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# **Study on the Inventory of Investment Incentives and Recommendations for Local Applications**

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## **Investment Enabling Environment (INVEST) Project**

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## List of Acronyms

AFAB	Authority of the Freeport Area of Bataan
AFV	Alternative Fuel Vehicle
BCDA	Bases Conversion Development Act
BLGF	Bureau of Local Government Finance
BIR	Bureau of Internal Revenue
BMBE	Barangay Micro Business Enterprise
BOI	Board of Investment
CDO	Cagayan De Oro
CSR	Corporate Social Responsibility
CSRPA	Civil Service Rules on Personnel Actions and Policies
DENR	Department of Environment and Natural Resources
DILG	Department of the Interior and Local Government
DOLE	Department of Labor and Employment
DTI	Department of Trade and Industry
EO	Executive Order
EPZ	Export Processing Zone
EV	Electric Vehicle
FAB	Freeport Area of Bataan
IE	Industrial Estate
IPP	Investment Priorities Plan
IRR	Implementing Rules and Regulations
IT	Information Technology
INVEST Project	Investment Enabling Environment Project
LDC	Local Development Council
LGC	Local Government Code
LGU	Local Government Unit
LIIB	Local Investment Incentives Board
LIIC	Local Investment Incentives Code
NERBAC	National Economic Research and Business Assistance Center
NIRC	National Internal Revenue Code
PD	Presidential Decree
PDC	Provincial Development Council
PEZA	Philippine Economic Zone Authority
RA	Republic Act
SMED	Small and Medium Enterprise Development
SEC	Securities and Exchange Commission
SJS	Social Justice Society
SSS	Social Security System
VAT	Value-Added Tax

## I. Introduction

The Investment Enabling Environment (INVEST) Project of the USAID is assisting three cities, Batangas, Iloilo and Cagayan de Oro, to streamline their business registration processes and enhance their investment planning and promotion capacities in order to improve their business climate. Studies have shown that one of the measures often resorted to by local government units (LGUs) to attract investments is the grant of incentives. This is a legal authority granted to them in the Local Government Code (LGC) of 1991 and the incentives they offer are usually contained in their Local Investment Incentives Codes (LIICs). It has been observed, however, that many of the investment incentives already granted in various national laws have not been incorporated in LIICs. The reasons for this problem include the facts that: (a) some of the national incentives granted under new laws were passed after the formulation of the LIICs; and (b) local governments are unaware of the existence of these incentives.

In view of this, the INVEST Project will be assisting its partner cities in assessing whether their LIICs need to be updated and, if necessary, coach them in doing so. To lay the groundwork for the assessment of its partner cities' LIICs, the Project contracted a study that would (1) prepare the inventory of incentives provided to priority sectors under various national laws; (2) evaluate the LIICs of the partner cities and recommend measures that will ensure the consistency of the incentives provided in the LIICs with those provided for by national laws; and (3) comment on the guidebook on the formulation of the LIICs prepared by the Department of the Interior and Local Government (DILG).

The initial results of the study, which was conducted by Atty. Rachel Follosco, have been presented to USAID, the DILG and the Department of Trade and Industry (DTI), which co-convene the Sub-Working Group on Local Investment Reforms. A more detailed presentation was also made to the *Sanggunian* members and representatives of local business chambers in the cities of Cagayan de Oro and Iloilo which focused on the directions that may be taken in the updating and revision of their LIICs. The compendium of incentives provided in national laws, which is part of the study, was distributed to the LGUs attending the DILG-DTI Forum that commemorated the 21<sup>st</sup> anniversary of the Local Government Code entitled "Accelerating Public and Private Partnerships for Competitiveness and Local Economic Development" held on October 11, 2012.

This study is divided into four parts. The first describes the legal basis for the authority of LGUs to grant incentives. This is followed by a description of the inventory of laws that provide incentives to particular sectors. The third section discusses general comments and observations on a sample of about 13 Local Investment Incentives Codes, including those of the INVEST partner cities. The last section summarizes the recommendations.

## II. Legal Framework for the Grant of Incentives By Local Governments

The DILG has encouraged each LGU to adopt its own LIIC. As discussed in the *Guide for LGUs in Formulating a Local Investments and Incentive Code (LIIC) or Ordinance*, which the DILG has recently issued (Guide), an LIIC is *–a document that articulates the local government's investment policies and programs, the local fiscal and non-fiscal incentives available to investors, both foreign and domestic, and the mechanics for availing them.*” The grant of incentives provided under an LIIC is clearly intended to aid in attracting, retaining, and expanding investments, as well as in diversifying and dispersing economic activities within the LGU, consistent with the LGU’s development vision.

The formulation of LIIC by LGUs is seen as a *–proactive measure to draw local and foreign investments especially in priority areas/industries to speed up economic progress that will provide employment opportunities, increase revenues, reduce poverty and improve the quality of life of both women and men.*” The Guide further details the purpose of LIIC, as follows:

*The LIIC is likewise a tool to define the development thrust of the LGU consistent with its Land Use Plan and zoning regulations, hasten the development of new or brownfield areas for industrial and business development, urban renewal or revitalization, and incentivize environmental protection and climate change adaptation thereby attaining the LGU's economic and social objectives and contributing to regional and national goals.*

*Specifically, it seeks to:*

- 1. Attract domestic and foreign investors to establish enterprises that will catalyze and accelerate economic activity and generate employment and income opportunities in the locality;*
- 2. Promote micro, small, medium enterprises, utilize local resources and develop markets for local products;*
- 3. Accelerate the development of agriculture, tourism, and other local industries;*
- 4. Disperse industries and commercial activities, consistent with the LGU land use plan;*
- 5. Spell out the guidelines and procedures to avail of incentives and benefits by new and existing investors;*
- 6. Define the priority areas of investments consistent with national priorities and the LGU comprehensive development plan;*
- 7. Promote the harmonization of the national/provincial and local investment policies;*
- 8. Promote private sector participation in climate-resilient local development through public-private partnerships; and*
- 9. Define the investment promotion program of the LGU for business attraction, retention and expansion. (emphasis provided)*

It cannot be overemphasized that the framers of LIICs must be aware of the existing provisions of the Philippine Constitution, as well as of laws, relevant rules, regulations, and other issuances that relate to, or would affect, the LGUs’ authority to issue LIICs and, more importantly, to

stipulate the provisions they propose to include therein, whether it concerns the identification of investment activities that will be granted incentives, the incentives that will be granted to specified business activities, or the terms and conditions of such incentives.

It is therefore important to make LGUs, particularly those given the responsibility and authority to draft LIICs, the relevant laws that have to be considered to better ensure that the LIICs that they craft are consistent with prevailing law. Knowledge of the prevailing legal framework at the national level also affords them a holistic view of the incentive system already in place so they can better relate it with the incentives their LGU proposes to extend. Considering all the incentives that various laws already require LGUs to grant to specified businesses, familiarity with the legal framework would enable them to assess whether the incentives they propose to grant conflict with what is provided under the law or would result in the excessive grant of incentives as would already compromise the financial viability of the LGU.

Moreover, if the legal validity of the incentives being extended has been properly considered by the LGUs, investors are better assured that the incentives will not be cancelled or questioned after they have invested on the basis of their assumption that they will be enjoying the declared incentives.

#### **A. Powers Granted to LGUs in the 1987 Constitution**

Heralded as one of the most significant changes introduced by the 1987 Constitution of the Republic of the Philippines (1987 Constitution) is the unequivocal grant of autonomy to LGUs. The grant of autonomy is provided for under its Article II (Declaration of Principles and State Policies):

*SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.*

*SECTION 25. The State shall ensure the autonomy of local governments.*

The declaration of the above state policy has far reaching implications. Ultimately, this is the basis of the authority of LGUs to adopt and issue their respective LIICs since the exercise of discretion on the part of LGUs to identify what investment areas to promote and how to promote the same is patently in accord with the grant of autonomy to them. The adoption of LIIC specifically entails:

1. The identification of priority areas of investment or the procedure and criteria for the identification of the priority areas of investments;
2. The creation of an office/board that has the responsibility of identifying priority areas of investment, as well as of evaluating and approving investments availing of incentives, among others;
3. The grant of various incentives, whether fiscal or non-fiscal, to businesses engaging in the identified priority areas of investment, including the procedure to register for and secure such incentive; and
4. Identification of any other ground for granting investment incentives (such as the number of employees from the LGU).

Consistent with the said state policy, Article X (Local Government General Provisions) of the Constitution further provides:

**SECTION 4. The President of the Philippines shall exercise general supervision over local governments.** *Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.*

**SECTION 5.** *Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.*

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**SECTION 14. The President shall provide for regional development councils or other similar bodies** *composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.*

*(emphases provided)*

It is clear from the foregoing that while there is a categorical intent to grant local autonomy, which necessarily requires the grant of the necessary power and authority to LGUs that would render them self-reliant, the 1987 Constitution itself did not intend local autonomy to be boundless. LGUs are subject to the general supervision of the President and they are still supposed to coordinate, at the very least, at the regional level, with respect to economic and social growth and development objectives and strategies. Section 14 of Article X of the 1987 Constitution above is specifically relevant to the process of identifying priority areas of investment of the LGUs.

It should be noted that, unless the LIIC adopted by the LGU by way of ordinance contravene a specific provision of law, the supervisory authority of the President of the Philippines does not give the latter the power to reverse the action taken by the LGU and neither can the President interfere with LGUs' decision to adopt their LIIC and to include whatever they deem appropriate in their LIIC. The Supreme Court has had the opportunity to expound on the breadth of the President's supervisory power under Section 4 of Article X of the Constitution quoted above in the case of Social Justice Society (SJS), et al. vs. Hon. Jose L. Atienza, Jr., in his capacity as Mayor of the City of Manila, G.R. No. 156052, February 13, 2008, as follows:

*Section 4 of Article X of the Constitution confines the President's power over LGUs to one of general supervision:*

**SECTION 4.** *The President of the Philippines shall exercise general supervision over local governments. . . .*

*Consequently, the Chief Executive or his or her alter egos, cannot exercise the power of control over them. Control and supervision are distinguished as follows:*

*[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.*

*Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. It does not allow the supervisor to annul the acts of the subordinate. Here, what the DOE seeks to do is to set aside an ordinance enacted by local officials, a power that not even its principal, the President, has. This is because:*

*Under our present system of government, executive power is vested in the President. The members of the Cabinet and other executive officials are merely alter egos. As such, they are subject to the power of control of the President, at whose will and behest they can be removed from office; or their actions and decisions changed, suspended or reversed. In contrast, the heads of political subdivisions are elected by the people. Their sovereign powers emanate from the electorate, to whom they are directly accountable. By constitutional fiat, they are subject to the President's supervision only, not control, so long as their acts are exercised within the sphere of their legitimate powers. By the same token, the President may not withhold or alter any authority or power given them by the Constitution and the law.*

*Thus, the President and his or her alter egos, the department heads, cannot interfere with the activities of local governments, so long as they act within the scope of their authority. xxx. In local affairs, the wisdom of local officials must prevail as long as they are acting within the parameters of the Constitution and the law. (citations omitted; underscoring provided)*

Lastly, the 1987 Constitution makes a categorical qualification to the authority of LGUs to generate their own source of funds, i.e., it is subject to the limitation thereon and the guidelines that the Congress provides, which Congress provides through specific provisions of law. Thus, if Congress enacts a law limiting the power of the LGUs to impose tax on specific instances, such law is not rendered unconstitutional since the 1987 Constitution itself has reserved unto Congress the power to limit the taxing authority of the LGUs, notwithstanding the grant to the LGUs of the power to create their own sources of revenue. Accordingly, LGUs will have to abide by, and may not disregard, whatever limitation Congress imposes on their authority to generate revenues, such as provisions of laws passed by Congress particularly granting to certain businesses exemptions from local taxes, fees, and charges, as a way of granting incentives. After all, such grant of incentives to certain business activities is consistent with policy of the state declared under Section 20 of Article II of the 1987 Constitution. In the case of *City Government of Quezon City v. Bayan Telecommunications, Inc. (Bayantel Case)*,<sup>1</sup> the Supreme Court categorically sustained the power of Congress to grant tax exemptions over and above the power of the local government's delegated power to tax.

## **B. Legal Powers Granted to Local Governments in the Local Government Code**

In furtherance of the provisions of the Constitution on LGUs, Republic Act No. 7160, or the Local Government Code of 1991 (LGC) was signed into law on 10 October 1991 and became effective on 1 January 1992. The LGC is admittedly the principal law governing LGUs.

The LGC includes several provisions which have direct or indirect impact on the exercise by LGUs of their authority to adopt an LIIC. These are further discussed below.

### **1. On the Grant of Power to Source Revenue**

Provisions of the LGC on the power of the LGUs to impose taxes are relevant notwithstanding the fact that LIICs do not ordinarily impose taxes, but rather provide exemptions from taxes. It has been held that the power to tax includes the power to exempt, the same being essentially a legislative prerogative.<sup>2</sup> Thus, knowing the extent of the power of LGUs to impose taxes provides a measure of the extent of tax exemptions that LGUs may likewise grant.

The sections of the LGC quoted below are those that grant the LGUs the power to impose taxes, fees, and other forms of exactions, whether for regulatory or revenue purposes.

*SECTION 129. Power to Create Sources of Revenue. — Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.*

*SECTION 132. Local Taxing Authority. — The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the sanggunian of the local government unit concerned through an appropriate ordinance.*

*SECTION 134. Scope of Taxing Powers. — Except as otherwise provided in this Code, the province may levy only the taxes, fees, and charges as provided in this Article.*

*SECTION 142. Scope of Taxing Powers. — Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.*

*SECTION 147. Fees and Charges. — The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, commensurate with the cost of regulation, inspection and licensing before any person may engage in such business or occupation, or practice such profession or calling.*

*SECTION 151. Scope of Taxing Powers. — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.*

*The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.*

*SECTION 153. Service Fees and Charges. — Local government units may impose and collect such reasonable fees and charges for services rendered.*

*SECTION 232. Power to Levy Real Property Tax. — A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.*

*SECTION 240. Special Levy by Local Government Units. — A province, city or municipality may impose a special levy on the lands comprised within its territorial jurisdiction specially benefited by public works projects or improvements funded by the local government unit concerned: Provided, however, That the special levy shall not exceed sixty percent (60%) of the actual cost of such projects and improvements, including the costs of acquiring land and such other real property in connection therewith: Provided, further, That the special levy shall not apply to lands exempt from basic real property tax and the remainder of the land portions of which have been donated to the local government unit concerned for the construction of such projects or improvements.*

## **2. On the Limitation on the LGU's Power to Tax**

The authority of LGUs to impose taxes is in the nature of delegated power; thus, it is subject to the limitations imposed by Congress, as specifically provided under the 1987 Constitution. Accordingly, in a case decided by the Supreme Court where the controversy is on the seeming clash between the inherent taxing power of the legislature, which necessarily includes the power to exempt, and the local government's delegated power to tax under the aegis of the 1987 Constitution, the Supreme Court held:<sup>3</sup>

*X xx. While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. As we explained in Mactan Cebu International Airport Authority:*

*"The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. . . ."*

xxx

*This new perspective is best articulated by Fr. Joaquin G. Bernas, S.J., himself a Commissioner of the 1986 Constitutional Commission which crafted the 1987 Constitution, thus:*

*"What is the effect of Section 5 on the fiscal position of municipal corporations? Section 5 does not change the doctrine that municipal corporations do not possess inherent powers of taxation. What it does is to confer municipal corporations a general power to levy taxes and otherwise create sources of revenue. They no longer have to wait for a statutory grant of these powers. The power of the legislative authority relative to the fiscal powers of local governments has been reduced to the authority to impose limitations on municipal powers. Moreover, these limitations must be "consistent with the basic policy of local autonomy". The important legal effect of Section 5 is thus to reverse the principle that doubts are resolved against municipal corporations. Henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will be resolved in favor of municipal corporations. It is understood, however, that taxes imposed by local government must be for a public purpose, uniform within a locality, must not be confiscatory, and must be within the jurisdiction of the local unit to pass."*

*(underscoring provided)*

That it is imperative for the LGUs to impose taxes subject to the limitations imposed by Congress in a duly enacted law was again emphasized by the Supreme Court in its decision in the case of Social Justice Society (SJS), et al. vs. Hon. Jose L. Atienza, Jr., in his capacity as Mayor of the City of Manila,<sup>4</sup> where it categorically held that any ordinance which contravenes provisions of law is null and void. The decision reads, in part, as follows:

*Indeed, ordinances should not contravene existing statutes enacted by Congress. The rationale for this was clearly explained in Magtajas vs. Pryce Properties Corp., Inc.: The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.*

*"Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature."*

*This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government*

units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.

*(citations omitted; underscoring provided)*

It being clear that the exercise of the authority of LGUs to impose taxes is delegated and will have to be exercised subject to the limitations imposed by Congress under applicable law, LGUs are constrained to observe and comply with the express limitations on their power to tax provided under the provisions of the LGC itself, as quoted below.

*SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:*

- (a) Income tax, except when levied on banks and other financial institutions;*
- (b) Documentary stamp tax;*
- (c) Taxes on estates, inheritance, gifts, legacies and other acquisitions mortis causa, except as otherwise provided herein;*
- (d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;*
- (e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;*
- (f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;*
- (g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;*
- (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;*
- (i) Percentage or value-added tax (VAT) on sales, barter or exchanges or similar transactions on goods or services except as otherwise provided herein;*
- (j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;*
- (k) Taxes on premiums paid by way of reinsurance or retrocession;*
- (l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;*

- (m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;
- (n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and
- (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

*SECTION 136. Tax on Business of Printing and Publication. — The province may impose a tax on the business of persons engaged in the printing and/or publication of books, cards, posters, leaflets, handbills, certificates, receipts, pamphlets, and others of similar nature, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year.*

*In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.*

*The receipts from the printing and/or publishing of books or other reading materials prescribed by the Department of Education, Culture and Sports as school texts or references shall be exempt from the tax herein imposed.*

*SECTION 159. Exemptions. — The following are exempt from the community tax:*

- (1) Diplomatic and consular representatives; and
- (2) Transient visitors when their stay in the Philippines does not exceed three (3) months.

*SECTION 234. Exemptions from Real Property Tax. — The following are exempted from payment of the real property tax:*

- (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
- (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;
- (c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;
- (d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and
- (e) Machinery and equipment used for pollution control and environmental protection.

*Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.*

In addition to the foregoing provisions of the LGC<sup>5</sup> specifically granting exemption and, to such extent, proscribing the LGUs from imposing taxes thereon, there are various duly enacted laws granting exemption from local taxes, fees and/or charges and shall likewise be considered as imposing restriction on the power of LGUs to tax. These other laws that grant exemptions of such nature are included in our compilation of laws presented as the Annex of this Report.

### **3. On the Power to Grant Incentives Such as Tax Exemptions**

#### *a. Basis of the power to grant incentives*

As it has been held by the Supreme Court that the power to impose taxes includes the power to withhold the imposition thereof, with or without an express authority granted to the LGUs to grant exemptions, LGUs may nonetheless grant exemptions. However, reliance on such ruling of the Supreme Court is superfluous, given that the LGC unequivocally provides:

*SECTION 192. Authority to Grant Tax Exemption Privileges. — Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.*

Regarding the grant of exemptions by LGUs, the rule of interpretation under Section 5 of the LGC is important. It reads, in part, as follows:

*SECTION 5. Rules of Interpretation. — In the interpretation of the provisions of this Code, the following rules shall apply:*

xxx

*(b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. **Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it.***

xxx

*(d) **Rights and obligations existing on the date of effectivity of this Code and arising out of contracts or any other source of prestation involving a local government unit shall be governed by the original terms and conditions of said contracts or the law in force at the time such rights were vested;***

xxx.

*(emphases provided)*

Section 5(b) above shifts the burden on the part of a business owner to prove that there is basis for his or her claim for tax exemption under a specific ordinance of the LGU. On the other hand, Section 5(d) mandates LGUs to honor terms and conditions of the contracts they enter into. This may be relevant insofar as it may serve as basis to question an attempt by an LGU to change the terms and conditions of the incentives under the LIIC after an investor has been granted registration thereunder. This should serve to deter LGUs from unilaterally cancelling or

diminishing incentives granted under specified terms and duly accepted by the investor at the time of registration for the purpose and after the investor has made its investment. This, however, is without prejudice to the holding of the Supreme Court to the effect that a certificate of registration secured supposedly to avail of incentives are not in the nature of contracts protected by the non-impairment provision of the 1987 Constitution.<sup>6</sup>

*b. Who exercises the LGU's power to grant incentives?*

The LGC specifically grants the power to the *Sangguniang Bayan*, *Sangguniang Panlalawigan*, and *Sangguniang Panlungsod* the authority to approve ordinances and, in particular, approve issuances providing for incentives such as an ordinance adopting the LGU's LIIC. The relevant provisions of the LGC state:

Sangguniang Bayan

*SECTION 447. Powers, Duties, Functions and Compensation. — (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:*

xxx

*(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:*

xxx

*(ii) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang bayan, enact ordinances levying taxes, fees and charges, prescribing the rates thereof for general and specific purposes, and granting tax exemptions, incentives or reliefs;*

xxx

*(vi) Prescribe reasonable limits and restraints on the use of property within the jurisdiction of the municipality;*

xxx

*(xii) With the concurrence of at least two-thirds (2/3) of all the members of the sangguniang bayan, grant tax exemptions, incentives or reliefs to entities engaged in community growth-inducing industries, subject to the provisions of Chapter 5, Title I, Book II of this Code.*

xxx

*(3) Subject to the provisions of Book II of this Code, grant franchises, enact ordinances authorizing the issuance of permits or licenses, or enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the municipality, and pursuant to this legislative authority shall:*

*(i) Fix and impose reasonable fees and charges for all services rendered by the municipal government to private persons or entities;*

*(ii) Regulate any business, occupation, or practice of profession or calling which does not require government examination within the municipality and the*

conditions under which the license for said business or practice of profession may be issued or revoked;

XXX

(xvii) Establish a municipal council for the orderly which shall formulate policies and adopt measures mutually beneficial to the elderly and to the community; provide incentives for non-governmental agencies and entities and, subject to the availability of funds, appropriate funds to support programs and projects for the benefit of the elderly; and

XXX.

### Sangguniang Panlungsod

SECTION 458. Powers, Duties, Functions and Compensation. — (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

XXX

(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the city as provided for under Section 18 of this Code, with particular attention to agro-industrial development and city-wide growth and progress, and relative thereto, shall:

XXX

(ii) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang panlungsod, enact ordinances levying taxes, fees and charges, prescribing the rates thereof for general and specific purposes, and granting tax exemptions, incentives or reliefs;

XXX

(xii) With the concurrence of at least two-thirds (2/3) of all the members of the sangguniang panlungsod, grant tax exemptions, incentives or reliefs to entities engaged in community growth-inducing industries, subject to the provisions of Chapter 5, Title I, Book II of this Code;

XXX

(3) Subject to the provisions of Book II of this Code, enact ordinances granting franchises and authorizing the issuance of permits or licenses, upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city and pursuant to this legislative authority shall:

XXX

(ii) Regulate or fix license fees for any business or practice of profession within the city and the conditions under which the license for said business or practice of profession may be revoked and enact ordinances levying taxes thereon;

XXX

(xvii) Establish a city council for the elderly which shall formulate policies and adopt measures mutually beneficial to the elderly and to the community; provide incentives for non-governmental agencies and entities and, subject to the availability of funds, appropriate funds to support programs and projects for the benefit of the elderly; and

XXX

Sangguniang Panlalawigan

*SECTION 468. Powers, Duties, Functions and Compensation. — (a) The sangguniang panlalawigan, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants pursuant to Section 16 of this Code in the proper exercise of the corporate powers of the province as provided for under Section 22 of this Code, and shall:*

xxx

*(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the province as provided for under Section 18 of this Code, with particular attention to agro-industrial development and country-wide growth and progress and relative thereto, shall:*

xxx

*(ii) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang panlalawigan, enact ordinances levying taxes, fees and charges, prescribing the rates thereof for general and specific purposes, and granting tax exemptions, incentives or reliefs;*

xxx

*(3) Subject to the provisions of Book II of this Code, grant franchises, approve the issuance of permits or licenses, or enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the province, and pursuant to this legislative authority, shall:*

*(i) Fix and impose reasonable fees and charges for all services rendered by the provincial government to private persons or entities; and*

*(ii) Regulate and fix the license fees for such activities as provided for under this Code.*

xxx

*(ix) Establish a provincial council for the elderly which shall formulate policies and adopt measures **mutually beneficial to the elderly and to the province; and subject to the availability of funds**, appropriate funds to support programs and projects for the elderly; and provide incentives for non-governmental agencies and entities to support the programs and projects of the elderly; and*

xxx

*c. Repeal of incentives prior to the LGC and possible re-enactment*

It should be noted that tax exemptions that were existing or granted prior to the enactment of the LGC have been expressly withdrawn. Section 193 of the LGC reads:

*SECTION 193. Withdrawal of Tax Exemption Privileges. — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly*

*registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.*

Notwithstanding the foregoing, consistent with its powers, Congress may still pass laws reenacting tax exemptions repealed pursuant to the foregoing provision or grant totally new local tax exemptions to specific business activities. After all, as the Supreme Court has confirmed, the grant of taxing powers to LGUs under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy.<sup>7</sup> In the case of real property taxes, the possibility of providing additional exemptions is categorically reserved to Congress in view of the last clause of Section 232 of the LGC quoted below, as confirmed likewise by the Supreme Court in the Bayantel Case.<sup>8</sup>

*SECTION 232. Power to Levy Real Property Tax. — A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted. (underscoring ours)*

There have been instances where tax exemptions repealed pursuant to Section 193 of the LGC were restored in subsequent legislation. In the Bayantel Case, the Supreme Court determined that by the passage of Republic Act No. 7633 providing for tax exemption, subsequent to the enactment of the LGC, the tax exemption under the old legislative franchise of Bayantel was deemed reenacted.<sup>9</sup> Likewise, Executive Order No. 226 also known as the Omnibus Investments Code of 1987 (EO 226), which was signed into law in 1987 and thus prior to the LGC, provided for local business and real property tax exemptions, specifically under its Article 78 (Book VI), for Export Processing Zone Enterprises, as follows:

*ARTICLE 78. Additional Incentives. — A zone registered enterprise shall also enjoy all the incentive benefits provided in Article 39 hereof under the same terms and conditions stated therein. In addition, zone registered enterprises shall also be entitled to the following:*

*(a) Exemption from Local Taxes and Licenses. — Notwithstanding the provisions of law to the contrary, zone registered enterprises shall, to the extent of their construction, operation or production inside the zone be exempt from the payment of any and all local government imposts, fees, licenses or taxes except real estate taxes which shall be collected by the Province/City/Municipality responsible for the collection thereof under the provisions of the Real Property Tax Code: Provided, That machineries owned by zone registered enterprises which are actually installed and operated in the Zone for manufacturing, processing or for industrial purposes shall not be subject to the payment of real estate taxes for the first three (3) years of operation of such machineries: Provided, further, That fifty percent (50%) of the proceeds of the real estate taxes collected from all real properties located in the Zone and such other areas owned or administered by the Authority shall be remitted to the Authority by the province/city/municipality responsible for the collection of such taxes under the provisions of the Real Property Tax Code. All real estate taxes accruing to the Authority as herein provided shall be expended for such community facilities, utilities and/or services as the Authority may determine.*

*(b) Production equipment or machineries, not attached to real estate, used directly or indirectly, in the production, assembly or manufacture of the registered product of the zone registered enterprise shall be exempt from real property taxes.*

Another law, Presidential Decree No. 66 (PD 66), which was signed into law in November 1972 and created the Export Processing Zone Authority,<sup>10</sup> the precursor of the Philippine Economic Zone Authority (PEZA), granted local tax incentives to businesses locating in specified export processing zones as follows:

*SECTION 18. Additional Incentives. — A zone registered enterprise shall also enjoy the following incentive benefits:*

xxx

*(f) Exemption from Local Taxes and Licenses. — Notwithstanding the provisions of law to the contrary, zone registered enterprises shall, to the extent of their construction, operation or production inside the zone be exempt from the payment of any and all local government imposts, fees, licenses or taxes except real estate taxes which shall be collected by the Municipality responsible for the collection thereof under the provisions of the Real Property Tax Code: Provided, That machineries owned by zone registered enterprises which are actually installed and operated in the Zone for manufacturing, processing or for industrial purposes shall not be subject to the payment of real estate taxes for the first three (3) years of operation of such machineries: Provided, further, That fifty percent of the proceeds of the real estate taxes collected from all real properties located in the Zone and such other areas owned or administered by the Authority shall be remitted to the Authority by the municipality responsible for the collection of such taxes under the provisions of the Real Property Tax Code. All real estate taxes accruing to the Authority as herein provided shall be expended for such community facilities, utilities and/or services as the Board may determine.*

If Section 193 of the LGC is to be followed, the foregoing provisions of PD 66 and EO 226 granting local business and real property tax exemptions are already repealed. However, it should be noted that as far as investments registered pursuant to EO 226 with the Board of Investment (BOI), the LGC itself provided for the local incentives as follows:

*SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:*

xxx

*(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;*

xxx.

On the other hand, the local tax exemptions originally granted as part of the fiscal incentives of export processing zone enterprises under EO 226 as well as PD 66, as quoted above, after having been repealed pursuant to Section 193 of the LGC are deemed restored under the PEZA Law, a law enacted subsequent to the LGC, in view of the following provision therein:

*SECTION 23. Fiscal Incentives. — Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.*

Given the foregoing provision of the PEZA Law, it is clear that the local tax incentives originally extended under PD 66 and EO 226 but repealed pursuant to Section 193 of the LGC, have been restored. There is therefore a categorical restriction or limitation imposed by Congress on the power of the LGUs to tax to the extent provided under PD 66 and EO 226.

*d. Conflict between the LGC and the LGC Implementing Rules and Regulations (IRR) on the authority of LGUs to grant incentives*

The controlling provision on the power of LGUs to grant incentives, including tax exemptions, is provided in Section 192 of the LGC (see Column 1 of Table 1 below) which is clearly a straightforward provision and essentially free of provisos and restrictions or limitations. However, under Article 282 of the LGC IRR, it is evident that conditions and limitations that do not exist in the law have been introduced. These additional restrictions and limitations on the authority of LGUs to grant incentives are likewise reflected in Memorandum Circular No. 153 dated June 4, 1992 of the DILG. These additional restrictions/limitations which do not appear to be warranted given the simple and categorical terms of Section 192 of the LGC are evident (Table 1).

**Table 1. Comparison of the Pertinent Provisions of the Local Government Code, its Implementing Rules and Regulations, and the DILG Memorandum Circular on Granting Tax Exemptions**

LGC	LGC IRR (Note: Significant qualifications not in the LGC provision are highlighted)	DILG MEMORANDUM CIRCULAR NO. 153 (June 4, 1992) <sup>11</sup>
<p><i>SECTION 192. Authority to Grant Tax Exemption Privileges. — Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.</i></p>	<p>ARTICLE 282. Authority to Grant Tax Exemption Privileges or Incentives. —</p> <p>(a) While sanggunians may grant tax exemption, tax incentive, or tax relief, <b>such grant shall not apply to regulatory fees which are levied under the police power of LGUs.</b> Tax exemptions shall be conferred through the issuance of a tax exemption certificate, which shall be non-transferable.</p> <p>(b) The sanggunians granting tax exemptions, tax incentives and tax reliefs may be guided by the following:</p> <p>(1) On the grant of tax exemptions or tax reliefs:</p> <p>(i) Tax exemption or tax relief may be granted in cases</p>	<p>WHEREAS, under Section 192 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary;</p> <p>xxx;</p> <p>WHEREAS, Section 529 of the same Code further provides that all existing tax ordinances or revenue measures of local government units shall continue to be in force and effect after the effectivity of RA 7160 unless amended by the sanggunian concerned, or inconsistent with, or in violation of, the provisions of the Code;</p> <p>WHEREAS, there exists the need to adopt guidelines for the observance of local government units concerned with</p>

LGC	LGC IRR (Note: Significant qualifications not in the LGC provision are highlighted)	DILG MEMORANDUM CIRCULAR NO. 153 (June 4, 1992) <sup>11</sup>
	<p>of natural calamities, civil disturbance, general failure of crops, or adverse economic conditions such as substantial decrease in the prices of agricultural or agri-based products;</p> <p>(ii) The grant of exemption or relief shall be through an ordinance.</p> <p>(iii) <b>Any exemption or relief granted to a type or kind of business shall apply to all businesses similarly situated;</b> and</p> <p>(iv) Any exemption or relief granted shall take effect only during the next calendar year <b>for a period not exceeding twelve (12) months</b> as may be provided in the ordinance. In the case of shared revenues, the exemption or relief shall only extend to the LGU granting such exemption or relief.</p> <p>(2) On the grant of tax incentives:</p> <p>(i) The <b>tax incentive shall be granted only to new investments</b> in the locality and the ordinance shall prescribe the terms and conditions therefor;</p> <p>(ii) The grant of the tax incentive <b>shall be for a definite period not exceeding one (1) calendar year;</b></p> <p>(iii) The grant of tax incentives shall be by ordinance passed prior to the first (1st) day of January of any year; and</p> <p>(iv) <b>Any tax incentive granted to a type or kind of business shall apply to all businesses similarly</b></p>	<p>the implementation of the aforementioned provisions of the Code;</p> <p>IN VIEW THEREOF, the following guidelines are hereby prescribed:</p> <p>SECTION 1. The sangguniang bayan/panlungsod/panlalawigan may grant tax exemptions, tax incentives or tax reliefs but such grant shall not, however, apply to regulatory fees which are levied under the police power of LGUs. Tax exemptions shall be conferred through the issuance of a tax exemption certificate, which shall be non-transferable. In this regard, the sanggunian concerned may be guided by the following:</p> <p>(a) Tax exemption or tax relief may be granted in cases of natural calamities, civil disturbances, general failure of crops, or adverse economic conditions such as substantial decrease in the prices or agricultural or agri-based products;</p> <p>(b) The grant of exemption or relief shall be through an ordinance;</p> <p>(c) Any exemption or relief granted to a type or kind of business shall apply to all business similarly situated; and</p> <p>(d) Any exemption or relief granted shall take effect only during the next calendar year for a period not exceeding twelve (12) months as may be provided in the ordinance. In case of shared revenues, the exemption or relief shall only extend to the LGU granting such exemption or relief.</p> <p>SECTION 2. Xxx</p>

LGC	LGC IRR (Note: Significant qualifications not in the LGC provision are highlighted)	DILG MEMORANDUM CIRCULAR NO. 153 (June 4, 1992) <sup>11</sup>
	situated.	SECTION 3. Existing tax ordinances or revenue measures of local government units which are inconsistent with, or in violation of, the provisions of the Local Government Code of 1991 shall cease to have force and effect.  Xxx.

The Bureau of Local Government Finance (BLGF) has issued several opinions asserting that the grant of incentives in contravention of the restrictions and limitations provided in Article 282 of the LGC IRR renders such incentive unenforceable (and should therefore be first amended to be enforceable)<sup>12</sup> or its disapproval justified, if still pending approval by the *sanggunian* concerned.<sup>13</sup>

However, as early as in the 2001 case of *PLDT v. City of Davao*,<sup>14</sup> the Supreme Court declared that the BLGF's interpretation of local tax laws are not authoritative and persuasive, particularly after considering the fact that the function of the BLGF is "merely to provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment, and other related matters." The Supreme Court further justified its opinion that BLGF opinions are not authoritative on the basis of the fact that BLGF, unlike the Commissioner of Internal Revenue, has not been granted express power to interpret.

Moreover, in the opinions it rendered on issues involving the validity of incentives extended by LGUs beyond the limitations provided under Article 282 of the LGC IRR, the BLGF always only invoked the provisions of the LGC IRR, thus assuming the validity of the LGC IRR, specifically Article 282 quoted above. Thus, notwithstanding the opinions of the BLGF, which simply assumes the validity of Article 282 of the LGC IRR, the validity of said Article 282 of the LGC IRR may in fact be assailed on the basis that it is inconsistent with the provision of law, i.e., Section 192 of the LGC which it seeks to implement.

The Supreme Court has, time and again, emphasized that IRRs and other subordinate issuances issued by administrative agencies should remain constantly faithful to the provisions of law which they seek to implement or amplify.<sup>15</sup> Previously, the Supreme Court already declared null and void Sec. 2 of Article 9 of the LGC IRR for having no basis in the LGC, as follows:

*The territorial requirement in the Local Government Code is adopted in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), thus:*

*ART. 9. Provinces. — (a) Requisites for creation — A province shall not be created unless the following requisites on income and either population or land area are present:*

*(1) Income —xxx; and*

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by National Statistics Office; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

However, the IRR went beyond the criteria prescribed by Section 461 of the Local Government Code when it added the italicized portion above stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Nowhere in the Local Government Code is the said provision stated or implied. Under Section 461 of the Local Government Code, the only instance when the territorial or land area requirement need not be complied with is when there is already compliance with the population requirement. The Constitution requires that the criteria for the creation of a province, including any exemption from such criteria, must all be written in the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.

Hence, the Court holds that the provision in Sec. 2, Art. 9 of the IRR stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands" is null and void. (emphases ours; citations omitted)

xxx

In this case, the pertinent provision in the IRR did not fill in any detail in accordance with a known standard provided for by the law. Instead, the IRR added an exemption to the standard or criteria prescribed by the Local Government Code in the creation of a province as regards the land area requirement, which exemption is not found in the Code. As such, the provision in the IRR that the land area requirement shall not apply where the proposed province is composed of one or more islands is not in conformity with the standard or criteria prescribed by the Local Government Code; hence, it is null and void.

(emphases provided)

We note further that the BLGF also rendered opinions holding that the instances when real property tax exemption can be granted are limited to those enumerated under Section 234 of the LGC (Article 325 of the LGC-IRR), namely:

- (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
- (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

- (c) *All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;*
- (d) *All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and*
- (e) *Machinery and equipment used for pollution control and environmental protection.*

Previously, the City Assessor of the City of Kidapawan requested for a BLGF opinion on whether the granting of tax exemption under the Kidapawan Investment Code of 1997 is consistent with the LGC insofar as it grants: (a) a four-year ~~exemption~~ from Mayor's Permit, Building Permit Fees, Business tax and other fees and charges imposed under existing Municipal Ordinances; while any other investment of Fifteen Million Pesos and below shall be granted the same privileges aforesaid for a period of three (3) years" and (b) 25% to 100% (for the first 3 years) real property tax exemption. In response, in an opinion dated 16 February 1999, the BLGF expressed that:

1. the term of the incentives under item (a) should be reduced to one (1) year; and
2. the grant of incentives shall not apply to regulatory fees which are levied under the police power of the municipality.

With respect to the real property tax incentive, the BLGF held:

*~~the Code already categorically enumerated the real properties that should be granted exemption from real property taxes. Thus, the basic principle of ~~what is not included is deemed excluded~~ should apply. In view thereof, this Bureau believes and so holds that the grant of real property tax exemption x xx is without legal basis. Likewise we also find merit on your contentions that the tax exemptions or incentives being contemplated under Section 192 of the said Code refers to business taxes, fees and other charges and not to real property taxes.~~*

*In view hereof, it is deemed necessary that recommendations be made before the Sangguniang Panlalawigan thereat in order that the same incentives may be rescinded."*

While it may indeed be argued that Section 192 of the LGC granting LGUs the authority to grant incentives may not be the basis of any authority on the part of LGUs to grant exemptions from real property tax because it is a provision under Title I of Book II of the LGC while real property taxation is under Title II of Book II of the LGC, the power to withhold the imposition of real property tax is implied from the grant of the power to tax. The LGC provision granting the power to impose real property tax reads:

*SECTION 232. Power to Levy Real Property Tax. — A province or city or a municipality within the Metropolitan Manila Area ~~may levy~~ an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted. (emphases provided)*

It is clear from the foregoing provision that the LGUs actually have the discretionary power to impose real property taxes since the provision itself uses the term ~~may~~ (levy)." The Supreme Court has expounded on the significance of the use of the word ~~may~~" as follows:

*Assuming for the sake of argument that respondent had indeed violated Section 94(b) of the Manual, her dismissal from employment is still invalid. Section 94(b) uses the word "may" and not "shall."*

xxx

*As a general rule, the word "may" when used in statute is permissive only and operates to confer discretion while the word "shall" is imperative, operating to impose a duty which may be enforced. In the case at bar, the use of the word "may" under Section 94(b) thereof implies that petitioners are permitted and authorized to terminate the employment of respondent for tampering or falsification of school records.*

xxx

*Such authority is merely permissive and discretionary. xxx It would be different if the word "shall" is used or the same is phrased in a negative manner. In such a case, the dismissal of respondent is mandatory and automatic. We find no exception to deviate from this general rule of statutory construction.<sup>16</sup>*

It is then clear that LGUs, which have been vested the authority to impose real property tax, may opt to impose or not impose said real property tax. There is no denying that the discretion not to impose real property tax is clearly vested in the LGUs. This is also consistent with what the Supreme Court had expressed, i.e., that the power to tax necessarily includes the power to exempt.<sup>17</sup>

Such conclusion is also inevitable if one is to give any significance to the last clause of Section 232 of the LGC which reads: *not hereinafter specifically exempted,*" which clearly implies that certain exemptions may subsequently be granted. Nowhere is it provided that the said clause anticipates only the subsequent grant of exemption under an applicable law and excludes the possibility of exemptions granted pursuant to an ordinance.

Article 282(b)(2)(i) of the LGC IRR may also be questioned for providing that only new investments shall be granted tax incentives, when no such qualification is imposed under Section 192 of the LGC. Further, under Article 282(b)(2)(iv) of the LGC IRR, it is provided that any tax incentive granted to a type or kind of business shall apply to all businesses similarly situated, although there is no such statement in the LGC itself.

Without regard to Article 282(b)(2), the Guide in fact contemplates the grant of incentives not only to new but also to expansion and modernization projects of an existing enterprise. The Guide proceeds to prescribe that activities eligible to incentives should include not only new investments but modernization or expansion projects of existing enterprises.

There is valid classification if and when an LGU makes a distinction in the treatment between new and existing enterprises even insofar as they are both engaged in the same business activity. It does not necessarily follow that there is or will be a violation of the equal protection of the laws guarantee under the 1987 Constitution if such distinction is made. It is well-established in jurisprudence that there is authority to classify and to treat each resulting class differently without violating the equal protection guarantee and the rule on uniformity of taxation provided the following requisites concur:

- (1) the standards that are used therefor are substantial and not arbitrary;
- (2) the categorization is germane to achieve the legislative purpose;
- (3) the law applies, all things being equal, to both present and future conditions; and

(4) the classification applies equally well to all those belonging to the same class.<sup>18</sup>

Thus, since incentives are intended to increase investments, there is reason to classify and treat differently investments that are new or constitute expansion of existing businesses from the old/existing businesses. Giving incentives to existing businesses will likely simply increase profits of existing businesses but will not necessarily achieve the objective of increasing investments. Thus, in a decided case, the Supreme Court held:

*We rule in favor of the constitutionality and validity of the assailed EO. Said Order is not violative of the equal protection clause; neither is it discriminatory. Rather, we find real and substantive distinctions between the circumstances obtaining inside and those outside the Subic Naval Base, thereby justifying a valid and reasonable classification.*

*The fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class. Explaining the nature of the equal protection guarantee, the Court in *Ichong v. Hernandez* said:*

*"The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either [by] the object to which it is directed or by [the] territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not."*

*Classification, to be valid, must (1) rest on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.*

*We first determine the purpose of the law. From the very title itself, it is clear that RA 7227 aims primarily to accelerate the conversion of military reservations into productive uses.*

xxx.

*We believe it was reasonable for the President to have delimited the application of some incentives to the confines of the former Subic military base. It is this specific area which the government intends to transform and develop from its status quo ante as an abandoned naval facility into a self-sustaining industrial and commercial zone, particularly for big foreign and local investors to use as operational bases for their businesses and industries. Why the seeming bias for big investors?*

*Undeniably, they are the ones who can pour huge investments to spur economic growth in the country and to generate employment opportunities for the Filipinos, the ultimate goals of the government for such conversion. The classification is, therefore, germane to the purposes of the law. And as the legal maxim goes, "The intent of a statute is the law."*

*Certainly, there are substantial differences between the big investors who are being lured to establish and operate their industries in the so-called "secured area" and the present business operators outside the area. On the one hand, we are talking of billion-peso investments and thousands of new jobs. On the other hand, definitely none of such magnitude. In the first, the economic impact will be national; in the second, only local. Even more important, at this time the business activities outside the "secured area" are not likely to have any impact in achieving the purpose of the law, which is to turn the former military base to productive use for the benefit of the Philippine economy. There is, then, hardly any reasonable basis to extend to them the benefits and incentives accorded in RA 7227. Additionally, as the Court of Appeals pointed out, it will be easier to manage and monitor the activities within the "secured area," which is already fenced off, to prevent "fraudulent importation of merchandise" or smuggling.*

*It is well-settled that the equal-protection guarantee does not require territorial uniformity of laws. As long as there are actual and material differences between territories, there is no violation of the constitutional clause. xxx.<sup>19</sup>*

*(citations omitted)*

In view of the foregoing, there is basis to argue that the further limitations and qualifications provided under Article 282 of the LGC-IRR which are not in Section 192 of the LGC may be nullified for being inconsistent with the LGC. Likewise, the opinion of the BLGF that LGUs have no power to grant real property tax exemptions since the enumeration in Section 234 of the LGC (Article 325 of the LGC-IRR) is exhaustive, lacks legal basis. It can therefore be asserted that the provisions of LIICs granting incentives such as those described above (as contained in the LIIC of the City of Kidapawan) are valid and need not be rescinded despite their seeming inconsistency with the LGC-IRR and/or BLGF Opinion on the matter.

### III. Laws Identifying Preferred Areas of Investment and Granting Incentives at the Local Level

Considering that a significant portion of LIICs pertain to the identification of preferred areas of investment or the stipulation of the process for such identification and the grant of various incentives to activities identified as preferred areas of investment, LGUs should not fail to consider the business activities that national laws have already determined to be preferred areas of investment as well as the incentives that are granted to those pursuing said business activities which often includes incentives at the local level and which concerned LGUs are mandated to observe and grant.

Attached as Annex is the *Compendium of Laws Identifying Preferred Areas of Investment and Granting Incentives at the Local Level*. As evident from the title, the Compendium does not concern itself with laws that may have identified certain activities as preferred investment areas but limits the incentives granted to only incentives at the national level, such as exemption from national taxes and customs duties as well as visa-related incentives for foreign nationals involved in the business.

The most significant law granting incentives is EO 226, which created the BOI, the government agency responsible for the enforcement and implementation of the said law and the administration of the incentives granted thereunder. Several laws grant incentives by referring back to the incentives under EO 226 and ultimately require applicants for incentives under said laws to be subject to the incentive administration authority of the BOI since the business activities extended incentives are at the same time included in the annual Investment Priorities Plan (IPP).<sup>20</sup> Business activities included in the IPP are entitled to the incentives granted under EO 226, thus requiring their prior registration with the BOI. Among these activities are those under the following:

1. Jewelry Industry
2. Tourism enterprises
3. Renewable Energy Industry
4. Refining, storage, distribution, and marketing of petroleum products
5. Waste water treatment facilities and water pollution control technologies
6. Mining
7. Solid waste management
8. Industrial tree plantation

The IPP grants either (a) business activity-specific incentives, i.e., eligibility is dependent solely on the nature of the business to be pursued, provided it is one of the business activities listed in the IPP during the year of application for registration, regardless of where in the Philippines the business will be pursued; or (b) business and area-specific incentives, such as the specifically-listed business activities which if pursued within the ARMM would be entitled to incentives, but not entitled to incentives if pursued elsewhere in the Philippines. This includes logistics and halal enterprises.

It should be noted that the incentives to be granted to BOI-registered enterprises by LGUs are not among the incentives specifically listed under the EO 226. The grant of local incentives to BOI-registered enterprises is specifically stipulated in the LGC, Section 133(g), in particular. On the other hand, probably enjoying the broadest freedom from LGU impositions are businesses registered with the PEZA under the PEZA Law. Unlike BOI-registered enterprises which can generally enjoy incentives regardless of where they locate in the country, those seeking to avail of the incentives under the PEZA Law being administered by PEZA are categorically required to operate/locate their businesses in specifically identified areas referred to as Special Economic Zones or ECOZONES which *are selected areas with highly developed or which have the potential to be developed into agri-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations.*<sup>21</sup> An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZ), free trade zones, and tourist/recreational centers.<sup>22</sup> Thus, incentives under the PEZA Law are not relevant to LGUs that do not host any ECOZONES.

As of June 2012, there are already 264<sup>23</sup> operating ECOZONES and about 107 more declared ECOZONES which are still being developed,<sup>24</sup> hosted by easily over 100 LGUs.

A comparison of the incentives at the local level enjoyed by PEZA-registered export enterprises<sup>25</sup> as against BOI-registered companies is presented below.

**Table 2. Comparison of Incentives between PEZA- and BOI-Registered Enterprises**

PEZA-Registered Export Enterprise		
Income Tax Holiday Period		5% GRT
3 years exemption from RPT (EO 226) on qualified real properties	Subject to RPT after the 3 <sup>rd</sup> year	Continuous RPT exemption
No local taxes under Sec. 78 of EO 226		No local tax under PEZA Law (5% GRT is in lieu of all taxes <sup>26</sup> )
No fees and licenses under PD 66		
BOI-registered Enterprises		
Income Tax Holiday Period		Regular Income Tax Period
Subject to RPT		
No local taxes in view of Section 133(g) of LGC		Subject to local taxes after the ITH
Subject to local license and permit fees		

Aside from PEZA, which grants incentive mainly (but not solely) on the basis of the fact that the business operates from within an identified ECOZONE, there are several other economic zones created by other laws and are independently operated and managed by a governing agency or office created under the same law. These laws grant incentives to those locating within the identified economic zone and pursue any of the businesses entitled to incentives. Specifically, these are:

1. Bases Conversion Development Act of 1992 (BCDA Law), as amended<sup>26</sup> which created five special economic zones, namely:
  - a. Subic Special Economic Zone (Sec. 12)
  - b. Clark Special Economic Zone (Sec. 15)
  - c. Poro Point Freeport Zone (Sec. 15-A)
  - d. Morong Special Economic Zone (Sec. 15-B)
  - e. John Hay Special Economic Zone (Sec. 15-C)
2. Zamboanga City Special Economic Zone Act of 1995<sup>27</sup>
3. Freeport Area of Bataan (FAB) Act of 2008<sup>28</sup>
4. Aurora Pacific Economic Zone and Freeport Act of 2010<sup>29</sup> and
5. Cagayan Special Economic Zone Act of 1995<sup>30</sup>

While the national laws mentioned above categorically grant incentives at the local level, there are also laws, such as the Barangay Micro Business Enterprises (BMBEs) Act of 2002<sup>31</sup> and the Organic Agriculture Act of 2010,<sup>32</sup> which do not mandate but only encourage LGUs to grant fiscal or some other forms of incentive.

## IV. Findings and Recommendations

### A. The Local Investment Incentives Codes

Based on a general observation of ten (10) duly adopted LIICs,<sup>33</sup> in addition to the INVEST partner cities of Cagayan de Oro, Batangas, and Iloilo, the following are quite common practices:

- 1. Criteria in the identification of priority investment areas over and above those which are entitled to local incentives under national law are not provided or are misdirected.**

There are LIICs which simply lists business activities that are entitled to incentives without laying down the actual criteria used in the selection of such business activities as preferred investment areas. Criteria such as those identified in the Guide should be specifically mentioned.

Moreover, effort should be exerted to properly identify business activities which are **growth drivers**, as distinguished from business activities that are merely growth-driven. Incentives should be given to growth drivers; no or lesser incentives should be extended to growth-driven businesses.

One prime example of a growth-driven business is the operation of a mall, for which many LIICs extend incentives. No amount of incentive will motivate an investor to open a mall in an area where clearly the level of progress and purchasing power of the population remain low and insufficient to generate revenues enough to cover the cost of operating a mall. Malls can generate jobs but they cannot precede the growth of industries and other job opportunities in the locality which will increase the purchasing power of the local population, which in turn is what is critical to sustain a mall. Malls will never survive where the level of income in the locality is below par and people do not have any source of livelihood. Necessarily, the decision to open and operate a mall would not hinge on the incentives given for its opening and operation but rather on whether or not the investor sees that the overall level of income and commerce in the locality will already generate enough business for the mall and its locators.

Growth drivers are industries that create jobs and pay income to a big number of employees and thus jump start the capacity of the local population to support businesses such as restaurants and malls. Often, restaurants do not, by themselves, bring in growth but merely feed on growth that has been generated. Similarly, hotels mainly feed on tourism or industrial boom. In areas which have tourist attractions, hotels and restaurants are an integral part in the development of tourism in the area. But with no tourist destinations or anything more in the area, no grant of incentive to a hotel business will enable such hotel to sustain its business. If the provisions of the Guide for determining investment priority areas are applied, a mall would not qualify as an investment priority area.

## **2. Some definitions of terms are inconsistent with existing definitions under national laws**

Definitions in the LIICs should be kept as close to, or consistent with, existing definitions of terms under national laws and their IRR, particularly insofar as such national laws also deal with investments and incentives. For example, there is no need to reinvent the definition of the term “Philippine national” and deviate from that which is provided under the Foreign Investments Act of 1991. This will avoid unnecessary confusion among investors. Also, the definition of “small scale,” “medium scale,” and “large scale” enterprises should be kept consistent with existing definitions under national law. One LIIC defines a “medium scale enterprise” as a business whose assets are valued at from more than PhP15 million up to PhP100 million, while another LIIC would already consider a business entity with a capitalization of over PhP40 million as a “large scale enterprise”. Republic Act No. 6977<sup>34</sup> provides the following thresholds, which the DTI has adopted:

Micro: not more than P 3,000,000  
Small: P 3,000,001 - P 15,000,000  
Medium: P 15,000,001 - P 100,000,000

## **3. Composition of the Board**

In several LIICs, officers of the DTI and BOI are designated as members of the Local Investment Incentives Board (LIIB) or similar governing bodies responsible for the implementation of the LIIC. Unless specifically provided for under an applicable law, LGUs do not have the discretionary authority to add to/amend the functions of officers and employees of the offices under the executive branch of government. Thus, officers of the DTI or other branches of government should not be designated as members of such Boards. Imposing additional responsibilities on officers of the national governmental agencies may raise the following problems and concerns:

- a. Conflict between their official work and their work under the LIIB
- b. Whether or not they can lawfully accept remuneration such as the per diems provided in the LIICs to be payable to the members of the LIIB
- c. Additional risks attendant to their assumption of additional responsibilities

It should be noted that it is the Provincial Development Councils (PDCs) which is specifically granted the authority to call upon officials of national agencies to assist them in the formulation of development plans. Section 107 of the LGC reads in part, as follows:

- (c) *The provincial development council shall be headed by the governor and shall be composed of the following members:*
  - (1) *All mayors of component cities and municipalities;*
  - (2) *The chairman of the committee on appropriations of the sangguniang panlalawigan;*
  - (3) *The congressman or his representative; and*
  - (4) *Representatives of non-governmental organizations operating in the province, who shall constitute not less than one-fourth (¼) of the members of the fully organized council.*
- (d) ***The local development councils may call upon any local official concerned or any official of national agencies or offices in the local***

**government unit to assist in the formulation of their respective development plans and public investment programs. (emphasis provided)**

As it is the PDC which has the benefit of the inputs coming from the representatives of the national government offices such as the DTI, then a member of the PDC should instead be made a member of the Board by the municipalities and/or cities.

#### **4. LIIB as the body authorized to determine the preferred investment areas**

There is a need to refer back to Title VI (Local Development Councils) of the LGC which gives to the Local Development Councils (LDCs) the function to formulate local investment incentives and formulate long-term, medium-term and annual socio-economic development plans and policies. Specifically, the LGC provides:

### *TITLE VI*

#### *Local Development Councils*

*SECTION 106. Local Development Councils. — (a) Each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial, city, municipal, or barangay level, shall assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction.*

XX X.

*SECTION 109. Functions of Local Development Councils. — (a) The provincial, city, and municipal development councils shall exercise the following functions:*

- (1) **Formulate long-term, medium-term, and annual socio-economic development plans and policies;***
- (2) **Formulate the medium-term and annual public investment programs;***
- (3) **Appraise and prioritize socio-economic development programs and projects;***
- (4) **Formulate local investment incentives to promote the inflow and direction of private investment capital;***
- (5) **Coordinate, monitor, and evaluate the implementation of development programs and projects; and***
- (6) **Perform such other functions as may be provided by law or component authority.***

*(b) The barangay development council shall exercise the following functions:*

- (1) **Mobilize people's participation in local development efforts;***
- (2) **Prepare barangay development plans based on local requirements;***
- (3) **Monitor and evaluate the implementation of national or local programs and projects; and***
- (4) **Perform such other functions as may be provided by law or competent authority.***

Notwithstanding the foregoing, no mention of the LDCs and their role is generally made in connection with any activity under the LIICs and there is likewise no directive for the LIIB

created under the LIIC to coordinate with, or to get direction from, such LDC of the LGU concerned. Accordingly, if the LDC is duly constituted and is functioning in accordance with its mandate under the LGC, then there can be a conflict in the turf of the LIIB and the LDC in so far as the identification of preferred areas of investment and determination of incentives to be offered to such investment is concerned.

## **5. Imposition of Penalties**

It is proposed that the most severe imposable penalty should be mere revocation of the incentive granted, and if deemed justified under the circumstances, the reimbursement to the LGU of the value of the incentives availed of, such as in the case of gross misrepresentation.

There should be due process accorded to the investor in case it is alleged to have committed or omitted an act rendering it subject to penalty under the LIIC. Not all LIICs have penalty clauses and not all penalty clauses in LIIC go on to provide the procedure for the imposition of penalty and the remedies available to the investor.

## **6. Notice Periods**

Some LIICs impose prior notice requirements that are unreasonably long. For example, in one LIIC, the prior notice period in case of withdrawal from business is six (6) months. There is no justifiable reason for such an unusually long period. From a business management perspective, it is not always possible to determine way in advance such decision to close. It is also counterproductive to disclose such information to the employees way ahead of the actual date of closure as it would already demoralize the employees in the meantime. It may likewise lead to an earlier demise of the business as customers for example may already try to delay their payments in view of the anticipated closure and owing to the fact that they will cease to have compulsion to protect their good business relationship with the outgoing investor.

The Department of Labor and Employment (DOLE) only requires at least one (1) month prior notice to them and the Labor Code also requires the same prior notice period to the employees who will be affected. Such shorter period should likewise suffice for purposes of notice to the LIIB.

## **7. Requiring the issuance of Implementing Rules and Regulations**

LIICs are legally adopted as any other ordinance and following the procedure provided under the LGC. The separate adoption of IRRs is not a legal requirement for the LIIC itself to be effective, except if expressly provided in the LIIC itself that aside from the requisites for valid adoption of an ordinance, the IRRs of the LIIC shall first be approved and issued for the LIIC to take effect.

It is observed that in many instances, the IRRs issued are essentially mere reproductions of the law itself. If such is the case, then the issuance of an IRR is best dispensed with to avoid adding a document to which reference need to be made and creating some inconsistencies. The need to issue an IRR is mainly dependent on the amount of detail that is already in, or lacking from, the ordinance sought to be implemented. To the extent that substantial detail and procedures and requirements are already specified or provided in the LIIC itself, the issuance of an IRR may be dispensed with.

## B. The Guide for the Formulation of the LIIC

On the basis of relevant provisions of the 1987 Constitution as well as various laws and jurisprudence discussed above and other provisions of existing laws, we discuss our further comments on certain portions of the Guide, which may, upon further consideration, be the basis for the amendment or enhancement of the Guide.

### 1. The Role of Investment and Incentives Board

It appears from the text of many LIICs so far issued that there is no mention whatsoever of the LDCs and their role in the identification of priority areas of investment and the formulation of investment incentives. The following provision which is contained in the Guide is often faithfully adopted in the LIICs:

#### IV. INVESTMENTS AND INCENTIVES BOARD

xxx

*The Local Chief Executive, as the Board Chairperson; The Vice-Chair-President of the Local Chamber of Commerce & Industry or any other duly accredited private/business organization*

*Members:*

1. *The Local Planning and Development Coordinator;*
2. *Department Heads representing major local economic drivers (tourism, agriculture, as the case maybe);*
3. *The Sanggunian Chairperson of the Committee on Trade, Commerce and Industry or Economic Development; and*
4. *At least three (3) Private Sector Representatives representing significant business/industry in the locality to be appointed by the Local Chief Executive, for a term of two (2) years, duly accredited by the sanggunian*

*The LGU may invite representatives from national government agencies as resource persons/ advisors*

xxx.

*d. Proposed Powers and Functions of the Board – The primary function of the Board is to help establish a favorable and a stable policy on business climate which will encourage and support private sector investment and in the operation of business activities. Pursuant to this, the Board is generally vested with the following powers:*

- a. *Promulgate the Implementing Rules and Regulations of the LIIC subject to the approval of the Sanggunian;*
- b. *Recommend to the sanggunian any amendments on the Code;*
- c. ***Adopt a short and medium-term investments promotion program;***
- d. ***Identify and review investment priority areas eligible for incentives;***
- e. *Deliberate on applications for registration and availment of local incentives for approval by the Local Chief Executive;*
- f. *Supervise the operations of the Investments Promotion Center*
- g. *Establish cooperative undertakings with other LGUs, the private sector, NGOs or other institutions as may be necessary;*

- h. Secure additional funding from other sources to supplement the budgetary support provided by the local government for the operation of the Board and the Investment Promotion Center; and*
- i. Enlist the assistance of local government offices, national agencies and private sector organizations, as may be necessary, useful and incidental to the effective and efficient implementation of this Code.*
- j. Establish trade and investment satellite offices in such other places as may be necessary to effectively carry out its mandates; and*
- k. Perform such other tasks, as are necessary and incidental to the exercise and performance of their functions. (emphasis ours)*

It is clear from the foregoing that there is no clear recognition of the role of the LDCs and of the need to seek at least some guidance from, or to coordinate with it in the preparation of the LIIC, including the process of identification of the investment priority areas and the formulation of incentives. It is rather standard to give to the LIIB the full authority to identify investment priority areas and the incentives package, without any clear directive for the LIIBs to coordinate with or at least consider the priority investment areas identified consistent with the development plan and incentives formulated by the LDCs.

While in general, the LGU's planning and development coordinator, who is supposed to head the LGU's LDC, is a member of the LIIB, this still does not suffice as justifiable basis to disregard the LDC and deprive it of some of its specified functions under the LGC. The LDC is supposed to act as a collegial body, thus, the inclusion of the LGU's planning and development coordinator in the LIIB cannot be a substitute for the collective wisdom of the LDC in the determination of the short-term and medium-term investment program of the LGU and the identification of the preferred investment areas and the appropriate incentives.

In view of the lack of mandatory coordination between them, there is a potential source of conflict between LIIBs and LDCs as a result of the exercise of their respective functions. Thus, LGUs should avoid an overlap in their functions by properly delineating these functions. It should be noted that the creation of the LDCs is made mandatory by statute while the creation of LIIBs is not. Further, the functions of the LDCs are statutorily provided and thus may not be diminished. Lastly, it may not also be right to infer that the inclusion of a person described as the "Local Planning and Development Coordinator", a position which is not specifically provided or contemplated in the LGC dispenses with the need to involve the LDC in the identification of investment priority areas and the crafting of the incentives package of the LGU.

The Guide will have to be amended to provide that the LIIB, to the extent that it has the power to formulate (a) long-term, medium-term, and annual socio-economic development plans and policies; (b) the medium-term and annual public investment programs; and (c) the local investment incentives to promote the inflow and direction of private investment capital, shall adopt the formulations of the LDC of the LGU on the said matters, unless there is justifiable basis to deviate therefrom.

## **2. Integrate the incentives granted by the next level LGU.**

The Guide does not categorically include in its suggested LIIC formulation process the conduct of an actual consultation with the provincial LIIB. Requiring a consultation with the provincial LIIB would allow the towns and cities in a province to align their incentives with those of the province.

If the provinces of which it is a part has already adopted an LIIC that categorically spells out the incentives that may be granted and the businesses eligible to the said incentives, a municipality's LIICs should already indicate the incentives extended by the province. For example, the LIIC of a town may grant real property tax exemption but it qualifies the same to be only to the extent of its share in the proceeds of real property taxes. It is also possible that the LIIC of the province to which the town belongs also already grants real property tax exemption to the same activity. This exemption should, however, apply only to the extent of the share of the province from the proceeds thereof. The LIIC of the town would be more meaningful and informative to investors if it already also discloses what the province also already grants as incentives to the same business activity.

It should be noted that in the case of real property tax, the proceeds are allocated among various LGUs in accordance with Section 271 of the LGC, which reads:

*SECTION 271. Distribution of Proceeds. — The proceeds of the basic real property tax, including interest thereon, and proceeds from the use, lease or disposition, sale or redemption of property acquired at a public auction, in accordance with the provisions of this Title, by the province or city or a municipality within the Metropolitan Manila Area shall be distributed as follows:*

- (a) In the case of provinces:
  - (1) Province — Thirty-five percent (35%) shall accrue to the general fund;*
  - (2) Municipality — Forty percent (40%) to the general fund of the municipality where the property is located; and*
  - (3) Barangay — Twenty-five percent (25%) shall accrue to the barangay where the property is located.**
- (b) In the case of cities:
  - (1) City — Seventy percent (70%) shall accrue to the general fund of the city; and*
  - (2) Barangay — Thirty percent (30%) shall be distributed among the component barangays of the cities where the property is located in the following manner:
    - (i) Fifty percent (50%) shall accrue to the barangay where the property is located;*
    - (ii) Fifty percent (50%) shall accrue equally to all component barangays of the city; and***
- (c) In the case of a municipality within the Metropolitan Manila Area:
  - (1) Metropolitan Manila Authority — Thirty-five percent (35%) shall accrue to the general fund of the Authority;*
  - (2) Municipality — Thirty-five percent (35%) shall accrue to the general fund of the municipality where the property is located;*
  - (3) Barangays — Thirty percent (30%) shall be distributed among the component barangays of the municipality where the property is located in the following manner:
    - (i) Fifty percent (50%) shall accrue to the barangay where the property is located; and*
    - (ii) Fifty percent (50%) shall accrue equally to all component barangays of the municipality.***
- (d) The share of each barangay shall be released, without need of any further action, directly to the barangay treasurer on a quarterly basis within five (5) days after the end of each quarter and shall not be subject to any lien or holdback for whatever purpose.*

Under the circumstances, if the municipality is extending real property tax exemption, it should already endeavor to ascertain which LGU entitled to share in the real property tax collected is willing to waive its share of the real property tax by way of incentive to specific businesses. It should not suffice for the LIIC of the LGU to simply stop at disclosing its own incentives and leave the investor to fend for itself to ascertain whether the province to which the municipality belongs is also waiving its right to impose real property tax.

### **3. Integrate the incentives granted under national laws and ensure consistency with prevailing laws.**

The Guide does not provide sufficient guidance on how the LIICs should factor in or treat business activities which are entitled to local incentives under national laws.

It is important for the LGUs to understand that they cannot diminish (e.g., by reducing the period of the incentive, or reducing the incentive itself) the local incentives that are provided under national laws. Neither can LGUs impose additional requirements to avail of local incentives provided under national law. Thus, a newly registered business under the IPP with the BOI cannot be further required to source at least 75% of its employees from the LGU before it will be exempt from local business tax during the period of its income tax holiday. Unless otherwise expressly stated under the applicable national law, there is no longer any discretion on the part of LGUs to evaluate the eligibility of a business activity to avail of local incentives.

In the case of businesses becoming registered with the BOI, there is no law which still leaves room for the LGUs to exercise discretion whether or not they would extend such BOI-registered enterprise the incentive that Section 133 (g) provides. To the extent that the BOI has already required the submission of reports or requirements such as a feasibility study, the same should no longer be required of the investor. Copies of essential documents may be required to the extent that these are relevant and useful to the LGU concerned. It should suffice for the investor to show proof of its BOI registration and the extent of the incentives granted to it pursuant to such registration.

Considering that the discretionary authority of the LGU over grantees of local incentives vary depending on whether the local incentives being availed of were directly granted by the LGU pursuant to its LIIC or similar ordinance or mandated to be granted by the LGU by law, it is convenient to make such distinction clear under the LIIC. Thus, it becomes clear that the additional terms and conditions and qualifications to avail of local incentives should be made to apply only to businesses directly granted incentives by the LGU but not to business that they are mandated to extend incentives to under national law.

Given that there is an annual IPP which lists all the businesses eligible for incentives under EO 226, which in turn includes incentives to be extended at the local level by the LGUs, it is best that LGUs should make this as a given mandatory list of preferred activities and from here, further identify business activities which may not be in the IPP which, given the resources or other relevant circumstances of the LGU, would be strategic to the LGU's growth as would be worth granting incentives to.

### **4. Simplify the accreditation or availment process and desist from imposing additional filings/documentary requirements.**

For example, requiring a proposing investor to already submit a program for corporate social responsibility (-CSR") may be premature at the time of registration and may not necessarily be

the focus of a newly registered business. This is not to say that an investor can operate irresponsibly and be totally oblivious of its responsibility towards its community and environment in the meantime. However, formalizing it in a document for registration purposes adds to the start-up requirements and such would in fact be mainly a theoretical exercise at the start. A more realistic program could only be put together after the initial critical start-up challenges have been overcome and the investor has become more familiar with the environment under which it is operating. Moreover, if there is a subsequent deviation from the program submitted, it is nowhere indicated and neither does it appear to be a justifiable basis for such action, that the registration of the investor is to be revoked, thereby denying it of the originally granted incentives.

It may also be worthwhile to note that even the 2011 IPP IRR simply encourages and does not require those enjoying non-pioneer incentives to pursue CSR activities. In the case of registrants enjoying pioneer incentives, they are required to pursue CSR activities but the enforcement of the same is monitored only starting on the fourth year.

**5. The list of duties and responsibilities of registered enterprises under item 7 of Part VI of the Guide should be revisited.**

It should be noted that many of duties, particularly reports and documents required to be submitted to the LIIB/Center are unnecessary. Offhand, the submission of the following should no longer be required as they do not appear to have any clear purpose or value to the LIIB/Center and also the LGU:

- (1) Amendments of Articles of Incorporation or By-laws, or Articles of Partnership, or Articles of Cooperation, within thirty (30) calendar days from the date of submission of said amendments with the Securities and Exchange Committee or Cooperative Development Authority;
- (2) Change of Directors within thirty (30) calendar days from the change;
- (3) Report on alien officers or employees within thirty (30) calendar days from date of registration or from the appointment of such aliens/replacements;
- (4) Report on employment of bona-fide LGU residents within thirty (30) calendar days from date of registration or from the appointment of their replacement;
- (5) Annual report on the enterprise's business operations, including its production or gross sales or receipts and environmental compliance monitoring;
- (6) Audited Financial Statements, within thirty (30) calendar days after its submission to the Bureau of Internal Revenue (BIR); and
- (7) Report on total local incentives availed of under this Code.

Unless there are changes in the registered enterprise that would otherwise affect its eligibility to be entitled to the incentives granted, no additional reports or disclosures need to be submitted to the LIIB/Center. Thus, if the number of employees from the LGU is the basis for the grant of incentives, then the moment that the number of employees from the LGU falls below the required number, then the investor should not submit any report to the LGU. The mere addition of one or reduction by one of the number of employees from the LGU, by itself, should not

trigger the need to submit the report under item 4 above. Likewise, an amendment of the articles of incorporation to increase the number of directors of the corporation is clearly of no consequence to the LGU, although if it applies for a reduction of its capital stock to below the required capitalization that qualified it to avail of incentives, then the investor should be required to submit the necessary report to the LIIB/Center.

Admittedly, this requirement to submit such documents must have been copied from the EO 226 IRR and the PEZA Law IRR, without evaluation if in the first place such additional submissions will be used by the LIIB/Center or if they are even relevant. For example, a report on the movement of alien officers and employees is required by the PEZA and BOI because part of the incentives extended to PEZA and BOI-registered enterprises relate to employment of expatriates and the grant of residency visas to their expatriates, which the LGUs cannot and do not grant. Thus, the inclusion of the requirement to submit reports in case of alien personnel movement is irrelevant to LGUs.

It should be noted that there are already a lot of requirements that businesses need to comply with. This should not be unnecessarily compounded by the LGUs. The LIIB/Center should be able to identify the purpose for requiring the same and how exactly such reports are intended to be used. It should be noted that the Guide even went so far as to propose the imposition of penalties for failure to file compliance or reportorial requirements.

**6. The Guide should only consistently provide guidance to LGUs rather than mandate LGUs to do or adopt anything.**

It is noticeable that certain parts of the Guide contain information that are typically included in material of such nature. For example, it discusses what are some investment policy guidelines the LGU may adopt (Part III of the Guide) and it proposes a guide on how to determine priority areas of investment (Part IV of the Guide). However, certain parts of the Guide, such as most of parts VI and VII, do not simply provide guidance but already directly prescribes what the rule should be. Thus, Part VII reads, in part, as follows:

*Environmental Impact Assessment. — Environmentally critical projects or enterprises locating their activities or expansion projects in environmentally critical areas shall comply with the requirements of Presidential Decree No. 1586 (Philippine Environmental Impact Statement System) and related issuances of the Department of Environment and Natural Resources.*

**Hazardous Substances.** – Projects involving the handling, transport, processing and storage of toxic, hazardous substances and/or nuclear waste shall not be entitled to any incentives.

**Specific prohibitions.**

*(a) No industrial or manufacturing facility shall be operated without proper air pollution devices, wastewater treatment facilities, and solid waste management facilities;*

*(b) No industrial or manufacturing plant shall be operated at levels beyond the operating capacity of their respective waste treatment facilities in order to maintain the effluent quality within the standards required by law;*

*(c) All Industrial and manufacturing establishment shall subject their operations and premises, facilities and systems to periodic environmental compliance monitoring, which shall be conducted by the LGU in coordination with the Department of Environment and Natural Resources. Refusal to be subject to such inspection shall be sufficient ground for the forfeiture of any incentive and the revocation of its Certificate of Registration and/or Business Permit by the concerned local government units. (emphases ours)*

The foregoing provision imposes a prohibition which the Guide should not do, being merely a guide. More importantly, it is a dangerously sweeping statement which, if indeed adopted by the LGUs, would even bring LGUs in breach of applicable laws. Suffice it to say, the IPP of 2012 includes activities that deal with hazardous substances. Many totally legitimate and vital industries involve the handling, transport, processing, or storage of hazardous substances. These require close regulation but to foreclose the possibility that they will ever be entitled to incentives may be inappropriate and may not have clear legal basis.

**7. The LIIC formulation process should be amended to include in the procedure a specific step at which the implications/impact of national laws, particularly those granting local incentives, should be taken into account.**

While the Guide recommends that investment policies and programs of the LGUs should be aligned with and supportive of regional and national trusts, nowhere is this specifically taken into account in the LIIC formulation process (Figure 1 of the Guide).

**8. The Center/LIIB should not duplicate the functions of the NERBAC or any other relevant agency or office**

The Guide provides:

***Non-Fiscal Incentives.*** - *Registered enterprises and investors shall be granted the non-fiscal incentives, such as*

*a) Provision of a one-stop documentation for simplified documentation/registration procedures, which shall be facilitated with the assistance from LGU Investments Promotion Center;*

*b) Consistent support for industrial peace through mediation and arbitration services that may be extended at the Investments Promotion Center.*

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*f) Assistance in labor recruitment and arbitration;*

xxx.

Pursuant to Republic Act No. 7470,<sup>35</sup> a National Economic Research and Business Assistance Center (NERBAC) was created and is responsible for assisting investors in expediting their registration. It is also to maintain a data bank of general business information, information on economic activities, available technology, and financing source. The same functions should not be duplicated by the LIIB or the Investment Promotions Center (Center), which should just focus on the grant of incentives and the enforcement of the same. We note that DTI Administrative Order No. 04-09 on the NERBAC specifically provides:

*Sec. 4. Purpose – The Center shall provide prospective entrepreneurs/investors with the basic information on various business options that are open to them in accordance with the investment priorities of the Government. The Center shall likewise provide a one-stop action center which shall facilitate the processing and documentation of all paper requirements necessary for the establishment of a business enterprise in the country, including credit services.*

It appears that the LGU cannot also give the Centers the function of conducting labor mediation and arbitration. It should be noted that the Labor Code specifies the offices under the DOLE which have the exclusive authority to conduct labor mediation and arbitration, depending on whether the dispute concerns labor relations or labor standards. Arbitration in the case of disputes arising from collective bargaining agreements are within the original exclusive jurisdiction of a voluntary arbiter pursuant to Article 272 of the Labor Code, as amended, which reads as follows:

*ARTICLE 272. Jurisdiction of Voluntary Arbitrators or Panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Xxx.*

*The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.*

Even assuming labor mediation and arbitration are not within the exclusive competence of specific offices, as discussed above, still it may not be prudent for the Centers to involve themselves in such activities. They may not have personnel who possess the skill, legal and technical know-how, and requisite competence to conduct the same.

**9. The grant of authority on the LIIC/Center to conduct inspection should be restricted**

The Guide does not merely recommend but appears to prescribe that the Board should have visitorial powers as follows:

*The Board, the Center, or any duly authorized member thereof, shall be empowered and authorized to conduct an ocular inspection of the premises or examination of the business activity of any enterprise, including the records and books of any enterprise, registered or applying for registration at any reasonable time of the day, during office hours, for verification or ascertaining, the enterprise's compliance with the provisions of the Code, or when the Board or Center deems it necessary in or incidental to the effective exercise and performance of their respective functions and powers.*

We note that most of the criteria for eligibility for incentives under LIICs, aside from the nature and/or location of the business pursued, relate to capitalization and the number of employees employed from the LGU. These do not require on-site inspection but can be verified from available public records. The capitalization of a corporation is reported in the General Information Sheet, a report accomplished under oath and required to be submitted annually to the Securities and Exchange Commission (SEC). The number of employees from the LGU is best checked by requiring the submission of a report under oath of the names and residence of the employees of the investor.

The other possible subjects of inspections such as compliance with environmental laws, for example, fall within the ambit of the official function of the other offices of the national government and the LGU. The LIIB/Center would not have the competence to inquire into the compliance of the investor in this regard. We note that investors enjoying incentives still need to secure business permits annually, which is issued subject to the conduct of certain mandatory inspections. Thus, overall, there does not appear any actual need to grant the LIIB/Center broad visitorial powers.

Likewise, businesses eligible to local incentives pursuant to national laws and not merely pursuant to the grant of incentives under the LIIC comply with requirements prescribed under the national law. Thus, the LGU would have no reason or basis to conduct additional inspections on these businesses to check their compliance with the eligibility requirements imposed under national laws. Such is the duty of the registering entity such as the BOI.

## **10. Revocation/Discontinuance of Incentives Previously Granted**

The Guide should caution LIIBs against retroactive application of ordinances eliminating certain business activities from the list of registrable investments. While indeed the Supreme Court has had the occasion to rule that the registration of investors to avail of incentives is not in the nature of contracts protected by the non-impairment provision of the 1987 Constitution, as discussed above, LGUs should take care to protect their credibility and ensure the stability of the business policies within their jurisdictions. Incentives previously given should not be unilaterally revoked, particularly after investors have made their decision to invest in the jurisdiction of the LGU. Any change in the LIIC should not only operate prospectively but should also only apply to new registrants.

It may need to be emphasized that LGUs have no authority to revoke, whether total or partial, the incentives at the local level granted under national law except to the extent that the main registration, such as the investors registration with the BOI on which the grant of local incentives depends, is revoked.

### **C. The LIICs of INVEST Partner Cities**

The study also carefully examined the LIICs formulated by the three cities supported by the INVEST Project, i.e. Batangas, Iloilo and Cagayan de Oro. Below are comments on the LIICs of these cities:

#### **1. Batangas City**

The LIIC is provided in **Ordinance No. 3 S. 2009: Batangas City Investment Incentive Code of 2009.**

a. *Functions of the Board*

The Board in this case performs functions that are part of the listed functions of the LDC, which is true in most LIICs, as discussed above.

b. *Power of the Mayor*

Section 192 of the LGC specifically vests in the legislative body the authority to grant tax incentives. It reads:

*SECTION 192. Authority to Grant Tax Exemption Privileges. — Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.*

Section 24 of Title X (General Provisions) of the LIIC of Batangas City provides that “[t]he City Mayor may, upon recommendation of the Board and in the interest of development, rationalize the incentive scheme herein provided; extend the period of availment of incentives; or increase rates of tax exemption of any project whose viability or profitability require such modification.” The validity of Section of the Batangas City LIIC may be questioned in view of Section 192 of the LGC insofar as the rationalization of incentives and amendment of the incentives provided under the LIIC may be done unilaterally by the City Mayor rather than through an ordinance. As a rule, if a particular matter requires the passage of an ordinance for validity, it follows that any amendment thereto shall likewise be made by way of ordinance. If, on the other hand, it is argued that this constitutes a delegation of authority by the *Sangguniang Panlungsod*, it has to be shown that the requisites for a valid delegation concur in this case, namely, the law or ordinance *—(a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.*<sup>36</sup>

The same issue may be raised against Section 28 of the Batangas City LIIC insofar as it again grants the City Mayor the authority to add preferred areas of investment in the original list of preferred activities.

c. *Title IX on Donations to the Local Government*

The contents of this Title IX may not be appropriate for inclusion in the LIIC and is more appropriate for inclusion in the Revenue Code of Batangas City.

d. *Tax exemptions*

The tax exemptions provided would conflict with the incentives granted under national laws. As in almost all LIICs, there is no separate treatment provided in the LIIC for investments entitled to incentives under national law as it fails to consider the incentives that are granted pursuant to law which the LGU may not diminish.

## 2. Cagayan de Oro (CDO)

The LIIC of CDO is contained in **Ordinance No. 8268-2002: An Ordinance Providing for Incentives to Prospective and Existing Investors, Repealing Ordinance No. 5554-96, and for Other Purposes**

### a. Identification of Priority Areas

The LIIC of CDO is unique in that it defined the investment priority areas in the negative, i.e., all business activities are priority areas and entitled to incentives except those which are listed under a negative list included in the IRR of the LIIC and determined by the City Mayor.

### b. Sole prerogative of the City Mayor to identify the business activities to be included in the so-called "Negative List."

Without meaning to question the discretion of the City Mayor, it may not be appropriate to leave the decision to add to the Negative List to the City Mayor, without categorically providing that it is subject to consultation with or recommendations of any other officer, office, or person.

### c. *Wisdom of adopting a negative definition to define priority areas*

In view of the rule on interpretation of tax exemptions/incentive under Section 5 of the LGC, that any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it, it is more difficult to establish one's right to the incentive given the negative definition. One has to claim that its business is not in the negative list, thus, it is entitled to incentives. As a rule, if incentives are given, those entitled to it must be expressly identified rather than implied from the fact that it is not within the exclusions.

Moreover, by identifying a negative list instead of specifically identifying priority areas, CDO does not articulate what activities it wants to promote in its jurisdiction. CDO in effect, sends out clearly the message as to what businesses it does not want to be pursued in its jurisdiction but remains ambiguous on what specific businesses it wants to be promoted and prioritized, based on its assessment of the specific circumstances, resources, strengths, and weaknesses of CDO.

### d. The imposed qualifications are too stringent and inflexible, i.e., that it has to meet the minimum capitalization requirement of Php10 million or employ 50 employees.

A new business may not, at the outset, immediately employ 50 employees. It is more common to see business grow for some time to reach the level of 50 employees. On the other hand, it is at the initial stage of operations when revenue is still relatively low that the investor needs all the assistance and incentive that it can get rather than later, when the company already has 50 employees. On the other hand, an initial capitalization of Php10 million is not always necessary. It should be further noted that as defined, the investment amount excludes the value of the land.

Locating in less developed areas in CDO or pursuing a business that would make use of abundant raw materials within CDO are equally justifiable bases to promote, encourage, and thus, incentivize a particular business.

e. Rule on interpretation

The rule on interpretation provided under Section 14 of the IRR of the LIIC of CDO also runs exactly counter to what is provided in Section 5 of the LGC, i.e., -Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it.” It can be argued that since the rule on interpretation in the IRR is contrary to the mandatory provision of the LGC, the same is void.

f. Exemption from real property

Section 8 of the LIIC of CDO grants exemption from real property tax as follows:

a.) Exemption from Real Property Tax. The following real properties, equipment or devices are exempted:

i. Commercial buildings and /or improvements and including portion of the lot where said commercial building and/or improvement are found provided that the subject lot is owned by the applicant or having legal interest therein;

ii. Equipment or devices or other investments for pollution control and environmental protection and fire protection equipment;

iii. Lands classified whether commercial or residential used exclusively for parking purposes; Provided, That no commercial activity shall be conducted within the premises and that all available parking spaces shall be open to the general public.

iv. Lots actually used as road lot; Provided, That the same shall be open to the general public.

With respect to item (a)(i), CDO must limit the exemption to only such part of the building or real property that is used actually, directly, and exclusive for the registered activity. Thus, consistent with the fundamental principle in real estate taxation laid down under Section 198 of the LGC, that real property shall be classified for assessment purposes on the basis of its actual use. The taxability or non-taxability of the real property should not be determined on the basis of ownership. As has been ruled by the Supreme Court, in real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.<sup>37</sup>

Item (a)(ii) need not be mentioned as this is one of five specifically identified real properties exempt from real property tax pursuant to Section 234 of the LGC.

Item (a)(iii) may be more appropriately included in the local tax ordinance of CDO insofar as it refers to land which is not used commercially and it in fact includes residential land used for parking, in which case, it is unlikely that the owners thereof have a business registrable under the LIIC in the first place. Likewise, item (a)(iv) is probably more appropriate in the local tax ordinance rather than in the LIIC as it is unlikely that a registrable business would have anything to do with lots being used as roads open for use to the general public. In this instance, it appears that the basis of the exemption does not have anything to do with the fact that the owner thereof has a business that is registrable under the LIIC but simply because of the nature of the lot's use, i.e., it is used by the public for free.

g. Inclusion of some activities under the 2012 IPP in the Negative List

Clearly, several activities, including preferred activities under the 2012 IPP would be disqualified from incentives since they would qualify under the Negative List presently in effect, among them are:

- i. **Agriculture/Agribusiness and Fishery** - This covers commercial production and commercial processing of agricultural, herbal and fishery products (including their by-products and wastes). It also covers agriculture- and fishery-related activities such as irrigation, postharvest, cold storage, blast freezing, and the production of fertilizers and pesticides.
- ii. **Shipbuilding** - This covers the construction and repair of ships. This also covers shipbreaking/ ship recycling.
- iii. **Iron and Steel** - This covers basic iron and steel products, long steel products (billets and reinforcing steel bars), and flat hot-/cold-rolled products.
- iv. **Motor Vehicles** - This covers the manufacture/assembly of motor vehicles, including alternative fuel vehicles (AFVs) and electric vehicles (EVs) but excluding 2-stroke motorcycles, and manufacture of motor vehicles parts and components.
- v. **Industrial Tree Plantation** - This covers extensive plantation of forest land of tree crops (except fruit trees) for commercial and industrial purposes.
- vi. **Exploration, Mining, Quarrying and Processing of Minerals**- This covers the exploration and development of mineral resources, mining/quarrying and processing of metallic and non-metallic minerals.
- vii. **Refining, Storage, Marketing and Distribution of Petroleum Products**- This covers refining, storage, distribution, and marketing of petroleum products.

### 3. Iloilo City

The Iloilo City LIIC is contained in **Regulation Ordinance No. 2009-256: An Ordinance Amending Regulation Ordinance No. 2006-114, as Amended by Regulation Ordinance No. 2006-118, Entitled “The Iloilo City Investment Incentives Code of 2006”**

a. Definition of ~~Expansion~~ of the Business Enterprise”

The term is defined to refer to existing business which will increase its capitalization and manpower requirements on a different address, site or location than that already in existence and has not availed of herein incentives. The expansion shall be considered a new business within the purview of this ordinance.”

The distinction between an expansion which is in a different location from one which is undertaken in the same as the place where the existing business is located does not appear warranted. Classification should be based on substantial distinctions and the same are germane to the purpose of the law. Unless the incentive is area-specific, then the location of the expansion or new business is irrelevant. The requirement that there shall be an increase in the capitalization and manpower requirement shall suffice as basis to grant incentives.

b. Definition of ~~Investment Amount~~” to exclude cost of land

It is most likely that this definition is based on the BMBE Law. However, the premise of the said law is that the business is a relatively small business. The BMBE Law intends to encourage

private individuals to engage in business making use of their existing resources such as their own land. Thus, the value of the land may be validly excluded. However, in instances where the land is actually purchased from out of the paid-up capital of the corporation, then the land should properly be included. The LGU cannot close their eyes to the fact that the land, if purchased, is indeed part of the investment amount.”

In any case, in the text of the LIIC, the term “Investment Amount” was no longer used since the terms used were “actual investment” and “investment worth” in Chapter V of the LIIC.

c. Powers and functions of the Board

The Board in this case also performs functions that are among the functions of the LDC as in most LIICs, as discussed above.

d. Investment Priority Areas

The priority areas listed activities include some but not all activities in the 2012 IPP.

e. *Penalty*

No penalty is imposed in case of violation of the terms of the registration or any other act, omission, or misrepresentation contrary to the provisions of the LIIC.

#### **D. The Local Government Code’s Implementing Rules and Regulations**

In view of the discussion in Part II(B) above pointing out the disparity between the language of Section 192 of the LGC and its corresponding LGC IRR provision, the latter should be amended to restore the wider discretion on the part of the LGUs in granting incentives whether in the form exemption from local business tax, license fees, or real property tax, particularly in so far as the limitations are not specifically provided under the LGC. Specifically, as pointed out above, to the extent that the qualifications and restrictions provided under Article 282 of the LGC IRR are not clearly supported by provisions LGC, particularly Section 192 of the LGC, the same should be removed.

BLGF opinions, though consistent with the LGC IRR but inconsistent with the LGC itself (such as the opinions discussed above), should likewise be revoked.

## ANNEX

### Compendium of National Laws Granting Incentives at the Local Government Level

<p>SECTION 24. Relationship with Local Government Units. — Except as herein provided, the Municipality of Mariveles in the Province of Bataan shall operate and function in accordance with the Local Government Code of 1991. In case of any conflict between the AFAB and the local government units (LGUs) and the National Government (NG) on matters affecting the FAB other than defense and security matters, the decision of the AFAB shall prevail.</p>	<p>SECTION 153. Relationship with Local Government Units. — Except as provided in the Act, the Municipality of Mariveles in the Province of Bataan shall operate and function in accordance with the Local Government Code of 1991. In case of any conflict between the AFAB and the local government units (LGUs) and the National Government (NG) on matters affecting the FAB other than defense and security matters, the decision of the AFAB shall prevail.</p>
<p style="text-align: center;"><b>A. Investments Priorities Plan 2012</b></p>	<p style="text-align: center;"><b>General Policies and Specific Guidelines to Implement the 2011 Investment Priorities Plan (IPP)</b></p>
<p>The coverage, description and entitlement to incentives of the following listed activities shall be defined and clarified in the General Policies and Specific Guidelines to be issued by the Board of Investments (BOI).</p> <p>The extent of entitlement to incentives shall be based on the project's net value added, job generation, multiplier effect and measured capacity</p>	<p><b>Part II</b>  <b>GENERAL POLICIES</b>  <b>I. APPROVAL OF APPLICATION AND ENTITLEMENT TO INCENTIVES</b></p> <p>The approval of application for registration and entitlement to incentives under this IPP is subject to Article 7, paragraph 3 of Executive Order No. (E.O.) 226, to wit:</p> <p><i>–ART. 7 Powers and Duties of the Board. xxx  (3) Process and approve applications for registration with the Board,  imposing such terms and conditions as it may deem necessary to  promote the objectives of this Code, including refund of incentives  when appropriate, restricting availment of certain incentives not  needed by the project in the determination of the Board x x x”</i></p> <p>The approval of applications for registration, in general, shall take into consideration the existing and prospective demand for the proposed product/service as well as the potential of the project for creating new markets for domestic suppliers of raw materials and/or intermediate goods in the domestic market. The extent of entitlement to incentives shall be based on the project's net value-added, job generation, multiplier effect and measured capacity. The BOI, if national interest requires, may withhold registration of projects engaged in the export of a product including industry inputs that are in short supply domestically.</p> <p style="text-align: center;">xxx</p>

#### **IV. LOCATIONAL RESTRICTION POLICY**

##### **A. Regional Dispersal of Industries**

The dispersal of economic activities in the countryside is encouraged.

1. Unless otherwise specified in the Specific Guidelines, projects in any of the following less developed areas (LDAs) shall be entitled to pioneer incentives and additional deduction from taxable income equivalent to 100% of expenses incurred in the development of necessary and major infrastructure facilities.

##### **REGION PROVINCE**

CAR Abra  
    Apayao  
    Ifugao  
    Kalinga  
    Mt. Province  
II Quirino  
    Nueva Vizcaya  
IV Aurora  
    Marinduque  
V Masbate  
VI Guimaras  
VII Siquijor  
VIII Biliran  
    Eastern Samar  
    Southern Leyte  
ARMM Basilan  
    Maguindanao  
    Sulu  
    Tawi-Tawi

The BOI may, on a case to case basis, consider areas within any province as a less developed area subject to the provision of Article 40 of E.O. No. 226.

2. Projects in any of the following thirty (30) poorest provinces shall be entitled to pioneer or non-pioneer incentives, as may be applicable.

##### **REGION PROVINCE**

CAR Abra  
    Apayao  
    Mt. Province  
IV Romblon  
V Albay  
    Camarines Sur  
    Camarines Norte  
    Masbate  
VI Aklan  
VII Bohol  
    Negros Oriental  
    Siquijor

- VIII Eastern Samar
  - Northern Samar
  - Western Samar
- IX Zamboanga del Norte
  - Zamboanga Sibugay
- X Bukidnon
  - Camiguin
  - Lanao del Norte
  - Misamis Occidental
- XI Davao Oriental
- XII Sarangani
  - Sultan Kudarat
- ARMM Maguindanao
  - Sulu
  - Lanao del Sur
- CARAGA Agusan del Sur
  - Surigao del Norte
  - Surigao del Sur

**B. Exemption from the Locational Restriction**

Complementary to the provision of the law granting pioneer incentives to projects in LDAs, the BOI limits incentives to firms that locate in congested urban centers. The locational restriction applies to the National Capital Region (NCR) wherein projects are not entitled to ITH.

Exemption from the above locational restriction, however, may be given to the following:

1. Projects in government industrial estates<sup>2</sup> declared by national law or presidential proclamation prior to 01 January 1989 (unless subsequently privatized)
2. Projects that will engage in service type activities

Government Industrial Estates

- a) Dagat-Dagatan (P.D. No. 569 dated 30 October 1974)
- b) Vitas Industrial Estate, Tondo (E.O. No. 1086 dated 31 January 1986, as amended/expanded through Presidential Proclamation No. 39 dated 09 September 1992 and Proclamation No. 465 dated 01 August 1994) (Vitas Industrial Estate/Smokey Mountain)
- c) Bagong Silang Industrial Estate, Caloocan City (Presidential Proclamation No. 843 dated 26 July 1971)
- d) Food Terminal Inc., Taguig (LOI No. 900 dated 25 July 1979)
- e) Navotas Fishing Port Complex (E.O. No. 772 dated 08 February 1982)

3. Expansion of export-oriented projects

- a) Expansion shall be effected within the firm's existing premises.

b) The enterprise has a good track record of exports and has no record of violation of the terms and conditions governing its existing registration(s), specifically, the earlier project exceeded its projected export commitment in the past three (3) years.

4. Modernization projects

5. Projects of micro and small enterprises (MSEs)

6. Strategic Activities as defined under this IPP (see Part III, I.11 — Strategic Activities”)

7. Relocation of oil terminals

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## **VII. MICRO, SMALL AND MEDIUM ENTERPRISES (MSMEs)**

The BOI promotes the development of MSMEs on account of their contribution to employment generation, countryside development, and the cultivation of the Filipino entrepreneurial spirit.

In this regard, the BOI extends the following:

- Assistance in the preparation of simplified project application for BOI registration

- Identification of MSME support companies

In addition, the following assistance are provided to micro and small enterprises:

- Exemption from application and registration fees for micro enterprises

- Seventy five percent (75%) reduction in application and registration fees for small enterprises

- Reduced application fees for incentives as follows:

- One-day processing of application for registration

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### **Type of Fee Micro Enterprises Small Enterprises**

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- Exemption from the twenty five percent (25%) equity requirement

- Posting of the Notice of Filing of Application in provincial, city, municipal or barangay hall, in lieu of publication in a newspaper of general circulation

- Simplified reportorial requirements

- Simplified application for incentives

xxx

## **IX. PROJECT STATUS AND INCENTIVES**

In general, pioneer status with pioneer incentives shall be governed by Article 17 of E.O. No. 226.

Pioneer status with pioneer incentives may be granted to projects that meet the minimum investment requirement and other qualifications as provided in the Specific Guidelines.

Pioneer status with non-pioneer incentives may be granted to projects that meet the minimum investment requirement as provided in the Specific Guidelines.

	<p style="text-align: center;">xxx</p> <p><b>XI. PROJECTS PREVIOUSLY REGISTERED WITH BOI</b>  Projects that will utilize facilities (plant and equipment) of a previously registered activity with the BOI and has availed of incentives shall not qualify for registration.</p> <p><b>XII. MULTI-PHASED PROJECTS WITH MULTIPLE LOCATIONS</b>  In general, projects of an enterprise with multiple phases/locations may be registered on a per phase/location or revenue stream basis.</p> <p><b>XIX. PROJECTS IN THE AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM)</b></p> <p>The ARMM List covers priority activities that have been identified by the Regional Board of Investments of the ARMM (RBOI-ARMM) in accordance with E.O. No. 458. The RBOI-ARMM may also register and administer incentives to activities in this IPP for projects locating in the ARMM.</p> <p>Projects in the ARMM should register with the BOI-ARMM.</p>
<p><b>I. PREFERRED ACTIVITIES</b></p> <p><b>1. Agriculture/Agribusiness and Fishery</b>  This covers commercial production and commercial processing of agricultural, herbal and fishery products (including their by-products and wastes).  This also covers agriculture- and fishery-related activities such as irrigation, post harvest, cold storage, blast freezing, and the production of fertilizers and pesticides.</p>	<p><b>Part III</b>  <b>SPECIFIC GUIDELINES</b></p> <p>I. Preferred Activities</p> <p>1. Agriculture/Agribusiness and Fishery  This covers commercial production and commercial processing of agricultural and fishery products (including their by-products and wastes).</p> <p>This also covers productivity improvement in agriculture- and fishery-related activities such as irrigation, post-harvest, cold storage, blast freezing facilities and production of fertilizers.</p> <p>a. Commercial production</p> <p>This covers the production of agricultural (crops, poultry and livestock) and fishery products.</p> <p>In general, crop production should involve new plantation areas to qualify for registration.</p> <p>New plantation areas refer to new hectareage of plantation or lands that have been idle for at least one year or those involving change of crops/variety to achieve higher yield.</p>

**b. Commercial processing**

This covers the conversion of agricultural and fishery products, their by-products and wastes, to a form ready for further processing or final consumption.

This also covers the extraction of higher value substances from agricultural and forestbased raw materials through bioprocessing.

This also covers the production of animal and aqua feeds excluding those for game animals, fowls and other species for pet/leisure purposes.

Processing of agricultural products should involve domestically produced raw or semiprocessed agricultural products, unless the raw or semi-processed raw materials are not locally produced (NLP) or not in sufficient quantity (NISQ).

If using imported raw or semi-processed agricultural products that are locally produced (LP) or in sufficient quantity (ISQ), the project may qualify for registration, provided that the finished/final product is for export, or the project qualifies for pioneer status.

Production of iodized salt should comply with the applicable provision of "An Act for Salt Iodization Nationwide (ASIN)" (R.A. No. 8172).

Production of refined sugar, cooking oil, and rice should involve domestically produced raw or semi-processed agricultural products and comply with the applicable provisions of the Philippine Food Fortification Act of 2000 (R.A. No. 8976).

In addition, rice millers must comply with the following requirements:

1. Must be a National Food Authority (NFA) licensed rice miller
2. Milling recovery must not be less than 70% and the milled rice must meet the following specifications:
  - a. Whole kernels must not be less than 75%
  - b. Broken kernels must not be more than 5%
  - c. Damaged grains including yellow/discolored kernels and brewers must not be more than 1.5%
  - d. Moisture content must not be more than 14%

**c. Irrigation**

This covers irrigation system primarily intended to render service to agricultural farms.

Irrigation system shall include water source, distribution lines and control mechanism.

	<p>The system may also include prime mover, pump, generator and transformer. System capacity is expressed in terms of cubic meters of irrigation water per year.</p> <p><b>d. Post Harvest Facilities</b></p> <p>This covers the establishment and operation of cold storage, freezing, bulk handling, packing house and storage facilities.</p> <p>This also covers harvesting services.</p> <p style="text-align: center;">xxx</p> <p>Projects that cost at least the Philippine Peso equivalent of US\$20 million may be granted pioneer status but with non-pioneer incentives.</p> <p>Applications for registration must be endorsed by the concerned agency, when applicable.</p>
<p><b>2. Creative Industries/Knowledge-Based Services</b></p> <p>This covers business process outsourcing (BPO) activities, and IT and IT-enabled services that involve original content.</p>	<p><b>2. Creative Industries/Knowledge-Based Services</b></p> <p>This covers business process outsourcing (BPO), IT and IT-enabled services, and film and performing arts production.</p> <p>a. BPO, IT and IT-enabled services</p> <p>This covers voice and non-voice IT-enabled services including procurement and sourcing services, contact center, business/knowledge processing, software development, animation, data transcription, engineering design, game development and ICT support services.</p> <p>A contact center project must have a minimum investment cost of the Philippine Peso equivalent of US\$2,500 per seat to qualify for registration. This amount covers the cost of equipment (hardware and software), office furniture and fixture, building improvements and renovation, and other fixed assets except land, building and working capital. If equipment used were leased, the same should be converted to assets in terms of commercial interest rates and amortized over a five-year period. If equipment were consigned, the same should have an assigned value to be considered as part of the project cost. Projects that cost at least the Philippine Peso equivalent of US\$5 million (excluding cost of land and building) to be put up during the first year of operations, may be granted pioneer status. All ICT projects shall install internal security system compliant with BS 7799 or its equivalent.</p> <p>b. Film and Performing Arts</p> <p>The BOI may consult and/or require an endorsement</p>

	<p>from concerned agency such as Film Development Council of the Philippines (FDCP), National Historical Institute (NHI) and the National Commission for Culture and Arts (NCCA).</p> <p>Registration of film and performing arts production is on a per project basis. Projects with at least 50% of revenues derived from export may qualify for pioneer status.</p> <p style="text-align: center;">xxx</p>
<p><b>3. Shipbuilding</b></p> <p>This covers the construction and repair of ships. This also covers shipbreaking/shiprecycling.</p>	<p><b>3. Shipbuilding</b></p> <p>This covers the construction and repair of ships/boats. This also covers shipbreaking/ship recycling. <del>–Pioneer status with non-pioneer incentives”</del> means that projects may be granted four (4) years of Income Tax Holiday (ITH).</p> <p>The following are the qualifications for registration:</p> <p>General Requirements:</p> <ul style="list-style-type: none"> <li>• Registered enterprises must have the minimum required paid-up capital, capital equipment and technical and skilled manpower as specified by Maritime Industry Authority (MARINA).</li> <li>• Registered enterprises must comply with DOLE Department Circular No. 1 series of 2009 on the Guidelines on Occupational Safety and Health in Shipbuilding, Ship Repair and Shipbreaking Industry and secure of a copy of Department of Environment and Natural Resources (DENR) issued Environmental Compliance Certificate (ECC).</li> </ul> <p>Requirement for Ship/Boatbuilding:</p> <ul style="list-style-type: none"> <li>• Ships/boats to be built must be at least 500 GT</li> <li>Requirements for Shipbreaking/Ship recycling: <ul style="list-style-type: none"> <li>• Must have a drydocking or dismantling slip with a minimum capacity of 1,500 DWT</li> <li>• Must comply with the requirements of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships including the preparation of a Ship Recycling Facility Plan and the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships.</li> </ul> </li> </ul> <p>Any of the following may qualify for pioneer status:</p> <ul style="list-style-type: none"> <li>• Shipbuilding or ship repair facilities with a minimum lifting capacity of 20,000 DWT</li> <li>• Shipbuilding or ship repair facilities with a minimum berthing capacity of 7,500 DWT</li> <li>• Projects that cost at least the Philippine Peso</li> </ul>

	<p>equivalent of US\$100 million may be granted pioneer status but with non-pioneer incentives.</p> <p>Registered enterprises may be required to submit a copy of its License/Authorization or its equivalent from the MARINA or other concerned agency prior to start of commercial operation.</p>
<p><b>4. Mass Housing</b></p> <p>This covers the development of low-cost mass housing. This also covers the manufacture of modular housing components preferably using indigenous materials.</p>	<p><b>4. Mass Housing</b></p> <p>This covers the development of low-cost mass housing.</p> <p>The following are the qualifications for registration:</p> <p>General requirements:</p> <ul style="list-style-type: none"> <li>• The selling price of each housing unit shall be more than PhP400,000 but not exceeding PhP2.5 million.</li> <li>• Must be new or expanding low-cost mass housing project</li> <li>• Minimum of twenty (20) livable dwelling units in a single site or building</li> <li>• Project shall conform with the design standards set forth in the Rules and Regulations to Implement B.P. No. 220/P.D. No. 957 and other related laws.</li> <li>• All low-cost mass housing projects must comply with the socialized housing requirement by developing an area for socialized housing equivalent to at least 20% of the total subdivision area or total subdivision project cost for horizontal housing and 20% of the total floor area of qualified saleable low cost housing units for vertical housing projects.</li> </ul> <p>This may be done through any of the following modes:</p> <ul style="list-style-type: none"> <li>• Development of a new settlement;</li> <li>• Slum upgrading or renewal of areas for priority development either through zonal improvement programs or slum improvement and resettlement programs; or</li> <li>• Joint-venture projects with either the local government units, non-government organizations (NGOs) accredited by BOI or any of the housing agencies.</li> </ul> <p>-Pioneer status with non-pioneer incentives” means that projects may be granted four (4) years of Income Tax Holiday (ITH).</p> <ul style="list-style-type: none"> <li>• Compliance with the socialized housing requirement must be completed within the ITH availment period.</li> </ul> <p>Requirement for horizontal housing projects:</p> <ul style="list-style-type: none"> <li>• Mass housing projects must be located in areas zoned and classified for residential use/purposes in conformity with the approved</li> </ul> <p>Comprehensive Land Use Plan and Zoning of the</p>

	<p>concerned LGU.</p> <p>Requirement for vertical housing projects:</p> <ul style="list-style-type: none"> <li>• At least 51% of the total floor area, excluding common facilities and parking areas, must be devoted to housing units</li> <li>• In lieu of the above modes for compliance with the socialized housing requirement, enterprises may donate 30% of the above-socialized housing cost (i.e., 20% of the building construction cost based on the actual number or equivalent total floor area of qualified saleable low cost housing units) to non-government organizations (NGOs) for community development. Equivalent total floor area refers to the sum total of the floor area of all the registered low-cost mass housing units.</li> </ul> <p>The amount of donation required is only up to 40% of the estimated ITH.</p> <p>Any of the following may be considered as an expansion project:</p> <ul style="list-style-type: none"> <li>• Unfinished projects, the construction of which had stopped for at least one (1) year. Only the unsold units may qualify for registration</li> <li>• Conversion to low-cost or socialized housing project of a building originally intended for commercial, office spaces, or exclusive condominiums</li> <li>• Construction of additional floors or annexes intended for mass housing units</li> </ul> <p>A project shall be considered as an expansion if it will locate adjacent or contiguous to an existing mass housing project owned by the same entity and shall share common facilities with the existing project.</p> <p>Projects that have already been completed and have incurred sales (booked sales) of housing packages shall, in general, not qualify for registration.</p> <p style="text-align: center;">xxx</p> <p>In cases of un-incorporated joint venture and similar arrangements between land owner and developer wherein the sharing scheme is in terms of the number of lots or units built, only the share of the developer may qualify for registration.</p> <p style="text-align: center;">xxx</p>
<p><b>5. Iron and Steel</b></p> <p>This covers basic iron and steel products, long steel products (billets and reinforcing steel bars), and flat hot-/cold-rolled products.</p>	
<p><b>6. Energy</b></p>	<p><b>5. Energy</b></p> <p>This covers the exploration, development, and/or</p>

<p>This covers the exploration, development, and/or utilization of energy sources adopting environmentally friendly technologies.</p>	<p>utilization of indigenous energy sources, and other energy sources adopting environmentally-friendly/green technologies.  Any of the following may qualify for pioneer status:</p> <ul style="list-style-type: none"> <li>• Power supply projects located in missionary areas</li> <li>• Projects that cost at least the Philippine Peso equivalent of US\$1.5 million per megawatt but with non-pioneer incentives</li> </ul> <p style="text-align: center;">xxx</p> <p>Applications for registration must be endorsed by the Department of Energy (DOE).</p>
<p><b>7. Infrastructure</b></p> <p>This covers transport, water, logistics, waste management facilities, physical infrastructure (tollways, railways and telecommunication facilities), and PPP projects.</p>	<p><b>6. Infrastructure</b></p> <p>This covers transport, water, logistics, waste management facilities, physical infrastructure (tollways, railways, and telecommunication facilities), and pipeline projects for oil and gas.</p> <p><b>a. Transport</b></p> <p>This covers air, water and mass rail transport.</p> <p><b>(1) Air Transport</b></p> <p>Air transport operation includes passenger and/or cargo operation for commercial purposes. Lease with option to purchase an aircraft may be allowed. Pure lease may be allowed provided that the lease contract is for a minimum of five (5) years.</p> <p>Acquisition of additional aircraft/s may be registered as new project.  Any of the following may qualify for pioneer status:</p> <ul style="list-style-type: none"> <li>• Serving the missionary/developmental routes, as indicated in the Certificate of Public Convenience and Necessity (CPCN)</li> <li>• Air transport projects involving purchase/lease-purchase of brand new aircraft.</li> </ul> <p>For lease-purchase, the option to purchase should be exercised before the end of the 4th year of ITH availment.</p> <p>All applications for registration must be endorsed by the Civil Aeronautics Board (CAB), when applicable. Such endorsement must contain information on the routes to be served.</p> <p>Prior to start of commercial operation of each aircraft, the registered enterprise must submit a Certificate of Airworthiness issued by Civil Aviation Authority of the Philippines (CAAP).</p> <p><b>(2) Water Transport</b></p> <p>This covers domestic, overseas, and Roll-On/Roll-Off (RORO) shipping.</p>

**(a) Domestic/inter-island shipping**

This covers pure cargo, passenger, and passenger-cargo vessel operations including RORO Terminal System operations.

The following are the qualifications for registration:

- Must be a Philippine shipping enterprise accredited with the MARINA
- Vessel must be registered and operated under the Philippine Flag
- Must comply with following age requirements:

Type of Vessel Maximum Age from Original Date of Launching

Tankers 10 years

High-speed Craft 5 years

Passenger/Cargo 15 years

The age of the vessel shall be reckoned from the ship's date of launching based on the Builder's Certificate or Certificate of Vessel Registry.

- Tankers, High-speed Craft, RORO Vessels serving primary routes and Passenger/Cargo vessels must have gross weight of 150 GT and above.

- Tankers must be double-hulled.

RORO operator/enterprise serving missionary routes, as indicated in the Certificate of Public Convenience (CPC) issued by MARINA, may qualify for pioneer status.

**(b) Overseas shipping**

The following are the qualifications for registration:

- Must be a Philippine shipping enterprise accredited with the MARINA
- Vessel must be registered and operated under the Philippine Flag
- Vessels must be at least 1,000 GT and must not be more than fifteen (15) years old

Acquisition of brand new vessels may qualify for pioneer status.

Acquisition of additional vessel/s may be registered as new project.

Lease or charter of foreign-owned vessel with option to purchase may be allowed.

Pure lease or bareboat charter may be allowed provided the lease contract is for a minimum of one (1) year; Provided further, that any replacement of vessels shall be covered by the enterprise's existing registration involving the leased vessel, which shall be valid for at least one (1) year.

All vessels must be seaworthy and must obtain valid

	<p>Class and Statutory Certificates as required by MARINA.</p> <p>Modernization of ships may be allowed with entitlement to ITH limited to investments in safety and navigation devices and equipment. All applications for registration must be endorsed by the MARINA.</p> <p><b>(3) Mass Rail Transport</b> This covers mass rail transport system for passengers and cargoes in line with the transport development plans and programs of the Department of Transportation and Communications (DOTC).</p> <p><b>b. Water Supply and/or Distribution</b></p> <p>This covers the supply and/or distribution of water. Supply of water shall be limited to supply of treated bulk water for commercial purposes.</p> <p>Distribution activity must involve extraction of water, treatment and installation of a piping network that includes water main service pipelines and flow metering systems. Applicants must submit a copy of its Water Permit or Certificate of Public Convenience (CPC) or its equivalent, whichever is applicable. Projects involving any of the foregoing areas of water operations dedicated to a particular industrial estate, industrial community, or subdivision are not qualified for registration under this listing.</p> <p><b>c. Logistics</b></p> <p>This covers ports, terminals (passenger/intermodal terminals, cargo terminals/container yards, LNG/CNG storage terminals, natural gas refueling stations and charging stations for electric vehicles), warehouses and relocation of oil terminals.</p> <p><b>(1) Ports</b> This covers the development and operation of airports and seaports. All applications for registration must be endorsed by the CAAP or the Philippine Ports Authority (PPA), whichever is applicable.</p> <p><b>(2) Terminals</b></p> <p><b>(a) Passenger/Intermodal terminals</b> The following are the qualifications for registration:</p> <ul style="list-style-type: none"> <li>• Must cater to shipping lines or airlines and/or different land transportation systems (rail system, buses, taxis, etc.);</li> <li>• Must have new facilities with parking, comfort</li> </ul>
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	<p>rooms, ticketing and reservation office, air-conditioned waiting area and provide shuttle services; and</p> <ul style="list-style-type: none"><li>• Must have a system of ingress and egress to prevent traffic buildup/obstruction of thoroughfares on a 24-hour basis as certified by DOTC, Metropolitan Manila Development Authority (MMDA) and/or other concerned agency.</li></ul> <p><b>(b) Cargo terminals/Container yards</b></p> <p>The following are the qualifications for registration:</p> <ul style="list-style-type: none"><li>• Must have new facilities; and</li><li>• Must have a system of ingress and egress to prevent traffic buildup/obstruction of thoroughfares on a 24-hour basis as certified by DOTC, MMDA and/or other concerned agency.</li></ul> <p><b>(c) LNG/CNG storage terminals</b></p> <p>The following are the qualifications for registration:</p> <ul style="list-style-type: none"><li>• Must have new facilities;</li><li>• Must cater to power plants, industrial plants, shipping vessels or land transport; and</li><li>• Must cater to at least one (1) clientele, other than the proponent's own business.</li></ul> <p>Prior to start of commercial operation, the registered enterprise must submit a copy of its Permit to Operate issued by the DOE.</p> <p><b>(d) Natural gas refueling stations</b></p> <p>This covers the establishment and operation of natural gas refueling station and related infrastructures and facilities in accordance with relevant Philippine National Standard (PNS).</p> <p>Foreign-owned corporations must comply with the Retail Trade Law (R.A. No. 8762).</p> <p>Prior to start of commercial operation, the registered enterprise must submit a copy of its Permit to Operate issued by the DOE.</p> <p><b>(e) Charging stations for electric vehicles</b></p> <p>This covers the establishment of charging stations for electric vehicles. The charging stations could refer to a 'service station' designed to simultaneously fast charge multiple vehicles similar to gasoline/diesel stations or a network of at least charging stands.</p> <p>All applications for registration must be endorsed by</p>
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concerned agency.

**(3) Warehouses**

This covers the establishment and operation of IT-enabled and automated warehousing facilities.

xxx

**(4) Relocation and putting up of a new oil terminal**

Projects that cost at least PhP1 billion may be granted pioneer status but with nonpioneer incentives.

All applications for registration must be endorsed by the DOE.

All applications for registration must show such project's compliance with appropriate land use/zone plans including safety and security measures prescribed by the local government unit (LGU)/agency that approved the same.

**d. Waste Management Facilities**

This covers the establishment of toxic and hazardous waste (THW) treatment facilities.

The following are the qualifications for registration:

- Must involve treatment, storage and disposal (TSD)
- Must be capable of handling THW
- Must handle only locally-generated wastes.

Prior to start of commercial operation, the registered enterprise must submit a copy of its TSD Registration Certificate issued by the Environmental Management Bureau (EMB) of the DENR. If handling radioactive wastes, the registered enterprise must submit a License to Operate a Radioactive Waste Management Facility from the Philippine Nuclear Research Institute (PNRI) of the Department of Science and Technology (DOST) in addition to the TSD Registration Certificate.

**e. Physical Infrastructure**

This covers tollways, railways and telecommunication facilities.

**(1) Tollways and railways**

This covers the development, including rehabilitation, upgrading, and/or expansion, and/or operation of tollways and railways.

Upgrading of existing physical infrastructure may be registered as a new project provided that the cost of

	<p>upgrading already approximates at least 90% of the prevailing cost of constructing a new physical infrastructure, as certified by the concerned agency.</p> <p>If the cost of upgrading the physical infrastructure is less than 90% of the prevailing cost of constructing a new physical infrastructure, the project may be registered as a –Pioneer status with non-pioneer incentives” xxx</p> <p>For projects that will involve the development and operation of physical infrastructure to be undertaken by separate entities, both the developer and operator may qualify for registration. However, the developer may be entitled only to incentive on capital equipment directly needed for the operation of the physical infrastructure.</p> <p><b>(2) Telecommunication infrastructure</b></p> <p>This also covers the establishment of new telecommunications infrastructure as endorsed by National Telecommunications Commission (NTC). Projects that cost at least the Philippine Peso equivalent of US\$100 million may be granted pioneer status but with non-pioneer incentives.</p> <p><b>f. Pipeline Projects for Oil and Gas</b></p> <p>This covers the establishment of a new pipeline facility for transport of petroleum products and natural gas, petrochemical, and similar products.</p> <p>Prior to start of commercial operation, the registered enterprise must submit a copy of its Permit to Operate issued by the DOE.</p>
<p><b>8. Research and Development</b></p> <p>This covers R&amp;D activities and the establishment of research/ testing laboratories, Centers of Excellence (COE) and technical vocational education and training institutions.</p>	<p><b>7. Research and Development</b></p> <p>This covers R&amp;D activities and the establishment of testing laboratories, Centers of Excellence (COE) and technical vocational education and training institutions.</p> <p><b>a. Research and Development</b></p> <p>This covers all R &amp; D activities including the establishment of testing laboratories (e.g., for pharmaceuticals, electronics, construction, etc.), and Clinical Research Organization (CRO) that will conduct clinical trials. The registered CRO must submit a copy of Permit for Clinical Investigational Use (PCIU) issued by Food and Drugs Administration (FDA) before the conduct of each clinical trial.</p> <p>Applications for registration must be endorsed by the DOST or other concerned agency, when applicable.</p>

	<p><b>b. Center of Excellence (COE)</b></p> <p>This covers the establishment of entrepreneurial, technology, business incubation centers, common service facilities, and manufacturing, service and agribusiness entities including those locating in the premises of state universities and colleges (SUCs) outside Metro Manila and with a special arrangement with the SUC on the development of skills of the students.</p> <p>Projects that cost at least the Philippine Peso equivalent of US\$ 2 million may be granted pioneer status but with non-pioneer incentives.</p> <p><b>c. Training/Learning Institutions</b></p> <p>This covers the establishment of institutions specializing in the technical vocational education and training (e.g., engineering, culinary arts, etc.) in support of the activities listed in this IPP.</p> <p>–Pioneer status with non-pioneer incentives” means that projects may be granted four (4) years of Income Tax Holiday (ITH).</p> <p>The following are the requirements for registration:</p> <ul style="list-style-type: none"> <li>• The curriculum must be approved by either the Technical Education and Skills Development Authority (TESDA) for training courses or Commission on Higher Education (CHED) for degree courses or other concerned government agencies/authority and endorsed by the appropriate industry association.</li> <li>• The registered education/training/learning institutions must provide training laboratories and equipment, if applicable.</li> </ul>
<p><b>8. Green Projects</b></p> <p>This covers the manufacture/assembly of goods and the establishment of energy efficiency-related facilities (such district cooling systems), where either utilization of which would significantly lead to either the efficient use of energy, natural resources or raw materials; minimize/prevent pollution; or reduce greenhouse gas emissions.</p>	<p><b>8. Green Projects</b></p> <p>This covers the manufacture/assembly of goods/products and equipment, the utilization of which would lead to either the efficient use of energy, natural resources or raw materials; minimize/prevent pollution; or reduce greenhouse gas emissions.</p> <p>To qualify for registration, assembly operations must be integrated with the manufacture of at least one part/component for use in the assembly. Green Projects covers only projects other than those already listed in this IPP.</p>
<p><b>10. Motor Vehicles</b></p> <p>This covers the manufacture/assembly of motor vehicles, including alternative fuel vehicles (AFVs) and electric vehicles (EVs)</p>	<p><b>9. Motor Vehicles</b></p> <p>This covers the manufacture/assembly of motor vehicles, including alternative fuel vehicles and electric vehicles, and manufacture of motor vehicle parts and components.</p>

but excluding 2-stroke motorcycles, and manufacture of motor vehicles parts and components.

**a. Manufacture/assembly of motor vehicles**

The project shall involve the manufacture/assembly of brand new motor vehicle units (excluding 2-stroke motorcycles) that are compliant with the prevailing national standards and regulations on the registration, use and operation of motor vehicles.

Any of the following may qualify as new:

1. Projects that will involve the establishment of a factory complete with production machinery/equipment and facilities such as welding section, assembly section, metal treatment section, painting section, testing facility for road worthiness and emission standard compliance, and pre-delivery inspection section.

2. Projects of an existing motor vehicle manufacturer/assembler that involves the production of a new model or a full model change shall be considered new project, provided there is new investments of at least PhP100 million for four-wheel vehicles and PhP16 million for motorcycles in the acquisition of machinery and equipment, and manufacture of parts and components, otherwise the project will be considered expansion.

Any of the following may qualify for pioneer status:

- Projects covered under paragraph a.1 above for manufacture/assembly of passenger cars and/or commercial vehicles with investments of at least US\$50 million for the manufacture/assembly of motorcycle with investments of at least US\$4 million.

Investments may include the cost of the acquisition of an existing assets or facilities.

- Projects covered under paragraph a.2 above with investments of at least US\$7 million (with non-pioneer incentives) or US\$20 million (with pioneer incentives) for passenger cars and/or commercial vehicles, US\$1.5 million for motorcycles

- Projects on the manufacture/assembly of alternative fuel vehicle and electric vehicles.

Alternative fuel vehicles include the following:

- Hybrid vehicles are vehicles that run on electric batteries and gasoline/diesel/other fuels.

- Electric vehicles are vehicles that run solely on electric power.

- Flexible-fuel vehicles are vehicles that run on gasoline/diesel in combination with alternative fuel such as but not limited to:

- o Bioethanol vehicles that run on gasoline and a minimum ethanol

	<p>content/blend of at least 20%</p> <ul style="list-style-type: none"> <li>o Biodiesel vehicles that run on diesel and a minimum biodiesel blend/content of at least 5%</li> <li>o Compressed Natural Gas Vehicles are vehicles that run on Compressed Natural Gas (CNG)</li> <li>o Other vehicles powered by LPG, fuel cell and other alternative fuels.</li> </ul> <p>– Manufacture/assembly of brand new three or four-wheel Philippine utility vehicles for cargos and/or passengers</p> <p><b>b. Manufacture of parts and components</b>  This covers the manufacture of motor vehicle parts and components either as original equipment manufacturer (OEM) or after-market products.</p> <p>Any of the following may qualify for pioneer status:</p> <ul style="list-style-type: none"> <li>• Manufacture of engines and transmissions</li> <li>• Manufacture of tool &amp; die to produce chassis and engine</li> <li>• Establishment of common facility for heat treatment, forging, stamping of motor vehicle parts and components</li> <li>• Production of electric motors, batteries other than lead acid batteries, controller assembly and battery charger for electric vehicles</li> </ul>
<p><b>11. Strategic Projects<sup>2</sup></b></p> <p>This covers projects that exhibit very high social economic returns that will significantly contribute to the country's economic development</p>	<p><b>11. Strategic Projects</b></p> <p>This covers projects that exhibit very high social economic returns that will significantly contribute to the country's economic development. The social economic returns of the proposed project shall be measured in terms of the following:</p> <ul style="list-style-type: none"> <li>• Consumer-based benefits (e.g., price, availability, quality)</li> <li>• Forward and backward linkages with existing industries in the country</li> <li>• Generation of at least 500 direct employment or use of highly-specialized or advanced technology</li> <li>• Generation of at least US\$1 million in foreign exchange savings, when applicable</li> <li>• Stature of the proponent as a global player, when applicable</li> </ul> <p>Notwithstanding the preceding paragraphs, manufacture of packaging products that will involve product or process innovation which shall lead to significant improvements in quality and value of the packaged products shall also be deemed as "Strategic Project".</p> <p>Projects that cost at least the Philippine Peso equivalent of US\$500 million may be granted pioneer status but with non-pioneer incentives. Approval of projects shall be subject to the concurrence of National Economic Development Authority (NEDA) and Department of Finance (DOF).</p>

<p><b>12. Hospital/Medical Services</b> This covers the establishment and operation of primary and secondary hospitals.</p>	
<p><b>13. Disaster Prevention, Mitigation and Recovery Projects</b></p> <p>This covers projects that will prevent or mitigate adverse impacts of calamities and disasters (e.g., installation of flood control systems, installation of early warning systems for typhoons, earthquake occurrences, tsunami, volcanic eruptions, dikes, etc.).</p> <p>This also covers projects to rehabilitate areas affected by calamities and disasters (e.g., rebuilding of roads and bridges after earthquakes/floodings, volcanic eruptions, oil spill clean-up, etc.).</p> <p>This further covers training for disaster preparedness, mitigation or recovery/rehabilitation/reconstruction.</p>	<p><b>13. Disaster Prevention, Mitigation and Recovery Projects</b></p> <p><b>a.</b> This covers projects that will prevent or mitigate adverse impacts of calamities and disasters, which may include installation of flood control systems; installation of early warning systems for typhoons, earthquake occurrences, tsunami and volcanic eruptions; manufacture of goods critical to disaster management; construction of dikes; and salvaging operations. Salvaging pertains to the rescue of a seriously damaged/incapacitated ship that may include refloating and towing of the ship to a safe place. It also pertains to the removal of a sunken or wrecked ship, derelict or hazards including cargoes thereof.</p> <p>Only income from salvaging operations (excluding income from artifacts/treasure recovered from sunken vessels/ships) may be entitled to ITH.</p> <p><b>b.</b> This also covers projects to rehabilitate areas affected by calamities and disasters, which may include rebuilding of roads and bridges after earthquakes/flooding, volcanic eruptions, and oil spill clean-up.</p> <p>For projects that will involve the development and operation of physical infrastructure to be undertaken by separate entities, both the developer and operator may qualify for registration. However, the developer may be entitled only to incentive on capital equipment directly needed for the operation of the physical infrastructure.</p> <p><b>c.</b> This further covers training for disaster preparedness, mitigation or recovery/rehabilitation/reconstruction. All applications for registration must be endorsed by concerned agency.</p> <p>Disaster Prevention, Mitigation and Recovery Projects covers only projects other than those already listed in this IPP.</p>
<p><b>II. MANDATORY LIST</b> This covers activities that require their inclusion in the IPP as provided for under existing laws.</p>	
<p><b>1. Industrial Tree Plantation<sup>3</sup></b> This covers extensive plantation of forest land of tree crops (except fruit trees) for commercial and industrial purposes.</p>	<p><b>A. Revised Forestry Code of the Philippines (P.D. No. 705)</b> This covers extensive plantation of forest land of tree crops, except fruit trees, for commercial and industrial purposes. Tree crops include timber and non-timber species such as rubber, bamboo, rattan, etc. (excluding fruit trees) for commercial and industrial purposes.</p>

	<p>New project refers to the development of any public or private land to plantation of timber and non-timber species to supply the raw material requirements of forest-based industries. It also includes plantation with existing tree crops, which have not yet reached commercial harvest.</p> <p>Each Industrial Tree Plantation (ITP) project must have an approved and issued forest management/development agreement such as:</p> <ul style="list-style-type: none"> <li>• Socialized Industrial Forest Management Agreement (SIFMA)</li> <li>• Industrial Forest Management Agreement (IFMA)</li> <li>• Private Forest Development Agreement (PFDA)</li> <li>• Community-based Forest Management Agreement (CBFMA)</li> </ul>
<p><b>2. Exploration, Mining, Quarrying and Processing of Minerals<sup>4</sup></b></p> <p>This covers the exploration and development of mineral resources, mining/quarrying and processing of metallic and non-metallic minerals.</p>	<p><b>B. Philippine Mining Act of 1995 (R.A. No. 7942)</b></p> <p>This covers the exploration and development of mineral resources, mining/quarrying and processing of metallic and non-metallic minerals. Riverbed operations and cave mining shall not qualify for registration. All projects must have a mine life of at least ten (10) years.</p> <p>Exploration of mineral resources including those covered by exploration permits or mineral agreements under valid and existing Exploration Period may qualify for pioneer status.</p> <p>Not all projects under this listing are entitled to ITH.</p> <p>All projects must locate outside the National Capital Region and must have the necessary permits/licenses from the concerned agency.</p>
<p><b>3. Publication or Printing of Books/ Textbooks<sup>5</sup></b></p> <p>This covers printing, re-printing, publication and content development of books or textbooks.</p>	<p><b>C. Book Publishing Industry Development Act (R.A. No. 8047)</b></p> <p>This covers printing, re-printing, publication and content development of books or textbooks.</p> <p>Book is defined as a printed non-periodical publication of at least forty-eight (48) pages, exclusive of cover pages, published in the country and made available to the public. Textbook is an exposition of generally accepted principles in one subject, intended primarily as a basis of instruction in a classroom or pupil-book-teacher situation. Content development of books consists of the following:</p> <ol style="list-style-type: none"> <li>1. Development of new technologies directly related to book printing or publishing, such as but not limited to digitization, electronic books (E-books), internet-based archiving and retrieval systems, electronic content creation and development systems, educational and/or "how-to" audio-visual</li> </ol>

	<p>presentations with or without interactive segments, and the like</p> <p>2. Research and development activities directly related to book printing or publishing, such as but not limited to translation, editing, analysis and/or interpretation of text and materials into local dialects or adaptation/application to the domestic setting</p> <p>Application for registration shall be on a per book or title basis and must be endorsed by the National Book Development Board (NBDB).</p>
<p><b>4. Refining, Storage, Marketing and Distribution of Petroleum Products<sup>6</sup></b> This covers refining, storage, distribution, and marketing of petroleum products.</p>	<p><b>D. Downstream Oil Industry Deregulation Act of 1998 (R.A. No. 8479)</b></p> <p>This covers refining, storage, distribution, and marketing of petroleum products.</p> <p><b>Oil refining</b> refers to the manufacture of all petroleum products as defined under R.A. No. 8479 through distillation, conversion and treatment of crude oil and other naturally occurring petroleum hydrocarbons. This may include expansion, modification and modernization of a refinery, resulting in an increase in existing volume of production, and/or improvement in the quality of petroleum products in conformance with the PNS, the Clean Air Act, and other applicable laws and regulations.</p> <p><b>Storage refers to the business of receiving/discharging</b> and storing petroleum crudes and/or products of others for compensation or profit.</p> <p><b>Distribution</b> refers to bunkering and fuels shipping and transport. Fuels shipping and transport cover shipping and transport through land such as tank trucks, lorries and pipeline and tankers, and barges for the fuels to get to the points or areas where they are needed.</p> <p>Bunkering covers the activity of selling fuel for direct use by a vessel, usually for water and air transport, through a smaller transport vessel. Distribution projects are limited to those utilizing brand new equipment and double-hulled vessels.</p> <p><b>Marketing</b> covers the following:</p> <p>1. Retailing of petroleum products refers to selling of petroleum products or fuels in retail generally directed to the end users, through dispensing pumps in gasoline stations or in packaged containers such as drums for the liquid fuels or metal cylinders for LPG that are compliant with PNS. This includes the establishment and operation of gasoline stations and LPG retailing.</p>

	<p>For gasoline retailing stations, except those locating in LDAs listed in this IPP, the applicant shall be required to invest a minimum capital of PhP10 million per station, excluding land, or such amount as may be determined jointly by BOI and DOE for augmentation purposes, as the need arises; Provided, that foreign retailers shall comply with the requirements provided under R.A. No. 8762, otherwise known as the Retail Trade Liberalization Law, and its implementing rules and regulations.</p> <p>2. Fuels bulk marketing refers to the selling of petroleum products or fuels in wholesale through tank trucks, lorries, double-hulled vessels/tankers, barges or pipelines, which may be sourced from one's own storage facilities. Investment shall include underground tanks and other equipment intended for fuels retailing through outlets such as gasoline stations and LPG outlets.</p> <p>3. A combination of storage, distribution, and marketing activities. For storage, marketing and distribution, only investments of new industry participants may be entitled to incentives. The applicant shall submit an endorsement from the DOE certifying that the applicant is a new industry participant with new investments.</p> <p>For storage, marketing and distribution, petroleum products excluding liquefied petroleum gas (LPG), shall be sourced from the new industry participants as defined under R.A. No. 8479, except in cases of emergency supply situation. Blending of petroleum products alone may only be entitled to capital equipment and other non-fiscal incentives.</p> <p>Applicant enterprises shall elect to be governed by the provisions of E.O. No. 226 or R.A. No. 8479 at the time of their application for registration, provided that such election once made shall be final.</p>
<p><b>5. Ecological Solid Waste Management'</b> This covers the establishment of waste recycling facilities.</p>	<p><b>E. Ecological Solid Waste Management Act of 2000 (R.A. No. 9003)</b> This covers the establishment of waste recycling facilities whether or not integrated with manufacturing facility using as inputs 100% locally generated solid waste materials or scraps from the recycling facility to produce semi-finished or finished product.</p> <p style="text-align: center;">xxx</p> <p>All applications for registration must be endorsed by the National Solid Waste Management Commission (NSWMC).</p>

<p><b>6. Clean Water Projects<sup>8</sup></b></p> <p>This covers the establishment of wastewater treatment facilities, and sewage collection integrated with treatment facilities and the adoption of water pollution control technology, cleaner production and waste minimization.</p>	<p><b>F. Philippine Clean Water Act of 2004 (R.A. No. 9275)</b></p> <p>This covers the establishment of wastewater treatment facilities and sewage collection integrated with treatment facilities and the adoption of water pollution control technology, cleaner production and waste minimization undertaken through BOT or non-BOT schemes. Activities such as 5S and Good Housekeeping are not qualified for registration.</p> <p style="text-align: center;">xxx</p> <p>Projects adopting water pollution control technology, cleaner production and waste minimization are only entitled to capital equipment incentive.</p> <p>All applications for registration must be endorsed by the DENR, the Laguna Lake Development Authority (LLDA) or other concerned agency.</p> <p>Projects that will employ new or proprietary technologies shall submit an Environmental Technology Verification (ETV) issued by the DOST.</p>
<p><b>7. Rehabilitation, Self-Development and Self-Reliance of Persons with Disability<sup>9</sup></b></p> <p>This covers the manufacture of technical aids and appliances for the use and/or rehabilitation of persons with disability, and the establishment of special schools, homes, residential communities or retirement villages solely to suit the needs and requirements of persons with disability.</p>	<p><b>G. Magna Carta for Persons with Disability (R.A. No. 7277)</b></p> <p>This covers the manufacture of technical aids and appliances for the use and/or rehabilitation of persons with disability, and the establishment of special schools, homes, residential communities or retirement villages solely to suit the needs and requirements of persons with disability.</p> <p>Persons with disability are those suffering from restriction or different abilities, as result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being.</p> <p>Manufacturing of technical aids and appliances used by persons with disability includes but is not limited to the following:</p> <ul style="list-style-type: none"> <li>• Walk-in baths designed for persons with disabilities</li> <li>• Commode chairs</li> <li>• Braille books</li> <li>• Hoists and lifting chairs designed for incapacitated people, including stair lifts</li> <li>• Wheelchairs, scooters and automobiles using special controls or assistive technology designed for persons with disabilities <ul style="list-style-type: none"> <li>• Hearing-aids</li> <li>• Artificial limbs, orthotics, prosthetics and orthopedic braces</li> <li>• Automatic/mechanical lifts to be attached to motor vehicle</li> </ul> </li> </ul>

	<p>All applications for registration must be endorsed by the Department of Social Welfare and Development (DSWD).</p>
<p><b>8. Renewable Energy<sup>10</sup></b></p> <p>This covers developers of renewable energy facilities, including hybrid systems. This also covers manufacturers, fabricators and suppliers of locally-produced renewable energy (RE) equipment and components.</p>	<p><b>H. Renewable Energy (RE) Act of 2008 (R.A. No. 9513)</b></p> <p>This covers RE developers of renewable energy facilities, including hybrid systems, and manufacturers, fabricators and suppliers of locally produced RE equipment and components. This also covers processing of feedstocks/biomass for use as biofuel. Applications for registration must submit DOE Certificate of Registration, Certificate of Accreditation or DOE endorsement, whichever is applicable.</p> <p>Applicant enterprises shall elect to be governed by the provisions of E.O. No. 226 or R.A. No.9513 at the time of their application for registration.</p>
<p><b>9. Tourism<sup>11</sup></b></p> <p>This covers tourism enterprises that are outside the tourism enterprise zones (TEZs) and are engaged in the following:</p> <ol style="list-style-type: none"> <li>1. Tourist transport services whether for land, sea and air transport for tourist use;</li> <li>2. Establishment and operation of: <ul style="list-style-type: none"> <li>• Accommodation establishments such as but not limited to hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes for homestay, ecolodges, condotels, serviced apartments, and bed and breakfast facilities;</li> <li>• Convention and exhibition facilities or “meetings, incentives, conventions and exhibition” (MICE) facilities;</li> <li>• Amusement parks;</li> <li>• Adventure and ecotourism facilities;</li> <li>• Sports facilities and recreational centers;</li> <li>• Theme parks;</li> <li>• Health and wellness facilities such as but not limited to spas, tertiary hospitals, and ambulatory clinics;</li> <li>• Agri-tourism farms and facilities; and</li> <li>• Tourism training centers and institutes.</li> </ul> </li> <li>3. Development of retirement villages.</li> <li>4. Restoration/ preservation and operation of historical shrines, landmarks and structures.</li> </ol>	<p><b>10. Tourism</b></p> <p>This covers tourism enterprises that are outside the tourism enterprise zones (TEZs) and are engaged in the following:</p> <ol style="list-style-type: none"> <li>a. Tourist transport services whether for land, sea and air transport for tourist use</li> <li>b. Establishment and operation of: <ul style="list-style-type: none"> <li>– Accommodation establishments such as but not limited to hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes for homestay, ecolodges, condotels, serviced apartments, and bed and breakfast facilities;</li> <li>– Convention and exhibition facilities or “meetings, incentives, conventions and exhibition” (MICE) facilities;</li> <li>– Amusement parks;</li> <li>– Adventure and ecotourism facilities;</li> <li>– Sports facilities and recreational centers;</li> <li>– Theme parks;</li> <li>– Health and wellness facilities such as but not limited to spas, tertiary hospitals, and ambulatory clinics;</li> <li>– Agri-tourism farms and facilities; and</li> <li>– Tourism training centers and institute</li> </ul> </li> <li>c. Development of retirement villages</li> </ol> <p><b>a. Tourist transport</b></p> <p>This covers transport services whether for land, water and air transport for tourist use.</p> <p>Land transport covers the operation of brand new, world-class buses and/or minibuses/coasters. The quantity or number of units of vehicles that may be allowed shall be determined based on the number of tourist arrivals in the area or the ratio of hotel/resort</p>

	<p>facilities/rooms.  Tourist transport operators must have garage, hangar or berthing/docking facilities.</p> <p>Applications for registration of water and air transport operators must be endorsed by MARINA or CAAP, respectively.</p> <p>Registered tourist land transport operators must submit a copy of CPC.</p> <p><b>b. Tourism-related facilities</b>  <b>(1) Accommodation facilities</b>  Condotel/apartment hotel/serviced apartment, must cater to tourists/guests to qualify for registration. Each unit must have fully equipped kitchen and laundry facilities.</p> <p>For modernization projects, replacement of carpets, pillows, mattresses and other similar items shall be excluded from the computation of the ITH rate of exemption.</p> <p>For hotels and resorts, the quantity or number of units of buses and/or minibuses/coasters that may be allowed shall be determined based on the number of tourist arrivals in the area or the ratio of hotel/resort facilities/rooms.</p> <p>Any of the following may qualify for pioneer status:</p> <ul style="list-style-type: none"> <li>• Hotel projects/apartment hotels/serviced apartments/condotels classified as first class or deluxe by the Department of Tourism (DOT) and costing at least the Philippine equivalent of US\$100,000/room</li> <li>• Resort projects classified as “AAA” by the DOT and with project cost of at least the Philippine Peso equivalent of US\$10 million</li> <li>• Projects located in LDAs</li> <li>• Modernization of hotels classified as first class or deluxe by the DOT with a project cost of at least the Philippine Peso equivalent of US\$10,000/room</li> <li>• Amusement parks/ theme parks with minimum project cost of the Philippine Peso equivalent of US\$10 million involving the development of sites or attractions considered as novel in the Philippines</li> <li>• Adventure and ecotourism facilities/agri-tourism farms and facilities with a minimum lot area of twenty (20) hectares</li> </ul> <p><b>(2) Health and Wellness</b>  <b>(a) Health Spa</b>  This covers the establishment and operation of destination spa, resort/hotel spa, and traditional healing and therapeutic centers, e.g., Philippine “hilot”, “<del>dag</del>dagay”, “<del>ventossa</del>”, etc.</p>
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	<p>Projects that cost at least the Philippine Peso equivalent of US\$20 million may be granted pioneer status but with non-pioneer incentives.</p> <p><b>(b) Tertiary Hospital</b>  This covers tertiary hospitals with a minimum of (fifty) 50 rooms (suites and private rooms only) and with a minimum project cost of at least the Philippine Peso Equivalent of US\$10 million.</p> <p><b>(c) Ambulatory Clinics</b>  This covers services such as elective (non-emergency) surgical treatment whether requiring local, regional or general anesthesia of out-patients whose recovery, under normal and routine circumstances, will not require in-patient care.</p> <p>This includes comprehensive ophthalmologic surgery, dermatology, cosmetic procedure, plastic and reconstructive surgery, cosmetic dentistry, and medical care (diagnosis, observation, treatment and rehabilitation).</p> <p>Prior to start of commercial operation, the registered enterprise must submit a copy of its License to Operate from the Department of Health (DOH).</p> <p><b>(3) Tourism Training Centers and Institutes</b>  The following are the requirements for registration:</p> <ul style="list-style-type: none"> <li>• The curriculum must be endorsed by the appropriate industry association and approved by either the TESDA for training courses or CHED for degree courses or other concerned government agencies/authority.</li> <li>• The registered education/training/learning institutions must provide training laboratories/On-the-Job facilities and equipment.</li> </ul> <p>Applications must be endorsed by DOT.  DOT accreditation must be submitted prior to ITH availment. Only income derived from tourism-related activities shall be entitled to ITH.  The option to avail of incentives provided under R.A. No. 9593 shall be governed by the rules and regulations to be jointly promulgated by the BOI and DOT. Until the effectivity thereof, E.O. No. 226 and its rules and regulations shall apply.</p> <p><b>c. Retirement Village</b>  This refers to areas suitable for development that will ensure healthful, safe and environmentally-sound community life with prescribed carrying capacities of village facilities and activities such as but not limited to accommodation, food, recreation, medical/health care needs, security and other amenities/facilities, and provided with roads, power and water supply systems, drainage and sewerage systems and other infrastructures. The village should be under a unified and continuous</p>
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	<p>management.</p> <p>The following are the qualifications for registration:</p> <ul style="list-style-type: none"> <li>• A retirement village must have a minimum of four (4) hectares of contiguous land</li> <li>• Project cost must be at least the Philippine Peso equivalent of US\$10 million</li> </ul> <p>Retirement villages with a minimum area of twenty (20) hectares may qualify for pioneer status.</p> <p>Locators engaged in the activities listed in the IPP that are related to retirement business may be registered as separate activity.</p> <p>Applications must be endorsed by the Philippine Retirement Authority (PRA). PRA accreditation must be submitted prior to ITH availment.</p>
<p><b>IV. ARMM LIST</b></p> <p>The ARMM List covers priority activities that have been identified by the Regional Board of Investments of the ARMM (RBOI-ARMM) in accordance with E.O. No. 458. The RBOI-ARMM may also register and administer incentives to activities in this IPP for projects locating in the ARMM.</p>	
<p><b>A. Export Activities</b></p> <ol style="list-style-type: none"> <li>1. Export Trader and Service Exporters</li> <li>2. Support Activities for Exporters</li> </ol>	
<p><b>B. Agriculture, Agribusiness/ Aquaculture &amp; Fishery</b></p> <p>This covers the production and processing of agricultural and fishery products (production of “Halal” meat and foods), vegetable oils, food crops, integrated coconut processing and plantation, activated carbon, production of beverage crops and plantation, seaweeds production and processing, fruit processing, aquaculture (fish production and processing), young/sweet corn production, potato and sweet potato plantation/processing, cutflower production/processing, abaca plantation/processing, oil palm plantation/processing/refining and germinated oil palm seeds, feeds production, jatropha plantation/processing, sugarcane plantation/processing and refineries, quality seed and seedlings of fruit trees and other planting materials propagated asexually or by tissue culture, pearl culture/processing, production of</p>	

<p>livestock and poultry that includes processing, crocodile farming and processing, sericulture, feeds production and production of plantation crops and other pharmaceuticals, medical herbs/essential oil plants, biomass, rubber, carrageenan, mangosteen and moringa.</p>	
<p><b>C. Basic Industries</b></p> <p>This covers the production of pharmaceuticals such as antibiotics and medical devices, textile and textile products, inorganic and organic fertilizers using solid wastes materials, mining exploration and development of mineral resources (mining and quarrying of metallic and non-metallic minerals which includes small scale as defined under P. D. 1899 but to exclude river beds in operations and processing of minerals such as beneficiation and other metallurgical methods) and cement production of at least 1.0 million MTPY capacity (clinker based).</p>	
<p><b>D. Consumer Manufactures</b></p> <p>This covers processing of rubber products to be integrated with plantation and leather products.</p>	
<p><b>E. Infrastructure and Services</b></p> <p>This covers public utilities with developmental route of the five provinces and one city of ARMM and other adjacent cities and provinces such as common carriers, electric transmission/distribution, water supply facilities/waterways and sewerage systems, buses/cargo trucks, other specialized mass transport systems, power generation like hydro power, geothermal and natural gas, and telecommunications with international gateways.</p>	
<p><b>F. Industrial Service Facilities</b></p> <p>This covers testing and quality control laboratories, training and demonstration centers, tool shops and similar facilities, metal casting, metal working, furniture, ceramics and food processing,</p>	

<p>petrochemical complex and industrial gases.</p>	
<p><b>G. Engineering Industries</b></p> <p>This covers engineering products, electronics and telecommunication products, fabrication of construction materials and hydropower plant.</p>	
<p><b>H. Logistics</b></p> <p>This covers the transportation of cargoes and/or passengers (air, sea and/or land) and freight/cargo forwarding.</p>	
<p><b>I. BIMP – EAGA Trade and Investment Enterprises</b></p> <p>This covers enterprises located or have their base of operation in the BIMP – EAGA, namely, Brunei; Sabah and Sarawak in Malaysia; Maluku, Sulawesi, Kalimantan and Iringaya in Indonesia; and Mindanao and Palawan in the Philippines, who shall invest and engage in economic activity in the ARMM including the age old Traditional Barter Trading System in the BIMP – EAGA.</p>	
<p><b>J. Tourism</b></p> <p>This covers the establishment of tourism estate subject to guidelines developed jointly by RBOI-ARMM and the Department of Tourism – ARMM, tourist accommodation facilities, tourist transport facilities and development of retirement villages which shall include health and medical facilities including amenities required by the Philippine Retirement Authority (PRA) and subject to the guidelines to be approved by RBOI-ARMM in consultation with the PRA, the Department of Health (DOH), the Regional Planning and Development Office (RPDO) and other concerned agencies.</p>	
<p><b>K. Health and Education Services and Facilities</b></p> <p>This covers the establishment of private hospitals, medical clinics, wellness centers, primary education, secondary education, tertiary education (colleges, universities and vocational – technical schools) and ancillary services including any and all health and education related</p>	

investment.	
<p><b>L. Halal Industry</b>  This covers services and the production and processing of products under muslim or islamic law.</p>	
	<p><b>12. PPP Projects</b>  This covers projects under the Public-Private Partnership (PPP) Program of the government.</p> <p>Applications must be endorsed by the PPP Center or other concerned government agency.</p> <p>Approval of projects shall be subject to the concurrence of NEDA and DOF.</p>
	<p><b>II. EXPORT ACTIVITIES</b></p> <p>This covers the production/manufacture of non-traditional export products, services exports, and activities in support of exporters.</p> <p style="text-align: center;">xxx</p>

## ENDNOTES

<sup>1</sup> G.R. No. 162015, March 6, 2006.

<sup>2</sup> Philippine Petroleum Corporation v. Municipality of Pililla, Rizal, G.R. No. 90776, June 3, 1991.

<sup>3</sup> Quezon City and the City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation, G.R. No. 166408, October 6, 2008.

<sup>4</sup> G.R. No. 156052, February 13, 2008.

<sup>5</sup> In addition to Section 234 of the LGC, Sections 276 and 277 of the LGC also provide instances when real property taxes may be condoned by the *sanggunian* concerned and the President under Section 277.

<sup>6</sup> Republic of the Philippines, et. al vs. Hon. Ramon S. Caguioa, G.R. No. 168584, October 15, 2007, where the Supreme Court held as follows:

*Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.*

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*Second. There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.*

*To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.*

*Third. As a general rule, tax exemptions are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.*

*Fourth. A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrevocable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.*

*Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.*

*These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.*

*While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked.*

*Sixth. Whatever right may have been acquired on the basis of the Certificates of Registration and Tax Exemption must yield to the State's valid exercise of police power. It is well to remember that taxes may be made the implement of the police power.*

*It is not difficult to recognize that public welfare and necessity underlie the enactment of R.A. No. 9334. As petitioners point out, the now assailed provision was passed to curb the pernicious practice of some unscrupulous business enterprises inside the SBF of using their tax exemption privileges for smuggling*

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purposes. Smuggling in whatever form is bad enough; it is worse when the same is allegedly perpetrated, condoned or facilitated by enterprises hiding behind the cloak of their tax exemption privileges.

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*Ninth. The feared injurious effects of the imposition of duties, charges and taxes on imported cigars, cigarettes, distilled spirits, fermented liquors and wines on private respondents' businesses cannot possibly outweigh the dire consequences that the non-collection of taxes, not to mention the unabated smuggling inside the SBF, would wreak on the government. Whatever damage would befall private respondents must perforce take a back seat to the pressing need to curb smuggling and raise revenues for governmental functions. (citations omitted; emphasis ours)*

<sup>7</sup> *Supra*, note 1.

<sup>8</sup> *Ibid.*

<sup>9</sup> The Supreme Court decision reads in part, as follows:

*Bayantel's franchise being national in character, the "exemption" thus granted under Section 14 of Rep. Act No. 3259 applies to all its real or personal properties found anywhere within the Philippine archipelago.*

*However, with the LGC's taking effect on January 1, 1992, Bayantel's "exemption" from real estate taxes for properties of whatever kind located within the Metro Manila area was, by force of Section 234 of the Code, supra, expressly withdrawn. But, not long thereafter, however, or on July 20, 1992, Congress passed Rep. Act No. 7633 amending Bayantel's original franchise. Worthy of note is that Section 11 of Rep. Act No. 7633 is a virtual reenactment of the tax provision, i.e., Section 14, supra, of Bayantel's original franchise under Rep. Act No. 3259. Stated otherwise, Section 14 of Rep. Act No. 3259 which was deemed impliedly repealed by Section 234 of the LGC was expressly revived under Section 14 of Rep. Act No. 7633. In concrete terms, the realty tax exemption heretofore enjoyed by Bayantel under its original franchise, but subsequently withdrawn by force of Section 234 of the LGC, has been restored by Section 14 of Rep. Act No. 7633.*

*The Court has taken stock of the fact that by virtue of Section 5, Article X of the 1987 Constitution, 8 local governments are empowered to levy taxes. And pursuant to this constitutional empowerment, juxtaposed with Section 232 9 of the LGC, the Quezon City government enacted in 1993 its local Revenue Code, imposing real property tax on all real properties found within its territorial jurisdiction. And as earlier stated, the City's Revenue Code, just like the LGC, expressly withdrew, under Section 230 thereof, supra, all tax exemption privileges in general.*

*This thus raises the question of whether or not the City's Revenue Code pursuant to which the city treasurer of Quezon City levied real property taxes against Bayantel's real properties located within the City effectively withdrew the tax exemption enjoyed by Bayantel under its franchise, as amended.*

*Bayantel answers the poser in the negative arguing that once again it is only "liable to pay the same taxes, as any other persons or corporations on all its real or personal properties, exclusive of its franchise."*

*Bayantel's posture is well-taken. While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. Xxx.*

X xx.

*Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase "exclusive of this franchise" which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation as an express and realintention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise.*

<sup>10</sup> This law has been superseded by RA 7916 entitled "An Act Providing For The Legal Framework And Mechanisms For The Creation, Operation, Administration, And Coordination Of Special Economic Zones In The Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (PEZA), And For Other Purposes" (PEZA Law, approved February 24, 1995), with the exception of Sections 4,

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8, 17, 18, 19, and 20. (Accesslaw annotations, Philippine Tax Encyclopedia published by CD Asia, Inc.)  
<sup>11</sup> Subject: –Prescribing the Guidelines for the Implementation of Tax Exemption Privileges Under the Local Government Code of 1991”.

<sup>12</sup> BLGF Opinion dated 17 February 2010 relative to City Ordinance No. 2009-06 dated October 29, 2009 of the City of Cabadbaran entitled –An Ordinance Establishing the Local Investment Incentive Code of the City of Cabadbaran”.

<sup>13</sup> BLGF Opinion dated 27 August 1996 rendered upon the request of the Office of the Provincial Treasurer of Agusan del Norte.

<sup>14</sup> G.R. No. 143867, August 22, 2001; see also G.R. No. 143867, March 25, 2003.

<sup>15</sup> In *Luis K. Lokin, Jr. vs. Commission On Elections and the House of Representatives*, respondents. G.R. Nos. 179431-32. June 22, 2010, the Supreme Court held: *The authority to make IRRs in order to carry out an express legislative purpose, or to effect the operation and enforcement of a law is not a power exclusively legislative in character, but is rather administrative in nature. The rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes. The function of promulgating IRRs may be legitimately exercised only for the purpose of carrying out the provisions of a law. The power of administrative agencies is confined to implementing the law or putting it into effect. Corollary to this is that administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation. Indeed, administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution.*

In the case of *AUGUSTO TOLEDO vs. CIVIL SERVICE COMMISSION and COMMISSION ON ELECTIONS*, G.R. Nos. 92646-47, October 4, 1991, the Supreme Court held: *The new Civil Service Commission adopted "rules and regulations for carrying into effect the provisions" of the Civil Service Decree on November 20, 1983. The rules were named, "Civil Service Rules on Personnel Actions and Policies" (CSRPA). Section 22, Rule III of the CSRPA is substantially the same as Section 5, Rule VI of the quondam "Revised Civil Service Rules" and it reads as follows:*

*"SEC. 22. No person shall be appointed, reinstated, or re-employed in the service if he is already 57 years old, unless the President, or the Chief Justice of the Supreme Court, in the case of employees in the Judiciary, determines that he possesses special qualifications urgently needed by the hiring agency."*

xxx.

*Noteworthy, too, is that there is no provision at all in PD 807 dealing in any manner with the appointment, reinstatement or re-employment in the Government service of any person already 57 years or any particular age, for that matter. Again, the provision regarding persons 57 years of age was purely a creation of the Commission, having no reference to any provision in the decree intended to be implemented.*

xxx

*In any event, the provision on 57-year old persons in the Revised Civil Service Rules (under said RA 2260) cannot be accorded validity. As already pointed out, it is entirely a creation of the Civil Service Commission, having no basis in the law itself which it was meant to implement. It cannot be related to or connected with any specific provision of the law which it is meant to carry into effect, such as a requirement, for instance, that age should be reckoned as a factor in the employment or reinstatement of an individual, or a direction that there be a determination of some point in a person's life at which he becomes unemployable, or employable only under specific conditions. It was therefore an unauthorized act of legislation on the part of the Civil Service Commission. It cannot be justified as a valid exercise of its function of promulgating rules and regulations for that function, to repeat, may legitimately be exercised only for the purpose of carrying the provisions of the law into effect; and since there is no prohibition or restriction on the employment of 57-year old persons in the statute or any provision respecting age as a factor in employment — there was nothing to carry into effect through an implementing rule on the matter.*

*The power vested in the Civil Service Commission was to implement the law or put it into effect, not to add to it; to carry the law into effect or execution, not to supply perceived omissions in it. "By its administrative regulations, of course, the law itself can not be extended; said regulations 'cannot amend an act of Congress.'"*

*The considerations just expounded also conduce to the conclusion of the invalidity of Section 22, Rule III of the CSRPA. The enactment of said section, relative to 57-year old persons, was also an act of supererogation on the*

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part of the Civil Service Commission since the rule has no relation to or connection with any provision of the law supposed to be carried into effect. The section was an addition to or extension of the law, not merely a mode of carrying it into effect.

<sup>16</sup> National Labor Relations Commission, et al. vs. vs. Ma. Bernadette S. Salgarino, et al., G.R. No. 164376, July 31, 2006.

<sup>17</sup> Supra, note 1.

<sup>18</sup> Rufino R. Tan vs. Ramon R. Del Rosario, Jr., G.R. No. 109289. October 3, 1994, citing Pepsi Cola vs. City of Butuan, 24 SCRA 3; Basco vs. PAGCOR, 197 SCRA 771.

<sup>19</sup> Conrado L. Tiu, et al. vs. Court of Appeals, et al. G.R. No. 127410, January 20, 1999.

<sup>20</sup> The IPP is an annual list of priority business activities issued pursuant to Article 27 of EO 226 by the Board of Investments, after consultation with the appropriate government agencies and the private sector and subject to the President for approval. Pursuant to Article 28 of EO 226, ~~“No economic activity shall be included in the Investment Priorities Plan unless it is shown to be economically, technically and financially sound after thorough investigation and analysis by the Board. The determination of preferred areas of investment to be listed in the Investment Priorities Plan shall be based on long-run comparative advantage, taking into account the value of social objectives and employing economic criteria along with market, technical, and financial analyses.~~

*The Board shall take into account the following:*

- (a) *Primarily, the economic soundness of the specific activity as shown by its economic internal rate of return;*
- (b) *The extent of contribution of an activity to a specific development goal;*
- (c) *Other indicators of comparative advantage;*
- (d) *Measured capacity as defined in Article 20; and*
- (e) *The market and technical aspects and considerations of the activity proposed to be included.*

*In any of the declared preferred areas of investment, the Board may designate as pioneer areas the specific products and commodities that meet the requirements of Article 17 of this Code and review yearly whether such activity, as determined by the Board, shall continue as pioneer, otherwise, it shall be considered as non-pioneer and accordingly listed as such in the Investment Priorities Plan or removed from the Investment Priorities Plan.”*

<sup>21</sup> Section 2(f), Rules and Regulations To Implement Republic Act No. 7916, Otherwise Known As "The Special Economic Zone Act of 1995".

<sup>22</sup> *Ibid.*

<sup>23</sup> This consists of 13 tourism economic zones; 2 medical tourism parks/centers; 37 IT Parks; 132 IT Centers; 16 agro-industrial parks; and 64 manufacturing economic zones.

<sup>24</sup> [http://peza.gov.ph/index.php?option=com\\_content&view=article&id=116&Itemid=161](http://peza.gov.ph/index.php?option=com_content&view=article&id=116&Itemid=161), accessed on 22 September 2012.

<sup>25</sup> The incentives extended by the PEZA depend on the type of registration of the enterprise, which can be any of the following:

- 1. Export Manufacturing** - manufacturing, assembly or processing activity resulting in the exportation of at least 70% of production.
- 2. IT (Information Technology) Service Export**- IT service activities, of which 70% of total revenues is derived from clients abroad. (~~“IT Service Activities”~~ are activities which involve the use of any IT software and/or system for value addition). Among the IT Service activities eligible for incentives are: IT-enabled services such as business process outsourcing, call centers, data encoding, transcribing and processing, etc.; software development and application, including programming and adaptation of system softwares and middlewares; for business, media, e-commerce, education, entertainment, etc.; content development for multi-media or internet purposes; and others.
- 3. Tourism** – establishment and operation within PEZA Tourism Special Economic Zones of sports and recreation centers, accommodation, convention, and cultural facilities and their special interest attraction activities / establishments, with foreign tourists as primary clientele.
- 4. Medical Tourism** – medical health services, endorsed by the Department of Health, with foreign patients as primary clientele.
- 5. Agro-industrial Export Manufacturing** – processing and or manufacturing of agricultural products resulting in the exportation of its production.
- 6. Agro-industrial Bio-Fuel Manufacturing** – specialized manufacturing of agricultural crops and

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eventual commercial processing which shall result in the production of clean energy such as bio-fuels and the like.

**7. Logistics and Warehousing Services** - (a) operation of a warehouse facility for the storage, deposit, safekeeping of goods for PEZA-registered Economic Zone Export Manufacturing Enterprises, and or (b) importation or local sourcing of raw materials, semi-finished goods for resale to - or for packing / covering (including marking / labeling) cutting or altering to customers' specification, mounting and/ or packaging into kits or marketable lots for subsequent sale to - PEZA-registered Export Manufacturing Enterprises for use in their export manufacturing activities, or for direct export, or for consignment to PEZA-registered Export Manufacturing Enterprises and eventual export.

**8. Economic Zone Development and Operation:**

8.a. Manufacturing Economic Zone Development/Operation - development, operation and maintenance of an economic zone for export manufacturing enterprises, inclusive of the required infrastructure, facilities and utilities such as light and power system, water supply and distribution system, sewerage and drainage system, pollution control devices, communication facilities, paved road network, administration building.

8.b. IT Park Development/Operation – development, operation and maintenance of an area as a complex capable of providing infrastructures and other support facilities required by IT Enterprises, as well as amenities required by professionals and workers involved in IT Enterprise, or easy access to such amenities.

8.c. Tourism Economic Zone Development/Operation – development, operation and maintenance of an integrated resort complex, with prescribed carrying capacities of tourist facilities and activities, such as but not limited to, sports and recreation centers, accommodations, convention and cultural facilities, food and beverage outlets, commercial establishments and other special interest and attraction activities/ establishments, and provided with roads, water supply facilities, power distribution facilities, drainage and sewage systems and other necessary infrastructure and public utilities.

8.d. Medical Tourism Economic Zone Development / Operation – development, operation and maintenance of a Medical Tourism Park or Medical Tourism Center which are planned and designed in accordance with the standards of the Department of Health and the Department of Tourism to have support facilities and services required for health and wellness, and provided with required infrastructure facilities and utilities.

8.e. Agro-Industrial Economic Zone Development/Operation – development operation and maintenance of an agro-industrial economic zone planned and designed to have support facilities and services required for processing and agro-based manufacturing facilities, and provided with the required infrastructure facilities and utilities.

8.f. Retirement Economic Zone Development /Operation – development, operation and maintenance of a Retirement Economic Zone Park or Center, planned and designed in accordance with the accreditation standards of the Philippine Retirement Authority, and provided with the required infrastructure facilities and utilities.

**9. Facilities Providers:**

9.a. Facilities for Manufacturing Enterprises - construction as owner /operator of factory buildings inside a PEZA Special Economic Zone for lease to PEZA-registered Export Manufacturing Enterprises.

9.b. Facilities for IT Enterprises – construction as owner/operator of buildings and other facilities inside IT Parks which are leased to PEZA-registered IT Enterprises.

9.c. Retirement Facilities – establishment, operation and management of retirement facilities and other related activities, with foreign retirees as primary clientele, duly endorsed by the Philippine Retirement Authority, and located in a Retirement Economic Zone.

**10. Utilities**– establishment, operation and maintenance of light and power systems, water supply and distribution systems inside Special Economic Zones.

<sup>26</sup>RA No. 7227, *An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and for Other Purposes*, 13 March 1992, as amended by RA No. 9400, *An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes*, March 20, 2007.

<sup>27</sup>RA No. 7903, *An Act Creating a Special Economic Zone and Free Port in the City of Zamboanga*

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*Creating for this Purpose the Zamboanga City Special Economic Zone Authority, Appropriating Funds Therefor, and for Other Purposes*, 23 February 1995.

<sup>28</sup>RA No. 9728, *An Act Converting the Bataan Economic Zone Located in the Municipality of Mariveles, Province of Bataan, into the Freeport Area of Bataan (FAB), Creating for this Purpose the Authority of the Freeport Area of Bataan (AFAB), Appropriating Funds Therefor and for Other Purposes*, 23 October 2009.

<sup>29</sup>RA No. 9490, *An Act Establishing the Aurora Special Economic Zone in the Province of Aurora, Creating for the Purpose the Aurora Special Economic Zone Authority, Appropriating Funds Therefor and for Other Purposes*, 29 June 2007.

<sup>30</sup>RA No. 7922, *An Act Establishing a Special Economic Zone and Free Port in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan, Providing Funds Therefor, and for Other Purposes*, 24 February 1995.

<sup>31</sup>RA No. 9178, 13 November 2002.

<sup>32</sup>RA No. 10068, *An Act Providing for the Development and Promotion of Organic Agriculture in the Philippines and for Other Purposes*, 06 April 2010.

<sup>33</sup>The other LIICs reviewed include those of: **Saranggani Province** (Ordinance Enacting the Sarangani Province Investment Code, 2002); **General Trias, Cavite** (General Trias Investment Incentive Code of 2008, 2008), **Naga City** (1997 Investment Incentive Code of the City of Naga); **Guimbal, Iloilo** (the Municipality of Guimbal Investment Incentive Code of 2002); **Antipolo City** (Antipolo City Investment and Incentive Code of 2007); **Butuan City** (SP Ordinance 3466-2009, An Ordinance Revising SP Ordinance No. 2353-2001 Entitled -An Ordinance Providing for Investment Incentives to Prospective and Existing Investors in the City of Butuan and for Other Purposes); **Zamboanga City** (Ordinance No. 259: An Ordinance Enacting the Zamboanga City Investment Incentive Code of 2003, and for Other Purposes); **Bacolod** (City Ordinance 323: An Ordinance Establishing the Bacolod Investment Code of 2002); **Jagna, Bohol** (Ordinance No. 12-12-2007: Enacting the Revised Investment Code of Jagna, Bohol); and **Cavite Province** (Provincial Ordinance No. 09-002: Cavite Investment Incentives Code).

<sup>34</sup>An Act To Promote, Develop And Assist Small And Medium Scale Enterprises Through The Creation Of A Small And Medium Enterprise Development (SMED) Council, And The Rationalization Of Government Assistance Programs And Agencies Concerned With The Development Of Small And Medium Enterprises, And For Other Purposes.

<sup>35</sup>An Act Establishing The National Economic Research And Business Assistance Center Of The Philippines, Appropriating Funds Therefor, And For Other Purposes, approved April 29, 1992.

<sup>36</sup>Miriam Defensor Santiago, et al., vs. Commission On Elections, et al., G.R. No. 127325, March 19, 1997.

<sup>37</sup>Testate Estate of Concordia T. Lim vs. City of Manila, 182 SCRA 482.