BOARD. Within a reasonable period from receipt of the Resolution, the Board shall confirm, modify, or reverse the same. In all such cases, the Department shall notify the registered enterprise of the action taken by the Board.

Section 2. Effect of the BOARD's Decision to Cancel Registration. Within fifteen (15) days from receipt of the Board's decision ordering the cancellation of the registration of the BOI registered enterprise, the latter shall surrender to the Department its Certificate of Registration. Thereafter, the "registration" shall be deleted from the Board's Certificate of Registration Book provided it has complied with the BOARD's Decision. As a result, the registered enterprise shall cease to be entitled to the incentives provided under the law it is registered. This, however, is without prejudice to the registered enterprise's basic rights and guarantees provided under Article 38, Title II of E.O. 226.

Section 3. Non-Compliance with the BOARD's Decision. If the BOI registered enterprise:

a) Refuses to surrender the certificate of registration;
b) Refuses or fails to pay the penalty and fines, if any, and/or
c) Refuses or fails to abide by the BOARD's order of refund of taxes and duties on capital equipment.

All such registered enterprise shall be put in a "watchlist". The BOI shall, in its discretion, take appropriate actions against the registered enterprise and/or its stockholders and officers, such as but not limited to, the filing of civil cases before the regular courts through the Office of the Solicitor General to compel compliance with the BOARD's decision; for the collection of the amount of fines and penalties imposed by the Board and/or the monetary equivalent of the incentives to be refunded.

During the pendency of the case against the BOI registered enterprise and while the said enterprise is on the WATCHLIST, its certificate of registration will not be deleted nor canceled from the Registration Book.

RULE VII
Remedies

Section 1. Motion for Reconsideration. A motion for reconsideration of the decision of the Board may be filed within fifteen (15) days from the receipt thereof or within fifteen (15) days from the date of publication of the "notice" for purposes of Sections 3, 4, 5 of Rule III hereof. Either of the parties shall each be entitled to tender only one (1) motion for reconsideration.

Section 2. Appeal from the Board's Decision; how. An appeal from the decision of the Board may be done by filing a "petition for review before the Court of Appeals" within fifteen (15) days from receipt of the Board's decision denying the registered enterprise's motion for reconsideration (Sec. 4, Rule 43, Revised Rules of Court). The Court of Appeals has jurisdiction over all final judgment, decisions, resolutions, orders and awards of quasi-judicial agencies (Sec. 9 of B.P. 129, otherwise known as the Judiciary Reorganization Act of 1980, as amended by R.A. No. 7902, s. 1995).

Section 3. Effect of Filing an Appeal. The Appeal shall not stay the decision of the Board that is sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just (Sec. 12, Rule 43, supra).

Section 4. Finality of Decision. If within the period to appeal, no appeal has been taken or filed before the Court of Appeals, or one has been taken or filed but the Court of Appeals affirmed the decision of the Board, the same shall become final and executory.

RULE VIII
CANCELLATION BY GRADUATION

Section 1. Graduation. The certificate of registration of an enterprise which have reached the end of the useful life of its fiscal incentives may be canceled by way of graduation provided all the following conditions are satisfied:


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- recouped the cost of “capital equipment”/or no incentive/s availment;

- complied with the export/production commitment; and

- no unpaid penalty/fines.

Section 2. Preparation of the Graduation List. After publication of the “general notice”, the concerned Department shall prepare a list of all BOI registered enterprises to be “graduated” and the same shall be published in a newspaper of general circulation. Said enterprises shall be required to submit its “reply or intention to retain its BOI Registration” within the period indicated in the notice.

Section 3. Publication of Notice/List of Enterprises to be Graduated. A “notice with a listing” of all BOI registered enterprises to be “graduated” under the instant Rules shall be published once in a newspaper of general circulation.

Said enterprises whose registration shall be canceled by graduation shall be given fifteen (15) days from publication to communicate with the BOI whether or not it intends to maintain its registration. Failure or inability to do so shall be considered as lack of intention on its part to preserve and/or continue its BOI registration.

Upon the expiration of such time given for the subject enterprise to send a reply as set forth in the Notice, a copy of the list of firms to be graduated shall be forwarded to the Registration Division for cancellation in the Registry Book.

RULE IX
WATCH-LIST

Section 1. Watch-List. Enterprises, including its major stockholders and/or officers, whose BOI registrations are canceled subject to settlement of its obligations with the BOI shall be included in the watch-list. The watch-list is a list of all BOI registered enterprises, including its majority stockholders and/or officers, who:

- Refuse or fail to abide by the BOI’s “order of refund of taxes and duties on capital equipment;

- Refuse or fail to pay the penalty and fines for delayed and/or non-submission of reportorial requirements and/or violation of the other terms and conditions of registration;

- Refuse and/or fail to abide by the BOI’s order/decision to surrender its certificate of registration;

- Refuse or fail to comply with other orders/decisions of the BOI.

It shall also contain the corresponding amounts of the refunds, penalties and/or fines due from the subject BOI registered enterprises.

Section 2. Effect of Watch-List on Future Transactions. Future transactions of firms under the Watch-list shall be put on hold until said registered enterprises and/or major stockholders/officers have first settled all obligations with the BOI. For purposes of this Rules, a “transaction” shall include among others:

- Application/s for new/expansion project registration;

- Request for any BOI certification;

- Application for foreign national employment;

- SIRV application; incentives application;

- Other matters where the BOI is concerned or involved.


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The BOI shall file the appropriate actions before the regular courts pursuant to Section 3 of Rule VI.

Section 3. Deduction of Incentives Subject to Refund and/or Penalties. Transactions of a watch-listed enterprise that has other registration(s) shall be allowed provided that the amount of incentives subject to refund and/or penalties shall be deducted from the incentives being enjoyed or will be enjoyed by said enterprise by virtue of its other existing registration(s) or the subsequent approval of an application for registration.

RULE X
Execution of Order/Judgment Section

1. Order to Cancel Certificate of Registration of the Enterprise; how executed. In the event that the BOARD's decision or the appellate court's decision becomes final and executory, the certificate of registration shall be deleted from the BOARD's Certificate of Registration Book.

Section 2. Order to Pay Fines and Penalties; Order of Refund; how executed. In the event that the order to pay fines and penalties and/or order of refund become final and executory, the Department shall proceed to make the corresponding collection of the said amount. Thereupon, any amount thus collected shall be turned over to the National Treasury.

Section 3. BOI Registered Enterprises Whose Principal Place of Business Cannot Be Located; Order to Pay Fines and Penalties and/or Refund How Executed. In cases where the registered enterprise cannot be located, the order to pay fines and penalties and/or order of refund shall be enforced in the following manner:

- If the subject BOI registered enterprise's performance bond is still valid, the same shall be forfeited in favor of the Board of Investments;

- If the subject BOI registered enterprise's performance bond has already lapsed or if no performance bond has been posted, the BOI-Legal Services Department shall take appropriate actions against the company and/or its stockholders and officers, such as, but not limited to, the filing of civil cases through the Office of the Solicitor General for the collection of the amount of fines and penalties imposed by the Board and/or the monetary equivalent of the incentives to be refunded.

- If the cancellation is thru publication, the enterprise together with the major stockholders and/or officers will be included in a WATCHLIST to serve as reference for any future transaction of said enterprise and/or stockholders.

RULE XI
Repealing and Effectivity Clauses

Section 1. Repealing Clause. All other rules and regulations or parts thereof that are inconsistent with the foregoing Rules are hereby repealed, amended or modified accordingly.

Section 2. Effectivity Clause. These Rules shall take effect fifteen (15) days after their publication in a newspaper of general circulation.

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