

GUIDELINES FOR REGISTRATION OF CAGAYAN SPECIAL ECONOMIC ZONE AND FREEPORT ENTERPRISES

CEZA ADMINISTRATIVE ORDER NO. 002, S. 1999, June 24, 1999

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Pursuant to the provision of Section 6 (c) of Republic Act 7922, otherwise known as the "Cagayan Special Economic Zone Act of 1995" the following procedural guidelines are hereby prescribed for the guidance and compliance of all interested business entities and others concerned in the registration of CSEZFP Enterprises.

Article I

Preliminary Provisions

Section 1. Title. These procedural guidelines shall be known as CEZA Administrative Order No. 002, Series of 1999.

Section 2. Applicability. These guidelines shall apply to any person, firm, association, partnership, corporation or any form of business organization, regardless of nationality, control and/or ownership of the working capital thereof, who intends to register as CSEZFP Enterprise in any area of activity, except only as is specifically limited by the Constitution. Other than the areas of investment where nationality requirements or foreign ownership or control are restricted by the Constitution, the nationality requirements imposed, or restrictions on foreign ownership or control prescribed in the Foreign Investment Negative List (FINL) of RA 7042, otherwise known as "The Foreign Investments Act of 1991" and other laws which restrict foreign ownership or equity, shall not apply to CSEZFP Enterprise.

These guidelines shall cover two types of applicants, notably:

- (a) new applicants, engaged in economic activities not prohibited by the CEZA are eligible for CSEZFP benefits; and
- (b) manufacturing and service enterprises that are already located within the CSEZFP boundaries, who may opt to register to operate as CSEZFP enterprises.

Section 3. Definition of Terms. For the purpose of this Administrative Order, the terms used herein shall mean as follows:

- a) RA 7922 shall refer to Republic Act No. 7922, otherwise known as the "Cagayan Special Economic Zone Act of 1995".
- b) CEZA shall refer to the Cagayan Economic Zone Authority, a government corporate body established pursuant to RA 7922.
- c) CSEZFP shall refer to the Cagayan Special Economic Zone and Freeport defined in Section 3 of RA 7922 as a separate customs territory covering the entire area embraced by the Municipality of Santa Ana and the islands of Fuga, Barit and Mabbag in the Municipality of Aparri, all in the Province of Cagayan.
- d) CSEZFP Enterprise shall refer to any sole proprietorship, partnership, corporation, association or other form of

business entity, including the CEZA, locating in, and duly registered with and/or licensed by the CEZA to engage in any lawful economic activity within the CSEZFP.

e) Certificate of Registration shall refer to the certificate issued by the CEZA evidencing the registration of the business entity as a CSEZFP Enterprise.

f) Registration Office shall refer to the office designated to facilitate registration of all business enterprises or concerns applying to be CSEZFP enterprises and residents.

Article II

Procedural Guidelines

Section 4. Prerequisites for Registration- The applicant must meet the following conditions for registration:

a) The applicant must infuse capital within the CSEZFP, either in the form of a lease agreement, joint venture or Build-Operate-Transfer arrangements, or other methods of investment;

b) A CSEZFP enterprise shall be a duly constituted business enterprise organized or domiciled in the Philippines or any foreign country;

c) The enterprise must name a representative or agent who is a legal resident of the Philippines;

d) If affiliated with an existing enterprise in the Philippines outside the CSEZFP, the CSEZFP enterprise must establish a separate business organization to conduct business exclusively within the CSEZFP which shall be a separate taxable entity; and

e) In meritorious cases, the CEZA may allow the non- establishment of a separate business entity subject to such terms and conditions as may be prescribed by CEZA.

Section 5. Issuance of Application Forms. All applicants and potential investors shall secure standard forms from the Registration Office of the CEZA, and the list of prescribed documents to support the application for registration. The applicant must complete CSEZFP Form 99-1 [Application for Cagayan Special Economic Zone and Freeport Enterprise status (copy attached as Annex "A")] in quadruplicate, which shall be available at the Registration Office.

Section 6. Receipt of Application Forms. The Registration staff shall undertake the following steps to receive an application:

a) Immediately upon receipt of Application Form {CSEZFP Form 99-1), the registration personnel shall stamp the application with the date and time of receipt;

b) The registration personnel shall then notify the applicant, within five (5) working days, whether the application is complete or incomplete.

Section 7. Determination if Application is Complete. The registration personnel shall establish that the application form (CSEZFP Form 99-1) has been filled out. A complete application to register a CSEZFP Enterprise must contain the requirements summarized in Annex "B". The economic information provided in the project description, sources of funds, and financial plan is provided for informational purposes only, and does not require analysis and evaluation by CEZA. The environmental impact statement will be examined in detail only for those enterprise likely to pose environmental hazards.

Any application containing the minimum requirements for complete application shall be judged as "complete" by the registration staff. The registration staff shall make this judgment independently, without the need to refer the application to other registration personnel or elsewhere in the CEZA. The application is then subject for

processing.

Section 8. Incomplete Application, if the application is not complete, it should be returned to the applicant within five (5) working days, with a letter specifying needed additions. The exact nature of the missing or inadequate information shall be specified, to avoid re-submission of an incomplete application.

If the application is still incomplete after being returned by the applicant, CEZA shall repeat the procedure requesting in writing the missing information. Upon submission a third time with incomplete information, CEZA shall reject the application and notify the applicant of the reason for this decision. CEZA shall keep a file of company and personal names of rejected applications, for its own use in evaluating future submission.

Section 9. Evaluation of Complete Application- If the application is determined complete, the registration staff shall issue a receipt to the applicant within forty-eight (48) hours. Designated registration personnel will then review the application based on the following negative criteria:

- a) The applicant(s) cannot be adequately housed within the zone. _The applicant has not secured a commitment from a CSEZFP facilities operator to lease land or buildings, or land or building available directly from CEZA.
- b) The proposed location and economic activity of the applicant is not in compliance with CEZA zoning plan. The economic activity of the enterprise and its proposed physical location must be in conformance with the overall zoning plan developed by the CEZA.
- c) The proposed operation is prohibited by CEZA or Philippine laws or utilizes specifically prohibited inputs. The proposed operation cannot be one that is specifically prohibited by CEZA or Philippine laws, or utilizes inputs that are not permitted. Constitutional prohibitions and limitations on foreign ownership of certain types of enterprises must be observed.
- d) The enterprise would greatly overburden existing infrastructure or would require an unacceptable amount of CEZA investment to build necessary infrastructure. If the project would require infrastructural improvement and utility and other service from the CEZA that are in excess of the existing installed capacity available in the CSEZFP, and/ or the project requires modification or financial support from the CEZA for constructing additional infrastructure, the applicant must submit the following specific information in sufficient detail acceptable to CEZA:
 - (i) if financial support is required from CEZA, the level of this support should be projected to achieve a positive net economic rate of return after twenty (20) years, given the expected economic benefits of the enterprise;
 - (ii) if the applicant will finance the needed incremental infrastructure, improvements must be acceptable to CEZA, as evaluated by the concerned department.
- e) The enterprise would have a serious detrimental effect on the environment. That is, the enterprise fails to meet Philippine environmental laws, particularly P.D. Nos. 984, 1151, 1152 and 1586, as well as RA Nos. 6969 and 7586, including the rules and regulations of the DENR and other government agencies concerning environmental pollution which are not inconsistent with RA 7922. If the proposed economic activity is an environmentally sensitive process, the applicant must outline in sufficient detail the infrastructural investments and other measures that will be adopted to be consistent with environmental protection laws. This would ideally be in the form of an environmental impact study accompanying the application.
- f) The enterprise would have destructive impact on the safety and security of the CSEZFP or the country, the following types of enterprises are not to be granted CSEZFP enterprise designation:

- (i) firms dealing with firearms, ammunition and other forms of warfare or related equipment;
- (ii) firms harboring or producing dangerous or hazardous materials; or inflammable, explosive, radioactive or toxic substances hazardous to the life of persons, animals and plants and to the environment as a whole, and
- (iii) firms producing any other substances which are illegal under the laws and regulations of the Philippines and international convention.

g) The applicant(s) has a known record of criminal activity. Depending on the severity, criminal activity of any type including previous Customs fraud or related convictions may be grounds for rejection. Investigation of criminal activity may include the following:

- (i) Bank references provided in the application; and
- (ii) Publicly known information, including local and international police records.

Section 10. Steps in the Evaluation of Application Forms. The following steps shall be undertaken in the evaluation of application forms;

- a) The CEZA designated registration office shall conduct the initial investigation, and upon completion shall prepare a summary sheet with the necessary recommendation for approval of the application by the Administrator.
- b) The evaluation and attached recommendation shall then be presented to the Committee responsible for approvals, a copy of which shall be forwarded to the CEZA Administrator.
- c) The committee on approvals shall conduct meetings with official representatives from different departments of the CEZA for further evaluation. This process should take no more than ten (10) days, internally within the CEZA.

Section 11, Processing Application with Positive Evaluation. If results are positive, meaning the application contains none of the negative criteria mentioned in Section 9, CEZA Registration Office shall issue the Certificate of Registration as a CSEZFP Enterprise (Annex "C"[*])- The Registration Office shall send copies of the issued Certificate of Registration to CEZA's concerned departments, notably those involved in:

- a) management information systems (records and database) of CEZA, to make the necessary amendments and/or updates to the records and database;
- b) land and estate management, to begin the process of securing the lands, building and/or facility requested by the applicant;
- c) monitoring compliance of Zone enterprises to labor standards, wages, working conditions and employment contracts (Labor Center);
- d) supervision and monitoring of the operation of Zone enterprises; and
- e) providing necessary utility and other hook-ups.

Depending on the specific requirements of the applicant firm, CEZA shall initiate additional registrations, to include corollary registration of residents, and processing of expatriate work permits.

Section 12. Processing Application with Negative Evaluation. Should the evaluation of the applicant enterprise be negative, CEZA shall return the application within thirty (30) days from receipt of the completed application form, formally and clearly citing the reasons for non-acceptance. This may include particular and necessary modifications which may cause approval should the application be re-submitted.

Section 13. Registration of Existing Business Entities as CEZA Enterprises. As stated in Section 2.b. any existing enterprise and business organization operating entirely within the boundaries of the CSEZFP Enterprise. In order to qualify for registration, the enterprise must submit an application in the form prescribed by CEZA, accompanied by the supporting documents or minimum application requirements as enumerated in Annex "B" and the payment of the required registration fees. In general, the registration of said enterprise will be subject to the same registration procedure and will utilize the same forms for new applicants for CSEZFP Enterprise.

Section 14. Registered CSEZFP Enterprises. No other authorizations, licenses, or approvals shall be required of an enterprise holding a Certificate of Registration. Such CSEZFP registered enterprise shall enjoy all the rights and privileges applicable to it provided in Republic Act 7922. The Certificate effective for a period of one (1) year and may be renewed every year thereafter subject to payment of required fees and provided that applicant has not committed any of the acts enumerated in Section 16. If a CSEZFP Enterprise is sold, or if ownership is transferred to a new person or entity, the certificate of compliance remains valid as long as the operations of the CSEZFP Enterprise does not change and the ownership changes are reported to CEZA. In this regard, the Certificate may have technical provisions attached to it regarding;

- a) the permissible activities to be undertaken by the licensed enterprise; and
- b) the schedule of imported inputs and other items to be admitted into the CSEZFP free of duties and other charges.

CSEZFP Enterprises holding such Certificate of Registration need not re-apply for CSEZFP designation. CSEZFP Enterprises that alter their operations, as defined in their applications of designation, should have their Certificates of Registration modified accordingly.

Section 15. Withdrawal, Suspension, or Cessation of Operations. When a CSEZFP Enterprise decides to withdraw, suspend, or cease its registered activity or operations, written notice thereof shall be sent to CEZA (1) one month prior to the implementation of the action. Subject to the provisions of pertinent laws and without prejudice to the rights of mortgage creditors, the withdrawal or cessation of the business operations for a continuous period of two (2) months, unless extended upon the written request of the enterprise and approval of the CEZA, respectively, shall have the effect of automatically cancelling the Certificate of Registration without the need for the Board action. Upon such withdrawal and cessation of operations, the CSEZFP Enterprise shall cease to be entitled to the incentives provided for in the Act.

Section 16. Revocation, Suspension or Cancellation of Certificate of Registration. Without prejudice to the imposition of penalties prescribed under the pertinent provisions of the National Internal Revenue Code and the Tariff and Customs Code of the Philippines, the Certificate of Registration issued by the CEZA to any CSEZFP Enterprise may be revoked, suspended or cancelled on any of the following grounds:

- a) Failure to maintain the qualifications for registration or license as required by the Act;
- b) Violation of any provision of Philippine law, or RA 7922;
- c) Violation of the corresponding memoranda or circular or any of the general or specific terms of the registration or license agreement between the CEZA and the CSEZFP Enterprise; and
- d) Expiration or violation of lease contract or the conditions set forth in the Certificate of Registration.

Provided, that for minor violations, the CEZA shall prescribe and impose administrative penalties, fines, or sanctions in lieu of the revocation, cancellation, or suspension of the Certificate of Registration. The CEZA shall also graduate the penalties, fines or sanctions to be imposed based on the gravity and frequency of the violations

concerned.

Article III

Effectivity

Section 17. Effectivity. This Administrative Order shall take effect on 25 April 1999 and shall be published in at least one (1) newspaper of general circulation prior to the effectivity date,

(SGD.) RODOLFO O. REYES

Administrator and Chief Executive Officer

[*] Text Available at Office of the National Administrative Register, U.P. Law Complex, Diliman, Quezon City.

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