

Executive Order 226: Creating an Environment for a Vibrant Investment in the Philippines¹

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Introduction

Investments are the prime movers of an economy. In the Philippines, among the preferred activities in the investment priorities plan are: agriculture/agribusiness and fishery; creative industries/knowledge-based services; shipbuilding; mass housing; iron and steel; energy; infrastructure; research and development; green projects; motor vehicles; strategic projects; hospital/medical services; and disaster prevention, mitigation and recovery projects (PCOO, 2012). According to a study made by the Joint Foreign Chambers of Commerce in the Philippines (JFC), domestic investments in the country as percentage of GDP averaged 21% between 1990 and 2011 which is not enough to sustain long-term growth. The major challenge for the Philippines is to create an investment climate that would increase the attractiveness of doing business in the country. The Omnibus Investment Code of 1987 and other laws amending sections of the Investment Code were then crafted to serve this purpose.

The Omnibus Investments Code of 1987

On July 16, 1987, President Corazon C. Aquino signed Executive Order No. 226 known as the Omnibus Investments Code of 1987 to integrate, clarify and harmonize laws on investment thereby encouraging domestic and foreign investments in the country. It covers the following provisions: (1) functions and duties of the Board of Investments (BOI); (2) investments with incentives; (3) incentives to multinational companies; and (4) incentives of export processing zone enterprises. EO 226 originally included provisions on foreign investments however, Book II or the Foreign Investments Without Incentives was repealed through Republic Act (RA) No. 7042 which was signed into law on June 13, 1991.

The Board of Investments

The Philippine Board of Investments (BOI), an attached agency of the Department of Trade and Industry (DTI), is the lead government agency responsible for the promotion of investments in the Philippines. The BOI is mandated by E.O. 226 to implement provisions on investments with incentives, Foreign Investment Act, incentives to multinational companies establishing headquarters and warehouses, special investors' resident visa and incentives to export processing zone enterprises. It assists Filipino and foreign investors to venture and prosper in desirable areas

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of economic activities. The BOI is the one-stop shop in doing business in the Philippines (BOI, 2013).

Investments with Incentives

Preferred Areas of Investments. The Investment Priorities Plan (IPP) is prepared by the BOI, after consultation with appropriate government agencies and the private sector. The IPP includes and contains specific activities and generic categories of economic activity wherein investments are to be encouraged; specific public utilities, which can qualify for incentives; activities where the potential for utilization of indigenous no-petroleum based fuels or sources of energy can be best promoted; and other appropriate information, data, guidelines or criteria (Article 26 and 27).

Basic Areas and Guarantees. Article 38 provides the following other rights and guarantees (aside from those provided by the Constitution) to investors and registered enterprises: repatriation of investments; remittance of earnings; foreign loans and contracts; freedom from expropriation; and requisition of investment.

Incentives to Registered Enterprises. Paragraphs *c* (tax and duty exemption on imported capital equipment) and *d* (tax credit on domestic capital equipment) of Article 39 of E.O. No. 226 were amended by R.A. No. 7369 (granting tax and duty exemption and tax credit on capital equipment), signed on April 10, 1992 by President Corazon C. Aquino. Moreover, R.A. No. 7918, signed on February 24, 1995 (with retroactive effect to May 5, 1994) by President Fidel V. Ramos, amended Article 39 of E.O. No. 226. Section 1 of R.A. No. 7918 states that all registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment: (a) income tax holiday; (b) additional deduction for labor expense; (c) tax and duty exemption on imported capital equipment and its accompanying space parts; (d) tax credit on domestic capital equipment; (e) simplification of customs procedures; (f) unrestricted use of consigned equipment; (g) employment of foreign nationals; (h) exemption on breeding stocks and genetic materials; (i) tax credit on duty portion of breeding stocks and genetic materials; (j) tax credit for taxes and duties on raw materials; (k) access to bonded manufacturing/trading system; (l) exemption from taxes and duties on imported spare parts; (m) exemption from wharfage dues and export tax, duty, impost and fee. All other provisions of E.O. No. 226 and R.A. No. 7369, not otherwise affected by R.A. No. 7918 remain in full force and effect.

Incentives to less-developed-area registered enterprise. Article 40 of E.O. 226 provides pioneer incentives and incentives for necessary and major infrastructure and public utilities to a registered enterprise regardless of nationality located in a less -developed-area.

Foreign Investments Act

Republic Act No. 7042, known as the Foreign Investments Act of 1991 repealed Articles 44 to 56 of Book II (Foreign Investments Without Incentives) of E.O. No. 226. The Foreign Investments Act, signed by President Corazon C. Aquino on June 13, 1991, promotes foreign investments and prescribes the procedures for registering enterprises doing business in the Philippines. It includes registration of investments of non—Philippine nationals, foreign investments in export enterprise, foreign investments in domestic market enterprises, list of investment areas reserved to Philippine nationals (foreign investment negative list), determination of areas of investment for inclusion in List C of the Foreign Investment

Negative List, strategic industries, compliance with environmental standards, and consistent government action. On the other hand, R.A. No. 8179, signed on March 28, 1996 by President Fidel V. Ramos, amended the following provisions of R.A. No. 7042: Sections (3.a) definition of Philippine national; (7) foreign investments in domestic market enterprises; (8) list of investment areas reserved to Philippine nationals (Foreign Investment Negative List); (9) investment rights of former natural-born Filipinos; and (10) other rights of natural born citizen pursuant to the provisions of Article XII, Section 8 of the Constitution.

Incentives to Multinational Companies Establishing Regional or Area Headquarters and Regional Operating Headquarters in the Philippines

Republic Act No. 8756, signed on November 23, 1999 by President Joseph E. Estrada amended certain provisions of E.O. No.226, including title of Book III (above title as amended) and the following Articles: (58) Qualifications of Regional or Area Headquarters (RAHQ); (59) Qualification of Regional Operating Headquarters (ROHQs); (60) Multiple Entry Visa; (61) Withholding tax of 15% on compensation income; (62) tax and duty free importation; (63) travel tax exemption; (64) Corporate income tax incentive; (65) value-added tax ; (66) exemption from all kinds of local taxes, fees or charges; and (67) tax and duty-free importation of training materials and equipment; importation of motor vehicles.

Incentives to Multinational Companies Establishing Regional Warehouses to Supply Spare Parts, Components, Semi-Finished Products, and Raw materials to the Asia-Pacific Region and Other Foreign Markets.

Republic Act No. 8756 also includes amendments for Book IV (above title as amended) and for the following Articles: (68) Qualifications (of a multinational company); (69) tax treatment of imported articles in the regional warehouse; (70) exemption from the minimum storage period; (71) Exemption from the maximum storage period under the Tariff and Customs Code; period of storage in the regional warehouse; (71) Rules and Regulations on the jurisdiction, operation, and control over qualified goods in the regional warehouse; (72) cancellation of license or registration; and (73) Implementing Rules and Regulations for Books III and IV.

Special Investors Resident Visa

E.O. No. 226 also stipulates provisions on the qualifications of an alien or foreigner who may be issued a Special Investors Resident Visa (Article 74) while Article 75 provides the reportorial requirements of a holder of such visa.

Incentives to Export Processing Zone Enterprises

Book VI of E.O. No. 226 provides the incentives to export processing zones as stated in the following Articles: (76) employment of foreign nationals; (77) tax treatment of merchandise in the zone; and (78) additional incentives such as exemptions from local taxes and licenses, and real property taxes.

Repealed Laws

Executive Order No. 226 repealed the following Laws:

- 1) Batas Pambansa Blg. 44 or the Investment Promotion Act for Less-Developed Areas which was signed into law on November 26, 1979;
- 2) Batas Pambansa Blg. 391 or the Investment Incentive Policy Act of 1983 which was signed into law on April 28, 1983;
- 3) Presidential Decree No. 218 on Prescribing incentives for the establishment of regional or area headquarters of multi-national companies in the Philippines which was signed on June 16, 1973;
- 4) Presidential Decree 1419 on Prescribing incentives for the establishment of multinational regional warehouses by multinational companies supplying spare parts or manufactured components and raw materials to the Asia-Pacific area which was signed on June 9, 1978;
- 5) Presidential Decree 1623, as amended, on Authorizing the issuance of special investors resident visas to aliens which was signed on May 17, 1979;
- 6) Presidential Decree No. 1789 on Revising, amending and codifying the investment, agricultural and export incentives acts to be known as the Omnibus Investments Code which was signed on January 16, 1981;
- 7) Presidential Decree 2032 on Declaring national policies on agricultural development and promulgating the agricultural incentives act of 1986 which was signed on February 4, 1986;
- 8) Executive Order 815 on Safeguarding and promoting the development of the Philippine semiconductor electronics industry which was signed on June 26, 1982.

Conclusion:

Investments serve as the country's fuel to make the economy grow and develop. More investments mean more job opportunities and more income for the investors, the government, and the Filipino workers. The Investments Code and the laws amending it are just among the many factors affecting both Filipino and foreign investments in the country. Investors also consider peace and order situation, trust in the leadership, and work ethics of the people before any investment is done. In general, investments are good, however, we must not overlook their potential effects specifically on the environment and natural resources.

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