

RS 10/19/22

MEMORANDUM CIRCULAR NO. 22-19
Series of 2022

SUBJECT : GUIDELINES ON THE REGISTRATION WITH THE BOARD OF INVESTMENTS OF EXISTING REGISTERED BUSINESS ENTERPRISES IN THE INFORMATION TECHNOLOGY-BUSINESS PROCESS MANAGEMENT SECTOR BY VIRTUE OF FISCAL INCENTIVES REVIEW BOARD RESOLUTION NO. 026-22 DATED 14 SEPTEMBER 2022

WHEREAS, under Section 2(c) of Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, it is declared that the State shall provide support to businesses in their recovery from unforeseen events such as an outbreak of communicable diseases or a global pandemic, and strengthen the nation's capability for similar circumstances in the future;

WHEREAS, Presidential Proclamation No. 57, s. 2022 further extended the existing State of Calamity due to the coronavirus disease-2019 (COVID-19) pandemic throughout the Philippines effective 13 September 2022 until 31 December 2022, unless earlier lifted or extended as circumstances may warrant;

WHEREAS, the Fiscal Incentives Review Board (FIRB), pursuant to Section 297(A) of the National Internal Revenue Code of 1997, as amended by the CREATE Act, issued FIRB Resolution No. 026-22 dated 14 September 2022 allowing the affected Registered Business Enterprises (RBEs) in the Information Technology-Business Process Management (IT-BPM) sector to transfer their registration to the Board of Investments (BOI) until 31 December 2022 and to adopt up to 100% WFH arrangement, *Provided that*: "affected RBEs" shall cover those affected RBEs that have remaining tax incentives under Section 311 of the NIRC of 1997, as amended, or those with approved incentives on or before 14 September 2022 under the CREATE Act with the concerned IPA;

WHEREAS, the monitoring of the affected RBEs' compliance and the avallment of their remaining incentives shall remain with the Investment Promotion Agency (IPA) administering such economic zone or freeport zone where they are located (herein referred to as the "concerned IPA") under said FIRB Resolution No. 026-22;

WHEREAS, FIRB Resolution No. 026-22 further resolved that the BOI and the concerned IPA, in coordination with the FIRB Secretariat, shall, when necessary, provide any additional procedures and mechanisms to effectively and expeditiously carry out the said registration of RBEs in the IT-BPM sector;

WHEREAS, Articles (7)(2) and (20) of Executive Order No. 226 or the Omnibus Investments Code of 1987, as amended, provide that the Board shall be responsible for the regulation and promotion of investments in the Philippines and promulgate such rules and regulations as may be necessary to implement the intent and provisions of the Code;

WHEREFORE, by virtue of FIRB Resolution No 026-22 dated 14 September 2022 and in order to effectively and expeditiously carry out the registration of RBEs in the IT-BPM sector with the BOI from the concerned IPA and allow them to adopt up to 100% WFH arrangement, the following Guidelines are hereby issued:

Section 1. Scope. All affected RBEs in the IT-BPM sector that have remaining tax incentives under Section 311 of the NIRC of 1997, as amended, or those with approved incentives on or before 14 September 2022 under the CREATE Act with the concerned IPA that intend to register with the BOI may be allowed until 31 December 2022 to exercise such option.

Section 2. General Procedure. The following procedures shall govern the registration with the BOI:

2.1 Filing of Request

The affected RBE shall file its request with the concerned IPA using the herein prescribed Request to Register with BOI Form (Annex A).

2.2 IPA Endorsement to BOI

The concerned IPA shall endorse to the BOI Infrastructure and Services Industries Service (ISIS) the request of affected RBEs using the prescribed template IPA List of Endorsed RBEs (Annex B) and provide the following documents:

2.2.1. Scanned copy of the RBE's original Certificate of Registration with Terms and Conditions or Agreement issued by the concerned IPA; and

2.2.2. Scanned copy of "Request to Register with BOI Form" duly accomplished by the RBE.

The endorsement by the concerned IPA shall be treated as a certification of its no-objection on the registration with the BOI and that the RBEs endorsed are compliant with the terms and conditions of registration and are in good standing.

2.3 Issuance of BOI Certificate of Registration. After compliance with the required endorsement and payment with the BOI of the applicable fee in the amount of Php 2,250.00, the BOI ISIS will issue the certificate of registration to the duly endorsed RBEs (hereinafter referred to as the "covered RBEs") and specify the remaining incentives and the period of entitlement therein. The BOI Certificate of Registration shall include an annotation of the Certificate of Registration issued by the concerned IPA. The original Certificate of Registration issued by the concerned IPA shall likewise include the corresponding annotation of the BOI Certificate of Registration.

Section 3. Availment of Incentives. The concerned IPA shall continue to administer the remaining tax incentives of the covered RBEs within the corresponding period of entitlement as indicated in the Issued BOI Certificate of Registration. To avail of the remaining tax incentives, the covered RBEs shall file their applications for availment with the concerned IPA.

Nothing herein shall affect the other incentives and non-fiscal incentives that the covered RBEs are enjoying under their original registration with the concerned IPA, or under the NIRC or other laws, provided that the registration with the concerned IPA is maintained by the covered RBE.

After the lapse of the period of the remaining tax incentives, the existing registered project of the covered RBEs shall not be entitled to additional incentives, unless the activity qualifies as a new investment or qualified expansion under the Strategic Investment Priority Plan, which shall be subject to a separate application for registration.

Section 4. Compliance Monitoring. The monitoring of the covered RBEs' compliance with the terms and conditions of their registration shall be maintained with the concerned IPA. The covered RBEs shall observe and abide by the provisions of Republic Act No. 11534 or the CREATE Act, Executive Order No. 226 or the Omnibus Investments Code of 1987, as amended, existing laws, rules and regulations and the corresponding requirements of relevant government agencies.

Any findings of violations decided by the agency exercising jurisdiction over the matter or final resolution of the courts affecting the operations of the project shall be immediately reported by the covered RBE and/or concerned IPA to the BOI. Finally, any misrepresentation or falsification in the documents or other supporting papers submitted to the BOI, or failure to maintain qualifications for registration shall constitute as a ground for cancellation of the registration.

Section 5. Movement of Capital Equipment within and outside the Ecozones or Freeports. To facilitate the movement of the covered RBEs' capital equipment within and outside the ecozones or freeports, the covered RBE shall ensure that the number of laptops/other equipment of the covered RBE outside the ecozone or freeport does not exceed the number of its employees under the WFH arrangement. Upon approval of the concerned IPA, additional laptops/other equipment may be allowed if reasonably needed to perform the registered project or activity.

Within 30 days from the issuance of the BOI Certificate of Registration, covered RBEs shall submit to the concerned IPA the following:

- a. List of equipment and/or other assets brought out of the economic or freeport zones, including the quantity of laptops, desktops, or other assets;
- b. Acquisition cost, book value and year of acquisition of the equipment and/or other assets; and
- c. Total number of employees and number of employees under the WFH arrangement.

Thereafter, the covered RBEs shall submit to the concerned IPA within five (5) days after the end of each month a report on (a) additional or other equipment or assets brought out of the economic zones; and (b) total number of employees and number of employees under WFH arrangement.

For purposes of this Circular, no bond, in whatever form, shall be imposed on the movement of capital equipment within and outside the ecozones or freeports.

Section 6. Cancellation of BOI Certificate of Registration. In the event of cancellation of registration, the covered RBE shall file its request to the concerned IPA for evaluation and assessment of refund/penalties, if applicable. Upon approval of the IPA, the covered RBE shall surrender to BOI Legal and Compliance Service its original BOI Certificate of Registration and attach the implementing letter of cancellation or endorsement issued by the concerned IPA.

Section 7. IPA Reporting Requirement. The BOI, when necessary, may require the concerned IPA to provide a report on the compliance of the covered RBEs and their tax incentives availment.

Section 8. Repealing Clause. All existing rules and regulations or parts thereof that are inconsistent with the provisions of this Memorandum Circular are hereby amended accordingly.

Section 9. Effectivity. This Memorandum Circular shall take effect immediately following its publication in a newspaper of general circulation. Three (3) copies hereof shall be filed with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Center, Diliman, Quezon City pursuant to Presidential Memorandum Circular No. 11 dated 09 October 1992.

Issued this 18th day of October 2022 in Makati City, Philippines.

Approve:


ALFREDO E. RASQUIL
DTI Secretary and BOI Chairman

P.S. October 19, 2022,