

RLA BILL NO. 78

Republic of the Philippines
Autonomous Region in Muslim Mindanao
REGIONAL ASSEMBLY
Cotabato City

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FIFTH LEGISLATIVE ASSEMBLY
(Third Regular Session)

MUSLIM MINDANAO AUTONOMY ACT NO. 242

**AN ACT PROVIDING REGIONAL INVESTMENTS AND
INCENTIVES CODE OF THE AUTONOMOUS REGION IN
MUSLIM MINDANAO.**

Be it enacted by the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao in session assembled:

PRELIMINARY TITLE

TITLE AND DECLARATION OF POLICY:

SECTION 1. Title. - This Act shall be known as “The Regional Investments and Incentives Code of the Autonomous Region in Muslim Mindanao”.

SEC. 2. Declaration of Investments Policies. – The development of the regional and national economy shall be promoted in consonance with the principles and objectives of achieving global competitiveness, fostering economic efficiency and encouraging and supporting investments that promote regionwide development and create productive and quality employment. Accordingly, the following are the declared policies of the Autonomous Region in Muslim Mindanao:

1. The Autonomous Regional Government shall create and maintain a stable and market responsive investment regime that will encourage and support private sector investments;
2. The Autonomous Regional Government shall extend fiscal and non-fiscal incentives to promote investments in activities that will significantly contribute to the attainment of the region’s and country’s development objectives consistent with the medium term development plan of the Philippines.

3. The Autonomous Regional Government shall grant incentives based on a system that is clear and simple to administer, time-bound, and performance-based taking into consideration the need to be competitive in attracting foreign investments; vis-à-vis, other regions in the country.
4. The Autonomous Regional Government shall enact and adopt an integrated, cohesive and comprehensive investment incentives law that shall be implemented by a single administering agency, whenever applicable, and shall be recognized as the governing statute on the grant of investment incentives.
5. The Autonomous Regional Government recognizes that industrial peace is an essential element of economic growth and development, hence, it is the principal responsibility of the Autonomous Region in Muslim Mindanao to ensure that such condition prevails.
6. The Autonomous Regional Government shall undertake investment promotion initiatives deemed crucial to the attainment of each investment goal and objective.

TITLE I
ORGANIZATION AND FUNCTIONS OF THE BOARD OF
INVESTMENTS-ARMM

SEC. 3. The Regional Board of Investments – There is hereby created a Regional Board of Investments of the Autonomous Region in Muslim Mindanao under the office of the Regional Governor to implement the provisions of this Act, except as otherwise provided herein.

SEC. 4. The Board of Governors- The Board of Governors shall be composed of Five (5) regular members, the Chairman, who shall also be the Managing Head, and the four (4) other Member Governors all of whom shall be appointed by the Regional Governor to serve a term of six (6) years and shall hold office until their successors shall have been appointed and qualified.

SEC. 5. Qualifications of Governors of the Board – The governors of the Board shall be citizens of the Philippines, a resident of the Autonomous Region in Muslim Mindanao for at least six (6) months prior to their appointment, at least thirty (30) years old, of good moral character and of recognized competence in any of the following fields: law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

SEC. 6. Appointment of Board Personnel. – The Board shall appoint its technical staff and other personnel subject to Civil Service law, rules and regulations including positions that will be created under this Act funded by the Local Funds. The new positions to be charged to local funds are spelled out in the attached Organizational Chart.

SEC. 7. Powers and Duties of the Board. – The Board shall be responsible for the regulation and promotion of investments in the Autonomous Region in Muslim Mindanao. It shall meet as often as may be necessary, generally once a month on such day as it may fix. Notice of regular and special meeting shall be given to all members of the Board. The presence of at least *three (3) members in board meeting* shall constitute a quorum and the affirmative vote of three (3) *regular members en banc*, regular or special meeting shall be sufficient to exercise its powers and duties, which shall include but not limited to the following:

- 1) Promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act;
- 2) Process and approve, deny, suspend, revoke applications for registration with the Board, imposing terms and conditions as it may deem necessary to promote the objectives of this Act, including the refund and forfeiture of incentives when appropriate, restricting availment of certain incentives not needed by the project upon the determination of the Board, requiring performance bonds from RBOI- accredited bonding companies, and payment of application, registration, publication and other necessary fees when warranted;
- 3) After due hearing, decide controversies concerning the implementation of the relevant provisions 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 the decision of the Board within thirty (30) days from receipt thereof to the Regional Governor for decision. The Board shall have the power to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidences, and to cite for contempt any person/organization that fails to comply with the aforestated processes. *Provided*, further, That the Board may grant immunity from prosecution to any person whose testimony or documents or other evidence is necessary or relevant to determine such truth in any investigation;
- 4) Recommend to the Commissioner of Immigration and Deportation the entry into the Philippines for employment of foreign national under this Act;
- 5) 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;
- 6) Verify annually the compliance by registered enterprises with the relevant provisions of this Act, the rules and regulations promulgated under this Act and the terms and conditions of its registration;
- 7) After due notice and hearing, cancel the registration or suspend the enjoyment of incentives benefits of any registered enterprise and/or require refund of incentives enjoyed by such enterprise including interest and monetary penalties, and levy properties of the registered enterprise, if appropriate, or (a) failure to maintain the qualifications required by this Act for registration with

- the Board or (b) for violation of any provisions of this Act, the rules and regulations issued under this Act, the terms and conditions of registration: Provided, That the registration of an enterprise whose project timetable, as set by the Board is delayed by one year, shall be considered automatically cancelled unless otherwise reinstated as a registered enterprise by the Board;
- 8) Determine the new organizational structure taking into account Section 6 of this Act; appoint, discipline and remove its personnel consistent with the provisions of the Civil Service Law, Rules and Regulations;
 - 9) Prepare feasibility and other pre-investment studies, either upon its own initiative; or upon the request of the investor under the terms and conditions mutually agreed upon;
 - 10) Grant, special incentives provided to registered enterprises that list their shares of stock in the Philippine Stock Exchange or directly offer a portion of their capital stock to the public and/or their employees;
 - 11) Formulate and implement industrial programs that would hasten economic growth and development including those relating to the implementation of international trade, investments and environmental agreements and protocols;
 - 12) Establish Satellite offices in the Provinces of Autonomous Region in Muslim Mindanao as may be deemed necessary;
 - 13) Prepare industry and sectoral development programs, the Regional Plan for Investment Promotions (RPIP) and gather and compile statistical, technical, marketing, financial and other data required for the effective implementation of this Act;
 - 14) Within four (4) months after the close of the fiscal year, submit annual reports to the Regional Governor that shall cover its activities in the administration of this Act, including recommendations on investments policies;
 - 15) Provide, directly or through Philippine Diplomatic Missions, information as may be of interest to prospective foreign investors;
 - 16) Collate, analyze and compile pertinent information and studies concerning activities/ industries/ sector that have been or may be in the Investment Priorities Plan;
 - 17) Enter into agreements with other agencies of government for the simplification and facilitation of systems and procedures involved in the promotion of investments, operation of economic zones and registered enterprises, and other activities necessary for the effective implementation of this Act;
 - 18) Prepare the ARMM Investment Priorities Plan for inclusion in the National Investment Priorities Plan for approval of the President of the Republic of the Philippines;
 - 19) Generally, exercise all the powers necessary or incidental to attain the purposes of this Act and other laws vesting additional functions on the Board.

SEC. 8. Powers and Duties of the Chairman and Managing Head. – The Chairman and Managing Head shall have the following powers and duties:

- 1) To preside over the meetings of the Board of Governors;
- 2) To execute all acts of administration;
- 3) To prepare the agenda for the meetings of the Board of the Governors and submit for its consideration and approval the policies and measures which he deem necessary and proper to carry out the provisions of the act;
- 4) To render annual reports to the Regional Governor and such special reports as may be requested;
- 5) To act as liaison between investors seeking joint venture arrangements in particular areas of investments;
- 6) Assist registered enterprises and prospective investors to have papers processed with dispatch by all government agencies, instrumentalities and financial institutions;
- 7) Recommend to the Board of Governors such policies and measures he may deem necessary to carry out the objectives of this Act;
- 8) To coordinate domestic and international investments missions for and act as the head of the delegations to said undertakings; and
- 9) Generally, to exercise such other powers and perform such other duties as may be directed by the Board of Governors from time to time.

TITLE II

DEFINITIONS OF TERMS

SEC. 9. Definition of Terms. As used herein, the following terms shall mean –

- a) “RBOI-ARMM” or “Board” shall mean the Regional Board of Investments – Autonomous Region in Muslim Mindanao (RBOI-ARMM) created under this Act.
- b) “Registered Enterprise” shall mean any individual, partnership, cooperative, corporation or other entity incorporated and/or organized and existing under Philippine laws engaged in any activities listed in the IPP as hereinafter defined; and registered for such other activity with the Board in accordance with this Act: Provided, however, That the term “registered enterprise” shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, developmental banks, trust companies, investments 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 of fiduciary functions.
- c) "Investment Priorities Plan" (IPP) shall refer to the list of industries, services and other activities prepared by the RBOI-ARMM in consultation with other appropriate government agencies and private sector for submission to BOI National for inclusion, which will be eligible for registration with the Board, which includes industries with high comparative advantage, activities that will produce new product/service and export-oriented industries.
 - d) "New product/service" shall refer to any product/service not locally manufactured/rendered or not sufficiently manufactured/ rendered to meet the demand.
 - e) "Gross Income Earned", refers to gross sales or gross revenues less sales returns, discounts and allowances and cost of goods and/or cost of services as defined under Section 27(E) (4) of the National Internal Revenue Code of 1997.
 - f) "Tax Credit" shall mean any credit against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificates shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance, The tax credit certificates issued by the Board pursuant to this Act shall not be transferable. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government: Provided, That the tax credit issued under this Act shall form part of the gross income of the grantee for income tax purposes under Section 32 of the National Internal Revenue Code and therefore taxable: Provided further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.
 - g) "Export Sales" shall mean the sales values and/or revenues, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of products/ services (1) shipped out of the country and sold in the territory of another country by registered enterprises (Direct exportation); or, (2) sold to other export producers whether registered enterprises or not, for further processing to be shipped out of the country and sold in the territory of another country by such export producers (Indirect exportation); or, (3) sales of export products/services by registered enterprises and/or export producers to entities/institutions allowed to import tax and duty-free goods for consumption in the country; or, (4) services rendered to clients abroad such as knowledge, information, technology and systems and/or application or installation thereof in the project sites including but not limited to the fields of engineering and construction design, logistics, repair and maintenance, and services provided to international airlines/shipping lines/ military aircraft or seacraft even if rendered locally provided revenues are paid for in foreign currency, excluding

mere deployment of people or individual practice of profession abroad (Constructive exportation).

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government shall also be considered export sales.

- h) "Service Provider" is a registered enterprise engaged or proposing to engage in rendering technical, professional or other services. The Board shall formulate an annual list of services not covered herein.
- i) An "Export Enterprises" shall mean a registered enterprise which is a manufacturer, processor that exports or supplies to exporters fifty percent (50%) or more of its output and its activity is listed in the IPP.

The Information Technology (IT) industry shall automatically be considered as Export enterprise if at least fifty percent (50%) of its services are paid for in freely convertible currency.

An export trader which is a registered enterprise that buy and sells on its account products of micro-enterprises and small and medium enterprises and earns one hundred percent (100%) of its annual sales from exports of the same shall be deemed to be an export enterprise.

- j) A "Domestic Enterprise" shall mean a registered firm which produces goods for sale, or renders services exclusively or does not export fifty percent (50%) or more of its output.
- k) "Processing" shall mean converting of raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means or by a special treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or desiccating, quick freezing, that results in a change in the nature or state of the products. Merely packing or packaging shall not constitute processing.
- l) "Source Documents" are input materials and documents reasonably needed by information technology (IT) and IT-enabled industries such as, but not limited to, books, directories, magazines, newspapers, brochures, pamphlets, medical records/files, legal records/files, instruction materials, drawings/blueprints/outlines.
- m) "IT Park"- is an area which had been developed into a complex capable of providing infrastructure and other support facilities required by IT enterprises, as well amenities required by professionals and workers involved in IT enterprises, or easy access to such amenities.
- n) "IT Building"- is a building, the whole or part of which has been developed by public or private corporate entities to provide infrastructure and other support facilities required by IT enterprises, as well as amenities required by professionals and workers involved in IT enterprises, or easy access to such amenities.
- o) Industrial Estates (IE) refers to a tract of land subdivided and developed according to a comprehensive plan under a unified continuous management

and with provisions for basic infrastructure and utilities, with or without pre-built standard factory buildings and community facilities for the use of a community of industries.

TITLE III
INVESTMENTS WITH INCENTIVES
CHAPTER I – QUALIFIED ACTIVITIES

SEC. 10. INVESTMENT PRIORITIES PLAN (IPP). –The submission of the IPP is subject to the approved schedule of the National BOI. The Regional Board of Investments-ARMM, after consultation with the appropriate government agencies and the private sector, shall submit the IPP to the National BOI for inclusion and for approval of the President of the Republic of the Philippines.

The IPP shall be prepared once in every three years by the RBOI, in consultation with and certified in writing by the appropriate regional and national agencies.

The IPP shall contain the industries, services or activities with high comparative or significant competitive edge. It shall also include those that will engage in (i) production or manufacture of new product/service or (ii) export product service or (iii) stimulation of both forward and backward linkages or creation of value added activities or (iv) socially relevant, environment – friendly and economically viable undertaking.

SEC. 11. Amendments – Subject to publication requirements and the criteria for investment priority determination, the Regional Board of Investments-ARMM, in a recorded consultation with and certified in writing by appropriate government agencies may, at any time, recommend to the President thru the Regional Governor to add additional areas in the IPP, alter any of the terms of the declaration of an investment area or terminate the status of preference. In no case, however, shall any amendment of the IPP impair whatever rights that 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 area nor after approval of its deletion as a preferred area of investment.

SEC. 12. Publication – Upon approval of the IPP, in whole or in part, or upon approval of an amendment thereof, the IPP or the amendment, specifying and declaring the areas of investment shall be published in at least one (1) newspaper of general circulation and all such areas shall be opened for application until publication of an amendment or deletion thereof, or until the Board approves registration of enterprises.

CHAPTER II – INCENTIVES TO REGISTERED ENTERPRISES

SEC. 13. Governing Incentive Provision for Registered Enterprises. The Regional Board of Investments -ARMM is vested solely with the power to grant incentives provided in this Act.

SEC. 14. Incentives to Registered Enterprises – RBOI- ARMM may Grant the following incentives to their respective registered enterprises to the extent of the activity/project:

A. INCOME TAX HOLIDAY

INCOME TAX HOLIDAY (ITH) – Registered enterprises shall be entitled to an income tax holiday from the start of their commercial operation to the extent of their activity under the following categories:

Category A – A registered domestic enterprise located in the ARMM shall be entitled for 6 years income tax holiday.

Category B – A registered export enterprise shall be entitled to 6 years income tax holiday: *provided, however*, that if the export enterprise complies with any of the following:

1. large capital investments or sizeable employment generation,
2. use high level of technology,
3. Producing/rendering new products/services or giving strong backward or forward linkages, it shall be entitled to 8 years income tax holiday

Registered enterprises embarking on new investments that are listed in the current IPP shall be entitled to incentives provided herein pertaining to the new investments and subject to such terms and conditions as the Board may determine.

Additional investments in the project shall be entitled to income tax holiday equivalent to such investments and may be entitled to additional income tax holiday for as long as investment is made in the same project as the Board may decide: *Provided*, that the project is listed in the IPP at the time the additional investment in the project is made: *Provided further*, that the entitlement period for additional investments shall not exceed three times the period provided under Subsection (a) of Section 14, *Provided, however* that the total ITH period for an export enterprise availing of an eight year ITH shall not exceed twenty (20) years. Any unused incentives shall be deemed forfeited if not used during the incentive period.

The Bureau of Internal Revenue (BIR) shall require a registered enterprise availing of ITH or NOLCO to secure a certificate of eligibility from RBOI before filing an official copy of its Income Tax Return (ITR) for validation.

Failure to secure certification and/or to file the ITH or NOLCO availment for validation by the RBOI within forty-five (45) days from the last day of statutory filing date for ITR shall cause the forfeiture of the availment for the taxable period.

NET OPERATING LOSS CARRYOVER (NOLCO) – The net operating loss of the business or enterprises during the first three (3) years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over for the next five (5) consecutive taxable years from gross income immediately following the year of such loss; *Provided however*, that operating loss resulting from availment of incentives provided in this Act shall not be entitled to NOLCO. A

registered enterprise availing of ITH as herein provided shall not be entitled to avail of the NOLCO.

B. ACCELERATED DEPRECIATION

Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the production and transport of goods and services may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Finance and the provisions of National Internal Revenue Code (NIRC); as amended.

C. CAPITAL EQUIPMENT INCENTIVE

1. Importations of capital equipment, spare parts, production consumables, or those required for pollution abatement and control, cleaner production and waste reduction including consignment thereof, by registered domestic & export-oriented enterprises upon the effectivity of this laws shall be exempted to the extent of one hundred percent (100%) of the taxes and custom duties; Provided, That the importation thereof shall be used exclusively by the registered enterprises in its registered activity; Provided further, That the importation of machinery and equipment and accompanying parts shall comply with the following conditions:

- a) They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;
- b) They are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on a specific equipment and machinery being permanently used for non-registered activities; and
- c) The approval of the Board was obtained by the enterprise for the importation of such machinery, equipment and spare parts.

Approval of the Board must be secured before any, sale, transfer or disposition of the imported capital equipment, machinery or spare parts made: *Provided*, That if such sale, transfer or disposition is made within the first five (5) years from date of importation, any of the following conditions must be present:

- a) If made to another enterprise enjoying tax and duty exemption on imported capital equipment;
- b) If made to another enterprise, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
- c) Exportation of the equipment, machinery, spare parts or source documents or those required for pollution abatement and control;

- d) For reasons of proven technical obsolescence;
- e) For purposes of replacement to improve and/or expand the operations of the registered enterprises; or

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs other than the paragraph (b), the registered firm shall not pay the taxes and duties waived on such items: *Provided further*, that if the registered enterprise sells, transfers or disposes the aforementioned imported items without prior Board approval within five (5) years from date of importation, the registered enterprises and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax exemption given it; *Provided finally*, That even if the Board approved the sale, transfer or disposition of the equipment after five (5) years from date of importation, the registered enterprises is still liable to pay the taxes and duties on the net book value of the capital equipment, machinery or spare parts if it has violated any of its registration terms and conditions, Otherwise, it shall no longer be subject to the payment of the taxes and duties waived thereon.

2. The purchase of machinery and capital equipment and raw materials, supplies, parts and semi-finished products used in the fabrication of the machinery and equipment by a registered domestic and export oriented enterprise, from a domestic manufacturer shall be subject to zero percent (0%) value –added tax.

The registered domestic and export oriented enterprise shall be granted a tax credit equivalent to the amount of duties that would have been waived on the machinery; capital equipment; and raw materials, supplies parts and semi finished products used in the fabrication of machinery and capital equipment, had these items been imported, upon submission to the DOF of the bill of materials evidencing the transaction value of such and other pertinent documents, for verification and proper endorsement.

The registered domestic and export enterprise availing of the incentive provided under the immediately preceding two paragraphs shall be subject to the following:

- a) That said capital equipment, machinery and spare parts will be used exclusively by the registered enterprise in its registered activity;
- b) that the capital equipment or machinery where the raw materials, supplies, parts and semi finished products were used would have qualified for tax and duty free importation;
- c) That the approval of the Board is obtained by the registered enterprise.

If the registered enterprise sells, transfer or disposes of these machineries, capital equipment and spare parts, the provision in the preceding paragraphs for disposition shall apply.

This incentive shall be deemed waived if the application of tax credit under this subsection was not filed within one year from date of delivery.

(f) The importation of source documents by information technology registered enterprises shall be eligible for tax and duty free importation.

D. RAW MATERIAL INCENTIVES

Every registered domestic and export enterprise shall enjoy a tax credit equivalent to the Internal Revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products provided the same are not sufficient in quantity, quality or not competitively priced which are used in the manufacture, processing or production of its export products forming part thereof, exported directly and indirectly by the registered export enterprise, based on the actual taxes and duties paid for such materials/supplies/ semi-manufactured products by the registered enterprise.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of exportation of final product.

E. INCENTIVES ON BREEDING STOCKS AND GENETIC MATERIALS

1. Importation of breeding stocks and genetic materials within ten (10) years from the date of registration of commercial operation of the enterprise shall be exempt from all taxes and duties: *Provided*, That such breeding stocks and genetic materials are: (a) reasonably needed in the registered activity; and (b) approved by the Board .

Registered enterprise availing of the incentives shall be subject to the following : (a) that said breeding stocks and genetic materials would have been qualified for tax and duty free importation under the preceding paragraph; b) that breeding stocks and genetic materials are reasonably needed in the registered activity; (c) that approval of the Board has been obtained by the registered enterprise; and (d) that the purchase is made within ten (10) years from date of registration of commercial operation of the registered enterprise.

- #### F. EXEMPTION FROM WHARFAGE DUES – The provisions of law to the contrary notwithstanding, exports by a registered enterprise shall be exempted from wharfage dues.

G. DEFERRED IMPOSITION OF THE MINIMUM CORPORATE INCOME TAX (MCIT).

The Minimum Corporate Income Tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year shall be imposed when the minimum corporate income tax is greater than the tax computed under the National Internal Revenue Code (NIRC) as amended for the taxable year; *Provided* however, That said MCIT shall be imposed only after the enterprise' entitlement period to the income tax based incentives.

H. EMPLOYMENT OF FOREIGN NATIONALS

Subject to the provisions of Section 29 of Commonwealth Act No. 613, as amended, a registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding ten (10) years from its registration; *Provided further*, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of the president, treasurer and general manager or their equivalents may be retained by foreign nationals beyond the period set forth herein and such officer is the owner or a stockholder owning at least ten percent (10 %) of the outstanding capital stock of the registered enterprise and he remains the owner or maintains his stockholdings therein.

Foreign nationals under employment contract within the purview of these incentives, their spouses and unmarried children under Twenty One (21) years of age, who are not excluded by Section 29 of Commonwealth Act numbered 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. They shall be issued a multiple entry visa, valid for a period of three (3) years, to enter and leave the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports. The validity of the multiple entry visa shall be extendible yearly.

The foreign national admitted herein, as well as their respective spouses and dependents shall be exempt from:

- (a) obtaining alien certificate of registration and emigration clearance certificates; and
- (b) securing the Alien Employment Permit (AEP) and all types of clearances, permits, licenses or their equivalents by any government department or agency.

SEC. 15. Other Incentives – The Board may grant other incentives subject to the approval of the Regional Governor to activities listed in the IPP that exhibit high social economic returns on the part of capital or labor intensive activities. In the exercise of this authority, the following criteria shall be taken into account: (1) large capital investments or sizeable employment generation or (2) use of high level technology.

The incentives may include, as determined by the Board to be appropriate in a particular industry or enterprise, any or all of the following:

(1) Investment Tax Allowance

An investment tax allowance to the extent of its actual investment, paid in cash or property, shall be allowed as a deduction from its taxable income but not to exceed thirty percent (30%) spread within three years to be availed after the income tax holiday:

Provided, (1) That the investment is made in subscription of shares in the original and/or increased capital stock of an enterprise;

(2) That the shares are held for a period of not less than three years; and

(3) That the investment is approved with the Board. If the shares are disposed within the three year period, the enterprise shall lose the benefit of this

deduction, its income tax liability will be recomputed and shall pay whatever additional sum be due plus interest thereon, within (30) days from the date of disposition.

(2) Double Deduction for Training Expenses.

Expenses incurred for local training given to employees for the development of skill, identified as necessary by the appropriate government agencies, upon approval of the Board, shall entitle the registered enterprise to a special deduction from the taxable income equivalent to one hundred percent (100%) of the total expenses over and above the allowable ordinary and necessary business deductions for said expenses under the National Internal Revenue Code, as amended for a period of five years after entitlement of other income tax based incentives.

(3) Double Deduction for Research and Development

Expenses incurred for research and development conducted in the Philippines relating to the business shall entitle the registered enterprise to a special deduction from taxable income equivalent to one hundred percent (100%) of the total expenses over and above the allowable ordinary and business deductions for said expenses under the national Internal Revenue Code, as amended, for a period of five years after entitlement of other income tax based incentives.

To raise the quality of basic education, a domestic enterprise that produces quality educational materials for the public school system shall be entitled to the incentive herein provided.

SEC. 16. Incentives to Investors. A foreign national covered under Section 14, Paragraph (H) of this Act, invests an amount of at least US\$100,000.00, either in cash and/or equipment, in an enterprise engaged in an activity registered with the Regional Board of Investments, shall be entitled to a Special Investor's Resident Visa; Provided that,

1. He is at least (18) years of age;
2. He has not been convicted of a crime involving moral turpitude;
3. He is not afflicted with any loathsome, dangerous or contagious disease;
4. He has not been institutionalized for any mental disorder or disability;

Provided further, that in securing the special investor's resident visa, the alien-applicant shall be entitled to the same privileges provided for under Section 16 (K), last paragraph.

As a holder of the Special Investors Resident Visa, an alien shall be entitled to reside in the Philippines while his investments subsist. For this purpose, he should submit an annual report, in the form duly prescribed for the purpose, to prove that he has maintained his investments in the ARMM. Should said alien withdraw his investments from the ARMM, then the Special Investors Resident Visa issued to him shall automatically expire.

CHAPTER III – REGISTRATION OF ENTERPRISES

SEC. 17. Qualifications of a Registered Enterprise. – To be entitled to register to avail of incentives, an applicant must satisfy the following conditions:

5. He is a citizen of the Philippines, in case the applicant is a natural-person, or in case of a corporation of partnership or any other association, it must be organized and existing under Philippine laws and that it must comply with all the qualifications provided under this Act; Provided however, that for purposes of this Act and any law to the contrary notwithstanding, a natural-born ASEAN citizen or a corporation effectively controlled by ASEAN citizen shall be considered as a Philippine investor; Provided, That the investments is made in an activity where the constitution does not specially require Filipino participation;
6. That it will engage in an activity included in the IPP;
7. That the activity it will engage in is not within the activities, reserved by the Constitution to Philippine citizens or corporations owned and controlled by Philippine citizens; and
8. That if the applicant is engaged in or proposes to engage in undertakings or activities other than the registered projects, it shall install an accounting system adequate to identify the investments, revenues, costs, and profits or losses of each registered project undertaken by the enterprise separately from the aggregate investment, revenue costs and profit or losses of the whole enterprise, or to establish a separate corporation for each registered project if the Board should so require to facilitate proper implementation of this Act.

CHAPTER IV – BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

SEC. 18. Protection of Investments. - All investors and registered 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 Investments. – 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 74 of Republic Act No. 265 as amended;

For investments made pursuant to Executive Order No. 32 and its implementing rules and regulations, remittability shall be as provided therein.

- 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 74 of Republic Act No. 265 as amended;

- c) Foreign Loans and Contracts. – The rights 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 74 of Republic Act No. 265 as amended;
- d) Freedom from Expropriation. – There shall be no expropriation by the government of the property represented by investments or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the rights 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 74 of Republic Act No. 265 as amended;
- 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 74 of Republic Act No. 265 as amended.

CHAPTER V – ADMINISTRATION OF INCENTIVES

SEC. 19. Duties and responsibilities. The RBOI-ARMM shall have the following duties and responsibilities under this Act:

- (a) to adopt consistent procedures of administering incentives in accordance with the guidelines established by the Board;
- (b) to adopt and implement systems and procedures affecting trade and customs policies in accordance with the requirements established by the DOF and the Board;
- (c) to submit data and information to the Board as required by any of these agencies to ascertain consistency of investments policies and incentives, including their implementation as provided in (a) and to ensure the proper implementation of systems and procedures affecting trade and custom policies as provided in (b) and to perform all other duties and responsibilities, as be required by the higher authorities.

SEC. 20. Administration, Implementation and Monitoring of Incentives. RBOI-ARMM shall be responsible for the administration and implementation of the incentives granted to respective registered enterprise.

The Board and DOF/Local Treasury shall meet regularly to monitor and review the investments and incentives granted and a report shall be annually submitted to the Regional Legislative Assembly.

SEC. 21. Applications. Applications- shall be filed with the RBOI- ARMM, recorded in a registration book and the date appearing therein and stamped on the application shall be considered the date of official acceptance. In no case shall double registration be allowed. In the event that an enterprise shall transfer to another investment promotion agency or government assets enjoying incentives will be privatized, only the remaining unutilized incentives shall be enjoyed by the enterprise or the transferee, vendee or assignee of the government corporation.

All applications and their supporting documents filed under this Code shall be confidential and shall not be disclosed to any person except with the consent of the applicant or upon an order of a court of competent jurisdiction.

SEC. 22. Criteria Evaluation of Application. – The following criteria will be considered in the evaluation of applications for registration under a preferred area:

- a) Impact of the project on the overall economy;
- b) Overall viability of the project;
- c) The extent of employment generation; The extent to which technological advances are applied and adopted to local conditions; and
- d) Such other criteria as the Board may determine.

SEC. 23. Approval and Registration Procedures. - The Board is authorized to adopt rules and regulations to facilitate action on applications filed with it; prescribe criteria for the evaluation of several applications; devise standard forms for the use of applicants of the RBOI-ARMM the authority to receive and process applications for enterprises to be located in their respective provinces and city.

Applications filed shall be considered automatically approved if not acted upon by the Board within Ten (10) working days from official acceptance thereof. Deferment by the Board shall be considered as an official action; Provided however, that the Board may defer action to a specific application not more than twice; and Provided, finally that the Board shall act upon the application within ten (10) working days from compliance with the cause of the last deferment.

SEC. 24. Certificate of Registration. – A registered enterprise under this Act shall be issued a Certificate of Registration under the seal of the Regional Board of investments-ARMM and the signature of its Chairman and the 4 Members of the Board /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 area of investment in which the registered enterprise is proposing to engage;
- c) The type of the activity it is undertaking proposing to undertake; and
- d) The other terms and conditions to be observed by the registered enterprise by virtue of the registration.

SEC. 25. Validity of RBOI Registration- A firm's registration with the Board shall be valid for a period of twenty (20) years from start of commercial operation unless extended by the Board.

SEC. 26. Extension of Period of Availment. - The availment period of the incentives provided herein may be extended by the Board, in the event that the registered enterprise has suffered operational force majeure that has impaired its viability, equivalent thereto.

SEC. 27. Duration of Incentives. Fiscal incentives provided under this Code shall be terminated after a cumulative period of twenty (20) years from date of registration or start-up of commercial operations of the registered enterprise, whichever is applicable, except that it could be extended with regard to industries deemed indispensable to regional development.

SEC. 28. Payment in the Form of Foreign Currencies- RBOI-ARMM may be allowed to receive foreign currencies as payment of application fees, fines and penalties, including refund of incentives.

TITLE IV FINAL PROVISIONS

SEC. 29. Authority to Retain Funds. The Board shall have the authority to retain one-half of funds arising from the collection of fees from application/certifications of registration and/or incentives availment, fines, penalties and refund of incentives and other sources of income subject to the usual accounting process.

SEC. 30. Universal Coverage – Five years from the date of this Act goes into effect, all existing registered enterprises which are enjoying the incentives under Book One, Five and Six of Executive Order No. 226 otherwise known as the Omnibus Investment Code of 1987, as amended, and all other enterprises registered under other laws shall be governed by exclusively by this Act: Provided, That incentives arising from contracts or agreements entered into by an enterprise with the government, its instrumentalities and agencies shall continue in force and effect according to the terms and thereof: Provided, further, That existing enterprises may opt to register and be governed by this Act.

SEC. 31. Protection of the Environment. – The RBOI-ARMM, in coordination with the appropriate agencies, shall take concrete and appropriate steps and enact the proper measure for the protection of the environment., and shall coordinate with the Environmental Management Bureau of the Regional Department of Environment and Natural Resources to avoid undue delay in the issuance of the required Environmental Compliance Certificate(ECC): Provided, however, That applications for environmental clearances, permits, and /or licenses of registered enterprises shall be acted upon by the appropriate government agency within one hundred twenty days (120) from date of

official acceptance. In the event that the appropriate government agency failed to act within the aforementioned date, the application for the said environmental requirement shall be deemed complied with for purposes of operation of the registered activity: Provided finally, That the Board may withdraw the certificate of registration issued to the enterprise should the appropriate government agency eventually deny the application.

SEC. 32. Suspension and Forfeiture of Incentives; Refund and Penalties. - When there is probable cause to believe that the registered enterprise has violated its registration terms and conditions, the Board may suspend its incentives availment, until proven otherwise. The Board may impose fines and penalties and/or forfeit the incentives granted to its registered enterprises whenever there are violations of the registration terms and conditions by the latter, without prejudice to the cancellation of the registration of said enterprise.

In case of cancellation of the Certificate granted under this Act, the Board may, in appropriate cases, require the refund of incentives availed of and impose corresponding fines and penalties.

Any enterprise which violates any provision of this Act, its implementing rules and regulations, the terms and conditions of its registration or any lawful directive of the Board, or willfully commits any fraudulent misrepresentation in the course of filing an application for registration, or in the availment of incentives, including all official reports required to be submitted by the Board, shall be subject to a fine of not more than One Million Pesos (P1,000,000.00), without prejudice to the disapproval of its application for registration or cancellation of its registration : Provided, that any willful commission of fraudulent misrepresentation in its application for registration or submission of reports or gross violation of this Code and its implementing rules and regulations, a fine of at least One Million Pesos (P 1,000,000.00) but not exceed ten Million Pesos (P10,000,000.00) shall be imposed, in addition to other penalties that may be imposed by the Board.

The Board shall prepare a schedule of fines and penalties to be imposed on erring registered enterprises depending on the violation incurred, which may be reduced in exceptional cases.

Responsible officers of such enterprises, including duly appointed external consultants- agents who knowingly commit aid or abet the commission of any of the acts mentioned above, shall be subject to a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Three Hundred Thousand Pesos (P300,000.00).

Government officers and employees who participate directly or indirectly in the commission of the foregoing acts shall likewise be liable to a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Three Hundred Thousand Pesos (P300,000.00), in addition to any criminal and administrative penalties imposable under the Civil Service Law, Revised Penal Code, Republic Act No. 3019 (Anti- Graft And Corrupt Practices Act), Republic Act No. 6713 (Code Of Conduct and Ethical Standards For Public Officials) and other applicable laws.

If the offender is a foreign national, in addition to the imposable fines and penalties above, the foregoing acts shall be grounds for his summary deportation.

SEC. 33. Appeals from Board's Decision. - All orders or decisions of the Board in cases involving the provisions of this Act shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision, unless a *supersedeas* bond equivalent to the amount stated in the order or decision is posted by the appellant. All appeals involving cases decided by the Board, except as provided in the next succeeding paragraph, shall be filed with the Court of Appeals within (15) days from notice of the order or decision or to the denial of the appellant's motion for new trial or reconsideration. Within the same period, the aggrieved party may file a motion for reinvestigation or reconsideration. Only one motion for reconsideration shall be allowed, subject to the posting of the aforementioned *supersedeas* bond and which shall be limited to cash and/or surety bond from a RBOI-ARMM accredited bonding company.

In cases involving the denial of an application for registration, the party adversely affected by such denial appeal the same to the office of the Regional Governor within thirty days from notice of the order denying the application for registration, where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.

SEC. 34. Regional Oversight Committee. A regional oversight committee, herein referred to as the Committee, is hereby constituted in accordance with the provisions of the Code. The Committee shall be composed of the Chairman of the Regional Assembly Committee on Ways and Means and four members from the Regional Assembly.

The Committee shall, among others, in aid of legislation, monitor and ensure the proper implementation of this Act. The committee is also empowered to require RBOI the submission of all pertinent information, including but not limited to, availment of fiscal incentives, total investment, and cost- benefit analysis of incentives against investments, in a regular manner.

SEC. 35. Implementing Rules and Regulations (IRR). - The RBOI-ARMM, in consultation with Regional Planning Development Office, Bureau of Treasury and Department of Trade and Industry and other appropriate government agencies shall promulgate rules and regulations to implement the intent and provisions of this Act. Such rules and regulations shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the ARMM.

SEC. 36. Transitory Provision. - Until the Implementing Rules and Regulations of this Code take effect, the present rules and regulations to implement the provisions of this Code shall apply.

For activities or entities, whether government or private, those tax an/or duty exemptions or preferential treatment under special laws and withdrawn or repealed by this Act, pertinent provisions of National Internal Revenue Code (NIRC) of 199, as amended; the Tariff and Customs Code, as amended the Local Government Code, shall apply: Provided, however, that non-stock savings associations shall be considered as financial institutions and shall be taxed accordingly. Any distribution of net surplus or

dividends shall be subject to ten (10%) final withholding tax, as provided in sec. 24(B) of the NIRC, as amended.

SEC. 37. Separability Clause. - The provisions of this Act are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall in force and effect.

SEC. 38. Repealing Clauses. - Any in all laws, acts, orders and issuances inconsistent with any provisions of this Code are hereby modified and repealed accordingly.

SEC. 39. Effectivity- This Act shall take effect fifteen (15) days following its publication in a local paper of general circulation.

Approved.

PAISALIN P. TAGO
Speaker

This Act was passed by the Regional Assembly on June 11, 2008.

DATU MAMA M. AMPATUAN
Secretary General

APPROVED:

DATU ZALDY UY AMPATUAN
Regional Governor
Date signed: _____