

SIGNIFICANT AMENDMENTS IN THE RULES AND REGULATIONS IMPLEMENTING THE INTENT AND PROVISIONS OF R.A. 6186

- I. Rule I, Definitions and Basic Guidelines
 - A. Section 1(b) "Tax Credits" (page 3)
 - Old Rule* - Credits against internal revenue taxes only
 - New Rule* - Credits against internal revenue taxes and customs duties
 - B. Section 1(e) "Start of Operations" (page 3)
 - Old Rule* - when the enterprise begins its production for commercial purposes
 - New Rule* - when the enterprise begins production of the registered product for commercial purposes
 - C. Section 1(x) "Direct Labor Wage Cost" (page 3)
 - New Rule* - compensation (i.e., salaries, wages, payments, such as bonuses, living allowances which are part of the employer's taxable earnings), for labor directly used in the production process including services of the foreman. It excludes labor for maintenance of production machinery and equipment.
 - D. Section 1(y) "Local Raw Materials" (page 4)
 - New Rule* - indigenous raw materials and semi-finished products, (i.e., with local content equal to or greater than 50% of manufacturing cost), directly and actually used in the manufacture/processing of the registered product that is completely finished and forming part thereof; excludes packaging and containers necessary to put the product in exportable form.
 - E. Section 1(z) "Total Export Revenue" (page 4) (New)
 - sum of all export sales of the registered product that is completely finished and exported by the registered enterprise
 - F. "Liberalized Areas" (page 4) (New)
 - non pioneer areas which measured capacity, after 3 years of listing in the plans have not yet been filed by Philippine nationals
- II. Rule II, Qualifications of Applicants (page 4)
 - Old Rule (Rule II)* - U.S. owners/controlled corporations entitled to registration under same conditions prescribed for Philippine owners/controlled corporations; the former cannot avail of tax incentives under the Act
 - New Rule* - U.S. owners/controlled corporations, to be entitled for registration, shall submit proof of reciprocity continued registration after July 3, 1974 shall be subject to the regulatory effects of the Laurel-Langley Agreement
- III. Rule III, Section 3 Supporting Documents
 - A. Section 3(a), Copies of the Project Study (page 5)
 - Old Rule* - (Rule IV, Sec. 3(a)) applicant firm shall submit 10 copies to the Board
 - New Rule* - applicant firm shall submit 4 copies to the Board

- B. Section 3(n) "If Applicant is a Proposed Corporation" (Page 6) (New)
 - In lieu of the requirements in (e), (f), (g) hereabove, applicant shall submit proof of financial capacity by majority stockholders entitled to vote.
- C. Section 3(l) "Submission of Contracts" (page 6) (New)
 - such as joint venture agreements, licensing patents, trademarks and technological assistance agreements, existing or proposed.
- D. Section 5, "Incomplete Papers" (page 6)
 - Old Rule* - applicant shall submit deficiencies within 30 calendar days from receipt of notice by the Board
 - New Rule* - within 30 days after filing of applications, the Board notifies the applicant of the deficiencies and the latter has 30 days from receipt of notice to comply; date of compliance shall be date of official acceptance
- E. Section 6, "Publication of Application" (page 6) (New)
 - once in a newspaper of general circulation at applicant's expense, after the Board has given due course for final evaluation of the application.
- IV. Rule IV, Board Action (page 7)
 - A. Section 3, "Notice of Approval and Publication"
 - Old Rule* - (Rule VI, Sec. 1(c)) applicant has only 20 days to applicant now has 30 days to accept the registration terms and conditions
 - New Rule* - Notice of approval shall be published in a newspaper at applicant's expense
- V. Rule V, Certificate of Registration (page 7)
 - A. Section 1 "Conditions Precedent for Issuance of Certificate"
 - Old Rule* -
 1. Payment of registration fee
 2. compliance with the requirement of Sec. 22(b) on the issuance of two types of voting shares
 3. sworn statement on all information and data submitted
 4. resolution of applicant's Board of Directors accepting the terms and conditions
 - New Rule* -
 3. same
 4. same
 5. compliance with pre-registration requirements
 6. sworn certificate that applicant is not in arrears in the payment of obligations
 7. proof of publication of filing and approval
- VI. Rule VI "Incentives to Investors" (page 8)
 - Old Rule* - No provision
 - New Rule* - can be availed of only for investments made after registration

- A. Section 2(b) Capital Gains Tax Exemption (ownership and holding period) (Page 8)
 - 5-year ownership and holding period, counted from date of actual payment for new shares; ends on date of actual sale or disposition regardless of date of entry in corporate books
- VII. Additional Incentives to Philippine Nationals Investing in a Pioneer Enterprise (page 9)
 - A. Section 2(b), Investment for Tax Allowance Purposes
 - Old Rule* - may be voting or non-voting stocks of one or more pioneer enterprise
 - New Rule* - shall be new issues, voting or non-voting
- VIII. Incentives to Registered Enterprises (page 10)
 - A. Section 1 Who can avail
 - Old Rule* (Rule IX, Sec. 1) No provision
 - New Rule* - U.S. owned/controlled corporations registered in non-pioneer, non-liberalized areas cannot avail of tax incentives
 - B. Section 3 Accelerated Depreciation (page 10)
 - Old Rule* - may refer to fixed assets acquired before but not yet fully depreciated on date of registration
 - New Rule* - acceleration refers only to the undepreciated cost of the fixed assets
 - C. Section 4, Net Operating Loss Carry-over (page 10)
 - Old Rule* - the 10-year period prescribed therein shall be from date the enterprise commenced commercial operation of the registered activity
 - New Rule* - the 10-year period prescribed therein shall be from date the enterprise commenced commercial operation of the registered activity irrespective of date of registration
 - D. Section 5 Tax Credit for Withholding Tax on interest (page 10)
 - Old Rule* - the loan agreement and documents evidencing the registration of the foreign loan with the Board and Central bank shall be sufficient basis for the BIR to issue tax credit certificates
 - New Rule* - the BIR shall issue tax credit certificates for that:
 1. the enterprise assumes liability with the Board and Central bank shall be sufficient basis for the BIR to issue tax credit certificates
 2. no tax credit is enjoyed by the lender-remittor and for this purpose the following requirements shall apply:
 - a. where lender-remittor's country has a law providing for tax credit -
 - (1) the enterprise must present a duly authenticated ruling that lender-remittor is disqualified due to its legal personality, or
 - (2) the enterprise must present a duly authenticated certification of an independent auditor that lender-remittor has no taxable income.
 - b. where lender-remittor's country has no income tax law a duly authenticated certification of such fact must be submitted

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- E. Section 6 Deduction for Labor Training (page 11) (new)
 - Requirements:
 1. submission of a labor training program approved by the appropriate agency or the BOI;
 2. prior Board approval for availment of such deduction;
 3. submission to the Board of a quarterly or semi-annual report of the training program
- IX. Rule IX Importation of Capital Equipment
 - A. Section 3, Spare Parts (page 12)
 - Old Rule* (Appendix A, Sec. 3) restricted to one set for the specific machinery or equipment authorized to be imported 10% of the total equipment where they will be used.
 - New Rule* - same as the old rule, but in general, the cost shall not exceed 10% of the total equipment where they will be used.
- B. Section 4, Conditions for Importation of Capital Equipment (page 12)
 - Old Rule* - prior Board approval - before purchase order is made
 - New Rule* - in addition to those mentioned in the old rule, the following conditions are imposed:
 1. Exclusive use or partial use (if registered activity does not wishfully utilize it but must not become the principal mode of utilization)
 2. International bidding or contracting (to assure reasonable prices) except:
 - a. total importation less than U.S. \$1,000,000;
 - b. there is only one manufacturer;
 - c. importation is caused by the enterprise's expansion and equipment shall be acquired from the same supplier of the existing equipment;
 - d. the Board has other means in determining the price
- C. Section 5, Validity of Authority to Import (page 13) (new)
 - C/A valid for one year from date of issuance
- D. Section 8, Post Approval Conditions (page 13) (new)
 - submission of official import documents which shall be used by the Board as basis for the issuance of a certificate of release from customs custody.
- E. Section 11, Prior Approval of Sale or Disposition of Equipment (page 15)
 - Old Rule* - (Appendix A, Sec. 13) the enterprise shall notify the Board of the disposition or transfer within 10 days from date thereof, if said transfer or disposition is within five years from release by customs
 - New Rule* - Prior Board approval is necessary if the transfer or disposition is within five years from date of acquisition in order to exempt the transferor from the penalty of paying twice the amount of taxes waived

If without Board prior approval, it shall notify the Board of such disposition and suffer the penalty:

- (a) sale to another registered enterprise;
- (b) proven technological obsolescence;
- (c) replacement to improve and/or expand registered operations;

valid grounds for Board approval of the transferor:

- (a) sale to another registered enterprise;
- (b) proven technological obsolescence;
- (c) replacement to improve and/or expand registered operations.

Rule X. Purchase of Domestic Capital Equipment (page 15)

Old Rule

1. Domestic manufacturer one whose product carries a "value added" of at least equal to a certain percentage of the unit cost of production

"value added" — defined as including indigenous raw materials, direct labor, factory overhead expenses, and depreciation but excludes profit of the domestic manufacturer; value added must be at least 20% of production cost.

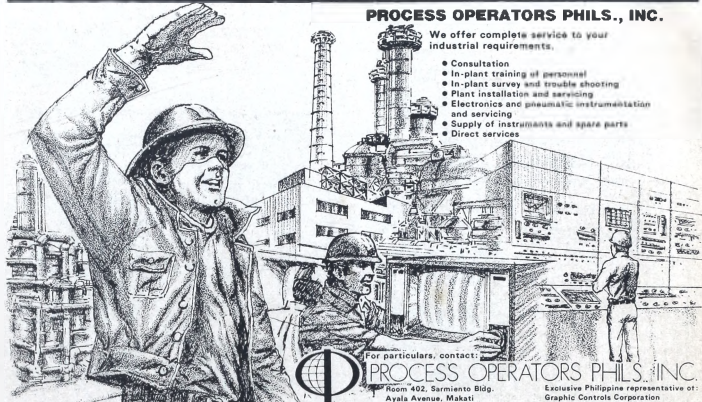
New Rule

1. Domestic manufacturer — one whose product carries a "value added" and local content" at least equal to a prescribed percentage of the manufacturing cost.

value added — difference between manufacturing cost (which includes raw materials, labor depreciation and factory overhead) and the value of raw material purchases; value added must be at least 20% of manufacturing cost (may be progressively increased by the Board as warranted by technological advances and other factors).

"local content" means the difference between the manufacturing cost (includes raw materials, labor factory overhead but excludes depreciation) and the cost of raw material importation; local content for equipment and spare parts where tariff is 20% or less, local content shall be at least 20% of manufacturing cost (may be progressively increased by the Board); where tariff duties are higher than 20% — higher local content shall be prescribed by the Board; for component part is considered locally manufactured even with the use of imported raw material — if "local content" present is equal to or greater than 50% of manufacturing cost.

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- Plantera Products, Inc.
- Philippine Petroleum Corporation
- Reynolds Philippines Corporation
- Ruby Industrial Corporation

Rule XI. Employment of Foreign Nationals

No Changes

Rule XII. Expansion Reinvestment Allowance (page 18)

Old Rule

1. No provision because it is expressly provided by law.
2. No express provision
3. No provision

New Rule

1. Prior Board approval — for both expansion project and the act of reinvestment but approval and registration of a project shall not be deemed approval of an expansion plan made in the project study.
2. Expansion must result in an increase in production capacity or any forward or backward integration approved by the Board; This mere "modernization" not deemed an expansion.
3. Expansion, when deemed affected —
 - a) where letters of credit for importation of capital equipment, machinery and spare parts to be used in the project are obtained;
 - b) where no letters of credit are obtained — on date letter of guarantee or instrument of payment is executed;
 - c) for equipment previously authorized by the Board under Sec. 7(a), i.e. Tax Exemption on Importation of Capital Equipment, and Sec. 7(b), i.e. Tax Credit on Domestic Capital Equipment, and Sec. 7(c), i.e. Tax Credit on Domestic Capital Equipment, or for civil works — upon actual installation of capital equipment or completion of the works;

4. No provision on the source of undistributed profits
3. Date of Reinvestment — deemed to have been made on the date the issue of stock dividends has been duly approved by the stockholders

4. Earned surplus may come from registered operations or not
5. Date of Reinvestment —
 - a) date of approval by stockholders of declaration of stock dividends, if no future date of issue has been specified;
 - b) the specified, future date of issue unless irrevocable transfer of a fixed amount of undistributed profit or earned surplus to capital account has been duly recorded in the books of registered enterprise prior to the actual issue in which case, the date of reinvestment is all the such date of irrevocable book transfer;
 - c) where stock dividends have been declared subject to approval of a pending increase in the authorized capital stock, reinvestment date shall be the date of effectivity of approval by the SEC of such increase.

6. Reduction of Capital Stock (page 19)
 - a) when there is a formal decrease of subscribed capital stock;
 - b) when registered enterprise issues any other not producing said effect, such as purchase of its outstanding stocks or the grant of advances to officers and/or stockholders of enterprise.

- Reduction of capital stock — same rule except that
 - a) the decrease of subscribed capital stock must be in accordance with the provisions of Sec. 17 of the Corporation Law;
 - b) the grant of advances to officers and/or stockholders must be considered excessive.

- Contents of Application to Reinvest (page 19)
- a) amount of profit or surplus to be reinvested
 - b) specific purpose for reinvestment;
 - c) other relevant information.

- a) statement of its total accumulated surplus indicating whether from registered or non-registered operations;
- b) the amount proposed to be reinvested;
- c) the purpose for reinvestment;
- d) the total cost of the project including the proposed reinvestment.



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SIGNIFICANT AMENDMENTS IN THE RULES AND REGULATIONS IMPLEMENTING THE INTENT AND PROVISIONS OF R.A. 5188

(Continued from page 25)

- e) the capital risk involved;
- f) availability or non-availability of technology, domestic capital equipment and indigenous raw materials;
- g) the export potentials;
- h) incremental labor involved;
- i) cost of anti-pollution measures as required by the National Pollution Control Commission.

Appropriate percentage of tax deduction (page 19) (New)

Appropriate percentage of tax deduction for each industry — to be determined by the Board.

Rule XIII. Additional Incentives to Pioneer Enterprise

Old Rule	New Rule
1. available to all pioneer industries	1. available to all registered pioneer enterprises.
2. no provision in the rules because the law already provides.	2. Exemption from payment of all NIRC taxes except income taxes on a graduated scale computed from the date of registration of the pioneer enterprise; However, the old schedule (before Presidential Decree No. 92) will apply to enterprises registered prior to the 5th IPE. The duration of higher tax exemption for enterprises whose project cost exceed P100 million at the time it applies for extension may be extended but the total period of exemption shall not exceed 20 years.

Conditions for Importations under Sec. 8(a) (page 21)

- a) Previous authority from the Board upon showing that:
 - 1) items to be imported are reasonably needed by the importer in its registered operations;
 - 2) the products, at the time of importation are not manufactured domestically in reasonable quantity and quality at reasonable prices;
 - 3) The Board may require publication of the proposed importation at the expense of the applicant.
- b) For machinery, equipment, and component parts — previous Board approval must be obtained by enterprise before ordering letters of credit:
 - 1) items to be imported are reasonably needed by the importer in its registered operations;
 - 2) the products, at the time of importation are not manufactured domestically in reasonable quantity and quality at reasonable prices;
 - 3) they are not manufactured domestically in reasonable quantity and quality at reasonable prices;
 - 4) they are reasonably and actually needed and will be used exclusively by the

Indirect tax liability excluded (page 21)

- 4. No provision

registered enterprises in the manufacture of its products except where the Board authorized part-time utilization of such machinery and equipment in the registered operations of the enterprise.

Tax exemption privilege covers only direct tax liabilities and excludes taxes transferred or passed on to registered enterprises either by business practice or mere contractual arrangement.

Rule XIV. Special Export Incentives for Registered Enterprises:

A. Special Tax Credit (page 21)

- 1. Applicable only to direct exports
- 2. Export product must be a completely finished product
- 3. Coverage — meant internal revenue taxes only
- 4. No provision

- 1. Applicable to direct and indirect exports thru other producers or export traders
- 2. No longer required because the export product may be an input of another export product
- 3. "Special tax credit" — equivalent to sales, compensating and specific taxes and duties actually paid on the supplies, raw materials and semi-manufactured products (whether imported or locally purchased) by the registered enterprise for the manufacture, processing or production of its export products.
- 4. Time for filing application — within one (1) year from the date of actual exportation of final export product.

B. Reduced Income Tax (New) (Page 22)

- 1. No provision in the old law because at the time, there were two other export incentives — double deduction of shipping costs and promotional expenses, which are now repealed

- 1. Applicable only against taxable income derived from registered export operations of the enterprise

- 2. Available only for exports by a registered enterprise of its completely finished products for a period of five (5) years from date of registration unless suspended or cancelled by the Board under the last paragraph of Section 9 (D) of the Act.

RULE XV. Cancellation of Registration or Suspension of Incentive Benefits (New) (Page 22)

- 1. Grounds for cancellation of registration — (a) failure to maintain qualifications for registration under the Act; (b) willful or grossly negligent violation of the Act; (c) of these rules and Regulations; (d) of the general and specific terms and conditions of registration for (e) of any law for the protection of labor or of the consuming public.
- 2. Grounds for suspension of one or more incentives — same as grounds for cancellation of registration depending on the gravity of offense committed.
- 3. Hearing committee — composed of at least two (2) Board members and the Director of Industry group concerned.
- 4. Decision, Right of Appeal — Decision of the Board shall be based on findings and recommendations of Hearing Committee which is appealable within fifteen (15) days from receipt of decision after which it shall become final.

RULE XV.A. Public Participation (New) (Page 23)

- a) Section 1. A registered enterprise, within one (1) year from registration shall offer to the public (including alien investors) 10% of its total subscribed capital stock (voting or non-voting) and any increase thereof, unless exempt.

The 1st three (3) months of offering shall be limited to Filipino period of offering shall be six (6) months from date of publication.

- b) Section 2. Enterprises where the Board may defer compliance:
 - a) those registered under Schedule E of the 2nd and 3rd IPE;
 - b) pioneer enterprises;
 - c) those corporations availing of the national treatment under the Laurel-Langley Agreement;
 - d) others who by reason of their peculiar circumstances are not deemed ready to comply.
- c) Section 3. Those deemed to have substantially complied:
 - a) publicly held corporations (i.e. those listed in the stock exchanges);
 - b) corporations wholly owned or at least 70% controlled by Filipino citizen corporations;
 - c) stocks held by a substantial number of rank and file employees of registered enterprises, not related within the 3rd civil degree of consanguinity or affinity with majority stockholders;
 - d) stocks held by employee's trust funds, retirement or pension funds approved by the Board. Trusts should be a Philippine national; 60% of the fund must accrue to the benefit of Philippine nationals.
- e) Section 4. Shares to be offered (page 24)

Common (voting) or preferred convertible to voting within five (5) years at the option of the stockholder; on non-callable basis but may be redeemable not earlier than five (5) years from date of issue; shares need not be new or original but secondary shares or treasury stocks are not entitled to capital gains tax exemption under Sec. 5(b) of the Act.

Consideration of the firm's future and historical earnings frequency of stock and cash dividends in determining price offering; for preferred shares, the Board reserves the right to set minimum dividend returns but in no case less than 12% per annum and or require that such shares be participating; subscription should be within the reach of small investors.

- f) Section 6. Procedural Requirements:

submission of a prospectus within six (6) months from registration indicating the following:

 - a) pertinent data about the enterprise;
 - b) description of shares to be issued;
 - c) terms of offering and mode of payment;
 - d) highlights of operations and financial position for the past five (5) years;
 - e) management profile;
 - f) current ratio and other financial relationships;
 - g) earnings per share;
 - h) debt equity ratio;
 - i) statement of BOI incentives available;
 - j) statement of SEC registration and exemption of sale to securities.

publication in a newspaper of general circulation and announcement to be posted in the GSIS, SSS and LRA.

If offering is limited to trust funds or employees, in lieu of a prospectus, submission of terms of offering and posting of notices in the office and factory premises shall be sufficient.

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turnover, a sizable percentage directly benefits countries throughout the world. And the world is where we operate. In 120 of its main cities we maintain offices, in addition to 140 domestic offices. And we're staffed by 19,000 employees. Some 1,400 of them are native to the area they work in. Backing our huge staff is 100

years of experience. And the kind of broad gauge expertise that comes with our scale of activity. Detailed reports from our worldwide network enable us to adapt our skills and services to new needs everywhere. Now that we've gotten acquainted, let's get together. We'd like to put our skills to work for you.

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