

Presidential Decree No. 1167, s. 1977

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MALACAÑANG MANILA

PRESIDENTIAL DECREE No. 1167

DEVELOPING AND REGULATING THE OVERSEAS CONSTRUCTION INDUSTRY,
PROVIDING INCENTIVES THEREFORE, AND FOR OTHER PURPOSES.

WHEREAS, it is a primary concern of the government to promote and stimulate national economic development by embarking on an aggressive export promotion program;

WHEREAS, overseas construction operations provide an opportunity for the exportation not only of materials and commodities, but also of labor skills and technical and managerial expertise;

WHEREAS, these construction opportunities abroad would be most effectively availed of with organized, coordinated, and sustained efforts, and government encouragement and support;

WHEREAS, many Filipino construction contractors who have the experience and skills have organized themselves, and are in a position to undertake overseas construction work;

WHEREAS, success in overseas construction operations will bring not only economic benefits, but also confidence and pride in the nation's capabilities;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as follows:

Section 1. *Short Title.* This Decree shall be known as the "Overseas Construction Incentives Decree."

Section 2. *Declaration of Policy.* It is the policy of the State to actively encourage and support activities that lead to the export not only of goods and services, but also of technical and managerial expertise; accordingly, the State encourages and promotes Filipino contractors who have the necessary capability to undertake overseas construction and help increase foreign exchange earnings and employment opportunities, and thereby hasten the economic development of the Filipino people.

Section 3. *Definition of Terms.* For the purpose of this Decree:

(a) "Construction contractor" shall mean a natural or juridical person organized and licensed under Philippine laws, who undertakes or offers to undertake, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to,

subtract from, remove, move, wreck or demolish any structure, facility, project development or improvement, or to do any part thereof. The term contractor includes general engineering contractor, general building contractor and specialty contractor, construction management, engineering, and specialized consultancy group;

(b) "Filipino contractor" shall mean a construction contractor, who is a citizen of the Philippines, or a corporation or other juridical entity, of which, in the case of a corporation, at least sixty percent (60%) of its capital stock outstanding and entitled to vote, is owned and held by citizens of the Philippines and at least sixty per cent (60%) of the Board of Directors thereof are citizens of the Philippines, and in the case of any other juridical entity, at least sixty percent (60%) of its equity is owned and held by citizens of the Philippines.

(c) "Overseas project" shall mean a construction or consultancy project undertaken or will be undertaken by a contractor outside the territorial boundaries of the Republic of the Philippines, and paid for in acceptable or freely convertible foreign currency;

(d) "Overseas construction operations" shall mean any activity related to an overseas project, including provision of technical, managerial and highly professional services; and

(e) Board shall mean the Philippine Overseas Construction Board created under this Decree.

Section 4. Incentives for Filipino Overseas Contractors. A duly registered Filipino contractor who is engaged or will be engaged in an overseas construction project, shall be granted the incentives provided in Subsections (a) and (b), or at his option, to the incentive provided in Subsection (c) of this Section:

(a) Tax credit

(1) Taxes paid by the Filipino contractor to foreign governments on income derived from overseas projects subject, however, to the limitation of Section 30 (c) (4) (a) and (b) of the National Internal Revenue Code;

(2) Tax credit for taxes withheld on interest payments on foreign loans incurred directly and exclusively for overseas projects: Provided, That (i) no such credit is enjoyed by the lender-remittee in his country; and (ii) the overseas contractor has assumed the liability for payment of the tax due from the lender-remittee; and

(3) Tax credit equivalent to the sales or compensating taxes paid on domestically manufactured or produced materials or products which are purchased by the overseas contractor and actually exported by him to be used in his overseas projects: Provided, That the sales taxes are indicated as a separate item on the sales invoice of the manufacturer or producer.

(b) Deduction from gross overseas income.

(1) Accelerated depreciation At the option of the Filipino construction contractor and in accordance with the procedures established by the Bureau of Internal Revenue fixed assets actually used in overseas operations may be: (i) depreciated to the extent of not more than twice as fast as the normal rate of depreciation if expected life thereof is ten (10) years or less; or (ii) depreciated over any number of years, between five (5) years and expected life if the latter is more than ten (10) years. Such depreciation cost as may be chosen by the said tax payer shall be allowed as a deduction from taxable income: Provided, That he notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this Section will be used by him;

(2) Additional deduction of labor training expenses An additional deduction from taxable income of one-half of the value of labor training expenses incurred for improving the performance and efficiency of unskilled labor: Provided, That such training program is duly approved by the Department of Labor: Provided further, That such deduction shall not exceed ten percent (10%) of the direct labor wage; and

(3) Net operating loss carry-over A net operating loss incurred on overseas projects in any year of operation may be carried over as a deduction from taxable income earned from overseas projects, within the three (3) years immediately following the years of such loss: Provided, That the loss carried over is computed net of incentives herein granted: Provided further, That no impairment of loans or guarantees extended by the Philippine Government or any of its instrumentalities has occurred or will occur as a result of overseas construction operations during the taxable year. The net operating loss shall be computed in accordance with the procedures established by the Bureau of Internal Revenue and shall be allowed only for purposes of income declaration in the Philippines.

(c) In lieu of the income tax payable as a result of the application of the incentives provided for in the preceding subsections, the Filipino contractor may elect to pay a one and one-half percent (1-1/2%) tax on his overseas gross income.

Section 5. *Internationally Bidded Local Projects.* The incentives provided in the preceding Section Four, other than that provided for in Subsection (c) thereof, shall be available to Filipino construction contractors participating as principal in internationally bidded or foreign-assisted projects, under such rules and regulations as shall be promulgated by the Board.

Section 6. *Priority in Hiring.* Construction contractors shall have priority in the hiring or placement of construction workers for their overseas construction projects: Provided, That such activity is undertaken in accordance with the labor Code as amended.

Section 7. Registration. Construction contractors undertaking or who intend to undertake overseas construction projects shall register with the Board. No construction contractor shall tender or bid on any overseas construction project unless registered and authorized by the Board.

Section 8. *Composition of the Board.*

(a) The Board shall be composed of five (5) members to be appointed by the President of the Philippines. The members of the Board shall serve for a term of three (3) years or until their successors have been appointed. In case of any vacancy in the Board, the same shall be filled by the President of the Philippines for the unexpired term.

(b) The members of the Board shall be citizens of the Philippines, at least thirty-five (35) years of age, of good moral character and with recognized competence in construction, international finance, or foreign trade.

(c) The President of the Philippines shall appoint from among the five members, a full-time Chairman of the Board who shall, at the same time, be the chief operating officer of the Board.

Section 9. *Strategies and Programs for Developing Philippine Overseas Construction Industry.* It shall be the duty of the Board to formulate strategies and programs for developing the Philippine overseas construction industry, to regulate and control the participation of construction contractors in overseas construction projects, and to administer the grant of incentives provided under this Decree.

Section 10. *Coordination of Strategies and Policies.* Unless otherwise specifically prescribed by this Decree, the Board shall coordinate its strategies and policies with those of the National Economic and Development Authority, Philippine Export Council, Philippine Export and Foreign Loan Guaranty Corporation, Overseas Employment Development Board, and all relevant agencies of the government involved in the development and promotion of the overseas construction industry. The strategies formulated by the Board shall be incorporated into the National Export Strategy.

The Board shall be under the control and supervision of the Office of the President.

Section 11. *Powers and Functions.* The Board shall exercise by itself or through existing agencies, the following powers and functions:

(a) Receive, process and approve, on such terms and conditions it may deem necessary to promote the objectives of this Decree, applications of construction contractors for registration under this Decree, and to impose and collect reasonable fees which shall be used exclusively to meet the operating and administrative expenses of the Board and in promoting its objectives;

(b) Identify, in coordination with the Department of Foreign Affairs, Overseas Employment Development Board, and Department of Trade, the projects, opportunities, and the countries where construction contractors may operate;

(c) Determine, with the assistance of the representative of the private construction industry and the Department of Public Works, Transportation and Communication from among the interested construction contractors those who will be allowed to bid for overseas projects;

(d) Determine from among the registrants those who will avail of and are eligible for the incentives provided by this Decree and cause the granting of the same;

(e) Check, verify, and evaluate at regular intervals, through the facilities of appropriate existing agencies, the performance of construction contractors engaged in overseas projects;

(f) Check and verify periodically, with the assistance of other instrumentalities of government, by inspection of the books or by requiring regular reports or by some other method deemed most effective, on the compliance by construction contractors with the provisions of this Decree and the rules and regulations issued thereunder;

(g) Authorize, upon recommendation of the Department of Trade, the exportation of construction materials and equipment, subject to existing rules on exportation:

(h) After due notice and hearing, cancel the registration of, or suspend or cancel, or cause the suspension or cancellation, wholly or partly, of the enjoyment of incentives and other benefits by any Filipino contractor, including the imposition of penalties as provided for under this Decree, for: i) failure by the contractor to maintain the qualifications required; of ii) for violation of any provision of this Decree and of other laws granting incentives and benefits to such contractors, or of the rules and regulations issued thereunder, or of any law or decree for the protection of labor; iii) for unjustified abandonment, incompetent management and administration of any overseas project awarded to such contractor;

(i) Recommend or participate, subject to the approval of appropriate authorities, in the negotiation of bilateral or multi-lateral agreements that would facilitate the entry of contractors in overseas markets and to protect the interest of Filipino contractors and their workers operating overseas;

(j) Formulate, examine and implement, or cause the implementation thereof, a scheme or arrangement for the protection of Filipino contractors from non-commercial risks with respect to their assets, equipment and other property held overseas in connection with approved overseas projects;

(k) Obtain, collate, and evaluate information necessary for the effective discharge of its primary purpose and the proper exercise of its powers and functions;

(l) Generally exercise all the powers necessary or incidental to attain the purposes of this Decree, including the promulgation of its internal rules and procedures governing meetings, organization and staffing.

Section 12. *Rules and Regulations.*

(a) The Board shall issue rules and regulations as may be necessary for the proper implementation of the general provisions of this Decree. Said rules and regulations shall contain, among others, criteria for determining the eligibility of contractors and their principals to operate overseas and to avail of the incentives provided for in this Decree, measures to avoid ruinous competition between contractors engaged in overseas construction projects, provisions to encourage the pooling of resources of construction contractors to enhance their competitive advantage in obtaining overseas construction contracts, provisions for the utilization of locally available materials and equipment in overseas construction projects, and measures to expand within a reasonable time, the ownership base of construction contractors by

either a public offering of their capital stock entitled to vote, or the sale of such stock to their employees, or other measures to achieve such end.

(b) The Secretary of Finance, upon recommendations of the Commissioner of Internal Revenue, shall promulgate all necessary rules and regulations for the effective enforcement of the tax incentive provisions of this Decree.

Section 13. *Meeting and Quorum.* The Board shall meet as often as is necessary but not less than once a month on such days as it may fix. Special meetings may be convoked upon the call of the Chairman or upon the written request of at least two (2) of its members. The presence of three (3) members shall constitute a quorum, and all decisions shall require the concurrence of at least three (3) members.

Section 14. *Remuneration of Members of the Board.* The part-time members of the Board shall receive a per diem of five hundred pesos (P500) for each meeting of the Board actually attended; Provided, however, That the total per diems paid to a Board member shall not exceed the sum of two thousand pesos (P2,000) in any one month. Full time members shall receive annual salaries and commutable monthly allowances as determined by the President of the Philippines.

Section 15. *Executive Staff.*

(a) The Board shall have an Executive Staff to implement its decisions. The positions in the Executive Staff, are hereby declared to be highly technical and confidential in nature.

(b) The Executive Staff may be augmented on an "as needed" basis, from time to time, in the exercise of its powers and performance of its functions by calling upon appropriate agencies of the government or the private sector.

(c) The Commission on Audit shall appoint its representative to the Board to audit its accounts in accordance with pertinent rules and regulations.

Section 16. *Special Attaches.*

(a) The Board may, whenever necessary, designate special attaches and, in coordination with other appropriate government agencies, assign such attaches to countries where Filipino contractors are operating or may be likely to operate, provided that use of existing labor, commercial or other forms of attaches is optimized for this purpose. The attaches shall perform the following duties:

(i) Gather information needed to develop the overseas construction market;

(ii) Assist Philippine government agencies and Filipino overseas contractors in developing the overseas construction market;

(iii) Monitor the performance of construction contractors overseas and submit relevant reports and recommendations to the Board;

(iv) Perform such other duties as may be assigned to him by the Board.

(b) The exercise of the foregoing functions by special attaches shall be governed by the terms and conditions of an understanding or agreement between the Board and the Department of Foreign Affairs.

Section 17. *Penal Provisions.* Any violation of the provisions of this Decree or of the terms or conditions of registration, or of the rules and regulations issued by the Board, shall be punished by a fine not to exceed Fifty Thousand Pesos (P50,000) or imprisonment for not more than three (3) years, or both, at the discretion of the Court.

Section 18. *Appropriation.* There is hereby appropriated the sum of five million pesos (P5,000,000) out of the funds of the National Treasury not otherwise appropriated, for the organizational and operational expenses of the Board during the period of one year from the approval of this Decree. Thereafter its budget shall be included in the annual General Appropriations Act.

Section 19. *Separability Clause.* The provisions of this Decree are declared to be separable and if any provision or the application thereof is held invalid or unconstitutional, the validity of the other provisions shall not be affected.

Section 20. *Repealing Clause.* All provisions of existing laws, decrees, and executive orders contrary to or inconsistent with this Decree are hereby repealed or modified accordingly.

Section 21. *Effectivity Clause.* This Decree shall take effect upon its approval.

Done in the City of Manila, this 27th day of June, in the year of Our Lord, nineteen hundred and seventy-seven.

(Sgd.) **Ferdinand E. Marcos**

By the President:

(Sgd.) **JACOBO C. CLAVE**
Presidential Executive Assistant