

EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. **3803**

EXPLANATORY NOTE

It is internationally recognized that foreign direct investments (FDI) is imperative both for developed and developing economies. Benefits from FDI can be seen across the spectrum of activities not only with respect to investible resources but its corresponding capital formation. FDI drives economic productivity; create jobs, raises income levels, transfers production technology, innovative capacity as well as creating access to international marketing networks.

The Philippine Government encourages foreign and local investments. This is because it generates employment opportunities, boosts economic development, increases financial resources, increase exports by raising efficiency, and enhances marketing opportunities. In fact, the government has launched investment incentives programs administered by thirteen (13) investment promotion agencies (IPAs). IPAs may be defined as government entities created by law, executive order, decree or other issuance for the purpose of attracting domestic and foreign direct investment through the administration of their respective fiscal and non-fiscal incentives; and, exercise regulatory powers over the economic zones. These include the following: Board of Investment, Philippine Economic Zone Authority, Bases Conversion Development Authority, Subic Bay Metropolitan Authority, Clark Development Corporation, Poro Point Management Corporation, Bataan Technology Park, Inc., Cagayan Economic Zone Authority, Zamboanga City Special Economic Zone Authority, Phividec Industrial Estate, Aurora Pacific Economic and Freeport Zone, Authority of the Freeport Bataan, and Tourism Infrastructure and Enterprise Zone Authority.

Notwithstanding all of these, the National Economic Development Authority (NEDA) reported in its Philippine Development Plan of 2011-2016, cited the lack of inclusive growth in the economy. The Philippines' economic performance in investments, exports, and terms of competitiveness is unsatisfactory and needs to be improved (PDP 2011-2016). In a study conducted by the World Bank with the International Finance Corporation in 2013, the Philippines ranked 138 out of 185 economies as regards the ease of doing business in 185 economies. The first top five criteria where the Philippines ranked low were in a) starting a business; b) registration of property; c) paying taxes; d) getting credit; and, e) protecting investors.

The study showed that applying for a business in the country involves a long, tedious and difficult process, i.e. an average of 15 procedures, 38 days, and costs 29.7% of income per capita.

In weeding through the layers of requirements in starting up a business and in qualifying for any of the investment incentives programs, the investor is confronted by bureaucratic red tape, inconsistent, complex and lengthy procedures, delays and a high cost for regulatory processes.

There is therefore a need to create a government agency/office that can assist in the expeditious facilitation of business investment registration and permits requirements and of the requirements for the availment of the investment incentives programs of the government.


This agency/office shall be known as the Office for Investor Facilitation and Protection (OIFP). The OIFP shall be an independent and attached agency to the Office of the President which shall:

- Acts as a coordinator and integrator for the investor, the IPAs and all other related government agencies or departments with respect to business registration, permits, clearances, endorsements;
- Processes the automatic approval if not acted upon by the appropriate agency or department within the time frame from the endorsement by the Office for Investor Facilitation and Protection provided that the documentary requirements are complete and without prejudice to Section 34 of E.O. No. 226.
- Acts as a protector by a) expeditiously resolving disputes between the investor and the IPAs, and other related government agencies and departments with respect to the administration of investment incentives program and grant of the investment incentives; b) and considering that the grant of the particular incentives program to which the investor has qualified and registered is a contract, it shall interpret it and see to it that its provisions are carried out and performed by the parties.
- Establishes a mandatory alternative to dispute resolution through consultations or consultative meetings and discussions before referring it to ADR, i.e., conciliation, mediation, arbitration, or early neutral evaluation to assist and resolve disputes out of court.

To attract investments into the country, stimulate the growth of local investments, and meet investors' expectations of fiscal and non-fiscal incentives, the government must protect and safeguard these investors in their investments by providing a mechanism to avoid protracted and tedious litigation in courts. History is replete with instances where the investors are denied by the courts of their claims for they have to wait for a long period, some lasting 10 years until the cases of the investors are finally resolved.

The OIFP will ensure that investors will not undergo lengthy and costly court proceedings with unpredictable outcomes through consultation or consultative meetings and discussions with the parties involved and referral to Alternative Dispute Resolutions such as conciliation, mediation and arbitration.

This bill therefore seeks to create and establish the Office for Investor Facilitation and Protection which shall be an independent authority attached to the Office of the President to address the foregoing issues of foreign direct investors in the Philippines.


RUFUS B. RODRIGUEZ

HOUSE OF REPRESENTATIVES

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House Bill No. **3803**

AN ACT

CREATING THE OFFICE FOR INVESTOR FACILITATION AND PROTECTION AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title* - This Act shall be known as the "The Office for Investor Facilitation and Protection Act".

SEC 2. *Declaration of Policy* - It is the policy of the State to encourage Filipino and foreign investments as a vehicle to national development in order to spur economic productivity, create jobs, raises income levels, transfers production technology, innovative capacity as well as creating access to international marketing networks.

It is also the policy of the State to attain inclusive growth by creating quality employment to reduce massive poverty and to increase competitiveness by creating a level playing field not only in its macroeconomic policy but also in its sector specific policies.

It is the policy of the State to attract more foreign investments within its national jurisdiction and encourage participation in the investment incentives program. The State recognizes its concomitant responsibility to protect and safeguard the Filipino and foreign investors in their investments within the country.

SEC 3. *Purposes and Objectives* - It is the purpose and objective of this Act:

- (a) To establish an independent authority/body that shall facilitate expeditious endorsement of complete requirements in business registration and setting up of business requirements, securing of permits, certificates, endorsements, etc. necessary for the registration and availment of the investments incentives programs of Government;
- (b) To ensure the protection of investors in their investments within the country;
- (c) To expeditiously settle controversies and disputes between investors and the IPA concerned and other related government departments and agencies with respect to the grant and administration of the incentives program and/or registration and qualification for the investments incentives program including the interpretation of the terms and the conditions of the grant of the specific incentives program of government; and,
- (d) To provide a mechanism for resolution of disputes between the investor concerned and the IPAs, other related government agencies and departments with respect to the administration of investment incentives program, the grant of the investment incentives and interpretation of the terms and conditions of the grant through consultation or consultative meetings and discussions and if not resolved, to be referred for alternative dispute settlement (ADR), i.e. conciliation, mediation and arbitration.

SEC 4. *Definition of Terms* - For purposes of this Act, the term:

- A. "Alternative Dispute Resolution System" as defined in Republic Act No. 9285 as any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof;
- B. "Investment Facilitation" refers to assistance, endorsement, and coordination for the requisite business registration and setting up business; registration, permits, licenses, endorsements to qualify the investor for the availment the investment incentives program;
- C. "Investment Promotion Agencies" refers to government entities created by law, executive order, decree or other issuance for the purpose of attracting domestic and foreign direct investment through the administration of their respective fiscal and non-fiscal incentives; and, exercise regulatory powers over the economic zones. This includes: Board of Investments (BOI), Philippine Economic Zone Authority (PEZA), Bases Conversion Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Poro Point Management Corporation (PPMC), Bataan Technology Park, Inc. (BTPI), Cagayan Special Economic Zone (CEZA), Zamboanga City Special Economic Zone (ZCSEZA), Phividec Industrial Estate (PIA), Aurora Pacific Economic and Freeport Zone (APECO), Authority of the Freeport Bataan (AFAB), and Tourism Infrastructure and Enterprise Zone Authority (TIEZA), and other entities as may be created by law.
- D. "Strategic Investments" refer to investments that fall under the areas or sectors in the Priority Development Plan approved by the President of the Philippines.

SEC 5. *Creation of the Office for Investor Facilitation and Protection* - There is hereby created an independent department/agency attached to the Office of the President known as the Office for Investor Facilitation and Protection (OIFP) dedicated to (a) coordinating and assisting in the facilitation of business registration requirements, permits, certificates and those requirements for the availment of the investments incentives program; and, (b) the protection of the investors through consultation, consultative meetings and discussions and if not resolved, for alternative dispute resolution (ADR), for issues that may arise between the IPAs, other related government agencies and departments with respect to the administration of investment incentives program, interpretation of the terms and conditions of the grant of the investments incentives program and grant of the investment incentives in favour of the Filipino or foreign investor.

SEC 6. *Management Head* - The management of the Office shall be vested in the Secretary and two (2) Assistant Secretaries.

SEC 7. *Qualifications* - The Secretary and the two (2) Assistant Secretaries shall be chosen by the President. The Secretary and his assistants shall be citizens of the Philippines, at least thirty-five years old on the date of their appointment, of good moral character, and of recognized executive ability and competence in previous public or private employment, with adequate training and experience in economics, technology, finance, law, management, public administration and investments.

SEC 8. *Term*- The Secretary and his two (2) Assistant Secretaries shall be appointed by the President for a term of six (6) years: Provided, that the President may remove the Secretary and his Assistant Secretaries for cause.

SEC 9. *Powers and Functions of the Secretary* - The Secretary shall have the following powers and functions:

- (a) To coordinate the facilitation of business registration requirements, permits, certificates and those for the availment of the investments incentives program by the investor with the 13 IPAs and other IPAs as may be created by law;
- (b) To intervene and mediate disputes and controversies through consultations and arbitration between investors and government agencies and departments first before referring it to the alternative dispute resolution mechanism;
- (c) To protect the investors through alternative dispute resolution for issues that may arise between the IPAs, other related government agencies and departments with respect to the administration of investment incentives program and grant of the investment incentives and the investor; and,
- (d) To delegate any of his functions to his assistant secretaries.

SEC 10. *Investment Facilitation* - When the Office for Investor Facilitation and Protection endorses for approval any application for registration or for the issuance of a certificate or permit, it shall be deemed approved by the department or agency to which it was endorsed if it is not acted upon within ten (10) days from official receipt of the transmittal by the IPA involved without prejudice to Section 34 of E.O No. 226 and four (4) days, in case of other concerned agencies, departments, LGUs and other governmental bodies; Provided, that it is accompanied with complete documentary requirements.

SEC 11. *Areas for Investment Facilitation* - The investment facilitation power of the OIFP shall be limited to facilitation of strategic investments or those businesses which fall under the sectors identified in the Investment Priorities Plan of government.

SEC 12. *Alternative Dispute Resolution* - The submission of the parties to the alternative dispute resolution shall be mandatory before resort to courts.

SEC 13. *Appropriations* - There is hereby appropriated the sum of Two Hundred Million Pesos (Php200,000,000.00) for the initial implementation of this Act. Thereafter, the funding for OPIF shall be included in the Annual General Appropriations Act.

SEC 14. *Implementing Rules and Regulations* - Within ninety (90) days after the effectivity of this Act, the OPIF shall promulgate the rules and regulations needed for the implementation of this Act, including the necessary rules for consultation, arbitration and alternative dispute resolution.

SEC 15. *Separability Clause*. - If any provision of this Act is held invalid or unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SEC 16. *Repealing Clause* - All laws, decrees, executive orders, rules and regulations and other issuances or part thereof, which are inconsistent with this Act, are hereby repealed, amended, or modified accordingly.

SEC 17. *Effectivity* - This Act shall take fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approved,