

e 10
is
the
ket
al
h
s



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRADE AND INDUSTRY

**IMPLEMENTING RULES AND REGULATIONS OF
REPUBLIC ACT NO. 7652, OTHERWISE
KNOWN AS THE "INVESTORS' LEASE ACT"**

WHEREAS, on May 31, 1993, the Congress of the Philippines enacted the "Investors' Lease Act" which was subsequently signed into law by the President of the Philippines;

WHEREAS, under SEC. 5(2) in relation with SEC. 7(3) of said Act, the Department of Trade and Industry (DTI) has the mandate to approve the area covered by lease agreement entered into under the provisions of the "Investors' Lease Act";

WHEREAS, under SEC. 6 of the same Act, the Secretary of Trade and Industry, subject to conditions stated therein, is empowered to terminate any lease contract entered into under the provisions thereof;

WHEREAS, for the DTI, and other agencies concerned to properly implement said Act, there is a need to promulgate rules and regulations to clarify the intent and provisions thereof;

WHEREAS, Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992, empowers the Bases Conversion and Development Authority (BASECON) to own, hold and/or administer specified military reservations. Further, the Subic Bay Metropolitan Authority (SBMA) and the Clark Development Corporation (CDC) as the operating and implementing arms of the BASECON, are mandated to exercise said powers over the lands within the Subic Special Economic Zone and the Clark Special Economic Zone.

NOW, THEREFORE, for and in consideration of the foregoing premises, the following implementing rules and regulations are hereby promulgated to implement the intent and provisions of Republic Act No. 7652, otherwise known as the "Investors' Lease Act".

RULE I

DEFINITION OF TERMS

SECTION 1. For purposes of Republic Act No. 7652 and these rules and regulations -

(a) "Act" shall mean Republic Act No. 7652 also known as the "Investors' Lease Act".

(b) "Foreign Investor" shall mean an individual or juridical entity not falling within the meaning of "Philippine national" as the term is defined herein.

(c) "Philippine national" shall mean a citizen of the Philip-

RULE II

APPLICABILITY

SECTION 1. Long-term lease of private lands by foreign investors shall be authorized only for purposes of and in connection with the establishment of industrial estate, factories, assembly or processing plants, agro-industrial enterprises, land development for tourism, industrial or commercial use and/or other similar priority productive endeavors.

SEC. 2. "Private agricultural lands devoted to agricultural activities, such as cultivation of soil, planting of crops, growing of fruits and/or plantations, covered by the provisions of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law, (CARL) shall not qualify for the long term lease under this Act and these rules and regulations.

The provisions of the preceding paragraph notwithstanding, private agricultural lands approved for conversion by DAR for non-agricultural purposes and areas classified as non-agricultural prior to June 15, 1988 per town plans approved by the HLURB and which will be devoted to the establishment of industrial estates, factories, assembly or processing plants, agro-industrial enterprises, land development for industrial, or commercial use, tourism and other similar priority productive endeavors shall qualify for long term lease under this act and these rules and regulations.

SEC. 3. Foreign investors with pre-existing lease agreements entered into prior to the effectivity of the Act and which lease agreements were entered into for any one or a combination of the purposes stated in Section 1, Rule II hereof, may opt to be governed by this Act and these rules and regulations, provided, however, that in no case shall the total lease period, including that of the pre-existing lease agreement, exceed a total of 75 years.

SEC. 4. Long-term lease of private lands for tourism projects shall be limited to those involving investments of not less than Five Million US Dollars (US\$5,000,000.00), seventy percent (70% of which must be infused into said project within three (3) years from the signing of the lease agreement.

RULE III

AREA OF LEASE AND APPROVAL THEREOF

SECTION 1. Any foreign investor investing in the Philippines shall be allowed to lease private lands which shall comprise such area as may reasonably be required for the purpose of the investment, subject, however, to the Comprehensive Agrarian Reform Law and the Local Government Code. The area of the leased private land as approved by the DTI or the BASECON/CDC/SBMA shall be used solely for the purpose of the investment.

a. Application letter signed by the owner(s)/ lessor(s) and the foreign investor/lessee signifying their intention to enter into a long-term lease agreement under the provisions of Republic Act No. 7652;

b. A copy of the parties proposed long-term lease agreement which, in addition to other terms and conditions...

RULE V

GROUNDS FOR TERMINATION OF LEASE AGREEMENTS

SECTION 1. The Secretary of DTI or the Chairman of BASECON and/or the Managing Heads of its implementing arms, whenever appropriate, may terminate or cancel any lease agreement entered into under the provisions of the Act or these rules and regulation assigned on any of the following grounds:

1. Failure by the lessors to initiate the investment project within three (3) years from the signing of the lease agreement; or
2. Withdrawal of approved investment;
3. Use of the leased premises other than that authorized by the DTI or the BASECON/CDC/SBMA;
4. Violation by the parties of any provision of the Act or these rules and regulations.

RULE VI

SCHEDULE OF FEES

SECTION 1. The following fees shall be collected by the DTI/BOI: Provided, that the BASECON and its implementing arms such as the CDC and the SBMA may impose their own schedule of fees on long term lease agreements covering lands under their management and control.

- (a) Fees for the application of original long term lease contract _____ 1/10 of 1% total capital, but not lower than Five Thousand Pesos (P5,000.00) nor to exceed Fifteen Thousand Pesos (P15,000.00)

For purposes of this sub-section, the term capital cost shall mean capital in case of single proprietorship or partnership and authorized capital in case of corporations and/or associations.

- (b) Fees for renewal of the long term lease contract _____ P5,000.00.
- (c) Fees for the application of transfers, assignment, sub-lease and/or sale of leasehold rights acquired under this Act _____ P5,000.00.
- (d) Fees for the amendment/ modification/reformation of the original long term lease contract _____ P5,000.00.

RULE VII

SCHEDULE OF FINES

Section 1. Without prejudice to the provisions of Rule VIII of this rules and...

37

LIBRARY OF THE PHILIPPINES LEGISLATIVE LIBRARY DIV.

... or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60% of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty per cent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national.

(d) "Private Lands" shall refer to those lands which have been segregated from the general mass of the public domain and distributed by any form of gratuitous or onerous grant by the State, such as but not limited to, a deed of sale, adjustment title, special grant or possessory information title converted into a record of ownership. The definition herein shall include patrimonial properties of the state owned, held, controlled, supervised or managed by government-owned or controlled corporations such as but not limited to the Export Processing Zone Authority, the Phividec Industrial Authority, the Bases Conversion arms, such as Clark Development Corporation (CDC) and the Subic-Bay Metropolitan Authority (SBMA).

(e) "Industrial Estates" shall mean large and suitable tracts of land which will be developed primarily for the use of a community of industries and provided with roads, water supply facilities, electrical facilities, communication facilities, sewage and drainage systems, and other infrastructures. The term "industrial estates" shall include within its meaning "science and technology parks", described as knowledge-based centers, set-up in proximity to scientific or industrial communities such as university campuses, research institutes, export processing zones or industrial estate areas providing means of technology transfer from research laboratories to industry. The term likewise includes within its purview lands under the control, supervision and management of EPZA, PHIVIDEC, and BASECON and its implementing arms, such as CDC and SBMA, intended for that purpose.

(f) "Priority Productive Endeavors" shall refer to the preferred areas of activity listed in the Investments Priorities Plan (IPP) prepared by the Board of Investments in accordance with the provisions of Executive Order No. 226 otherwise known as the Omnibus Investment Code of 1987 as amended. Further, the term shall likewise include endeavors certified by the BASECON/SBMA/CDC, EPZA or PHIVIDEC as preferred areas of activity.

(g) "Approved Investment" shall mean investment by a foreign investors approved by government as evidenced by any of the following:

1. Certificate of Registration in case of a BOI registered enterprise or Certificate of EPZA or PHIVIDEC registration or BASECON/CDC/SBMA registration or permit to operate.
2. Bureau of Trade Regulation and Consumer Protection (BTRCP) Certificate of Registration for Sole Proprietorship of SEC Certificate of Registration in case of investments not registrable with the BOI but registrable under the Foreign Investments Act of 1991;
3. Any other similar document purporting to show government approval of any business undertaking in the Philippines.

3. A stipulation as to the purpose of the investment for which the long-term lease agreement is being entered into;
 4. A stipulation by the parties recognizing the unequivocal authority of the Secretary of DTI or the Chairman of BASECON/and or the Managing Heads of CDC/SBMA whenever appropriate, to terminate or cancel the long-term lease agreement if the investment project is not initiated within three (3) years from the signing of the lease agreement or in case of withdrawal of approved investment or in case of use of the leased area for purposes other than that authorized by the DTI or the BASECON/CDC/SBMA or in case of violation by the parties of any of the provisions of the Act and these rules and regulations.
 - c. DAR approval of land use conversion of the leased area into commercial and/or industrial use, whenever applicable.
 - d. Locational clearance from the City/Municipality or the Housing and Land Use Regulatory Board pursuant to the provisions of E.O. 72 dated March 25, 1993.
- SECTION 3. The authority to evaluate, process, approve or disapprove application for long term lease contracts over lands located within the former US baselands or the special economic zones, as provided for in R.A. 7227 and other pertinent presidential issuances, is hereby delegated to BASECOM and its implementing arms, such as the CDC and SBMA within their zonal jurisdiction. For purposes of this provision any long term lease agreement entered into by the BASECON/CDC/SBMA as lessor with an investor for lease of lands within their zonal jurisdiction shall be construed as approval of the long term lease agreement under the Act, rules and regulations.
- SECTION 4. The DTI-BOI or the BASECON/CDC/SBMA shall render its decision within twenty (20) working days after official acceptance of the application. Where an application for leasehold rights is not acted upon by the DTI-BOI or the BASECON/CDC/SBMA within the said period of time, the same shall be considered automatically approved without prejudice to the imposition of usual normal conditions, and limitations in respect to the use of the leased property as provided for under Republic Act No. 7652.

RULE IV

SALE, TRANSFER OR ASSIGNMENT OF LEASEHOLD RIGHTS

SECTION 1. The leasehold rights acquired under long-term lease contracts entered into pursuant to this Act may be sold, transferred, assigned, and/or sub-leased only with the prior approval of the Secretary of DTI or the Chairman of BASECOM and/or the Managing Heads of its implementing and limitations in respect to the use of the lease property as provided for under the Act shall continue to apply. Provided: that when the vendee, transferee, assignee and or sub-lessee is a Philippine national, prior approval is not required, but notice thereof shall be made to the DTI Secretary or the Chairman of BASECOM and/or the Managing Heads of its implementing arms (CDC/SBMA) whenever appropriate, within ten (10) days from the date of sale, transfer, assignment and/or sub-lease of the leasehold right.

- for the sale, transfer, assignment and/or sub-lease of leasehold rights under this Act and these rules. P 10,000.00
- b) For failure to initiate the investment project within three (3) years from signing of the lease agreement P 100,000.00
- c) For withdrawal of the approved investment after the commencement of the project P 100,000.00
- d) For use of leased premises other than that authorized by DTI-BOI or BASECON/ CDC/SBMA P 100,000.00

RULE VIII PENAL PROVISIONS

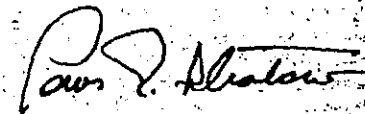
SECTION 1. Penal Provision. - Any contract or agreement made or executed in violation or any of the of the following prohibited acts shall be null and void ab initio and both contracting parties shall be punished by a fine of not less than One Hundred Thousand Pesos (P 100,000) nor more than One Million Pesos (P 1,000,000) or imprisonment of six (6) months to six (6) years, or both, at the discretion of the Court:

- 1) Any provision in the lease agreement stipulating a lease period in excess of that provided in paragraph (1) Section 4 of Republic Act No. 7652, otherwise known as the Investor's Lease Act.
- 2) Use of the leased premises for the purpose contrary to existing laws of the land, public order, public policy, morals, or good customs;
- 3) Any agreement or agreements resulting in the lease of land in excess of the area approved by the DTI or BASECON/CDC/SBMA whenever appropriate: Provided, that, where the excess of the totality of the area leased is due to the acts of the lessee, the lessee shall be held solely liable therefor: Provided, Further That, in the case of corporations, associations, or partnership, the President manager, director, trustee, or officers responsible for the violation hereof shall bear the criminal liability.

RULE IX EFFECTIVITY

SECTION 1. These rules and regulations shall take effect after fifteen (15) days following publication thereof, in a newspaper of general circulation in the Philippines.

APPROVED.
29 November 1994.


TOMAS I. ALCANTARA
Acting Secretary

GEN. OF THE PHILIPPINE LEGISLATIVE LIBRARY DIV.

36