



IMO
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**A BILL TO INCORPORATE THE
1996 PROTOCOL TO THE CONVENTION ON
THE PREVENTION OF MARINE POLLUTION
BY DUMPING OF WASTES AND OTHER
MATTER, 1972 PROVIDING PENALTIES
FOR VIOLATIONS THEREOF AND
FOR OTHER PURPOSES**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at
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EXPLANATORY NOTE

I. OVERVIEW OF THE 1996 PROTOCOL TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972

At the outset, a preliminary discussion of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter at Sea, 1972 would be helpful in understanding the Protocol itself. Upon the invitation of the United Kingdom, the Inter-Governmental Conference on the Convention on the Dumping of Wastes at Sea was held in London in November 1972 and adopted the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 commonly called as the "London Convention". Although the London Convention was originally an initiative of

the United Kingdom, when the same came into force on 30 August 1975 the International Maritime Organization (IMO) was made responsible for the Secretariat duties related to it.¹

The adoption of the London Convention made it one of the first global conventions to protect the marine environment from human activities. This is evident under Article I where it clearly states its main objective to promote the effective control of all sources of pollution of the marine environment with special emphasis to take all practicable steps to prevent the pollution of the sea by the dumping of waste or other matter that is likely to create hazards to human health, harm living resources and marine life, to damage amenities, or to interfere with other legitimate uses of the sea.

The London Convention consists of 22 Articles and 3 Annexes. Among the notable features of the said London Convention is its adoption of a "Black List/Grey List" approach to regulating ocean dumping. Annex I provides for substances which are prohibited from ocean disposal. This is considered as a Black List of materials that generally may not be ocean dumped (though for certain Annex I materials dumping may be permissible if present only as "trace contaminants" or "rapidly rendered harmless"). Annex II is considered as a Grey List of substances and materials that require "special care" for the issuance of special permit for dumping. While Annex III lays out general technical factors to be considered in establishing criteria for issuance of ocean dumping permits.

As of 31 December 2010, the status of the London Convention would show that there are eighty six (86) Contracting Parties to the same which comprises sixty seven point nine percent (67.9%) of the world tonnage.² The Philippines is among the Contracting Parties to the said London Convention.

A significant milestone for the protection of the marine environment was reached on 7 November 1996 when in a special meeting of Contracting Parties of the London

¹ Gold, Edgar; Gard Handbook on Protection of the Marine Environment, 3rd Edition, Royle Corporate Print, London, 2006, page 198.

² <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx> accessed on 12 January 2011.

Convention, adopted the "1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972". The Protocol is intended to supersede (replace) the 1972 Convention "as between Contracting Parties to this Protocol which are also Parties to the Convention". This means, in practice, that both instruments will be in force in parallel for some time, but the momentum will gradually shift to the Protocol as more and more parties ratify it.³ The Protocol entered into force on 24 March 2006.

The Protocol which has 29 Articles and 3 Annexes represents a major change of approach to the question of how to regulate the use of the sea as a depository for waste materials. The objective of the Protocol as reflected under Article 2 of the same is to protect and preserve the marine environment from all sources of pollution and, towards this end, Contracting Parties are required to take effective measures to prevent, reduce, and where practicable eliminate marine pollution caused by dumping or incineration at sea.

Article 3 of the Protocol is also invaluable as it stresses a "precautionary approach" principle which requires that "appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects. The article also advances the concept of "polluter pays principle" which means that "the polluter should, in principle, bear the cost of pollution". It further emphasizes that Contracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of the environment to another.

It is important to note that rather than stating which materials may not be dumped, the Protocol instead restricts all dumping except for a permitted list. This is considered to be a "reversed list" approach established under Section 4 of the Protocol whereby Contracting Parties are required to prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1. These are:

³ <http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-the-Prevention-of-Marine-Pollution-by-Dumping-of-Wastes-and-Other-Matter.aspx> accessed on 12 January 2011.

WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING	
1.	The following wastes or other matter are those that may be considered for dumping being mindful of the Objectives and General Obligations of this Protocol set out in Articles 2 and 3:
.1	dredged material;
.2	sewage sludge;
.3	fish waste, or material resulting from industrial fish processing operations;
.4	vessels and platforms or other man-made structures at sea;
.5	inert, inorganic geological material;
.6	organic material of natural origin; and
.7	bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.
.8	CO₂ streams from CO₂ capture processes. (Added under amendments adopted in 2006, which entered into force in 2007).

The dumping of the aforementioned, however, requires a permit pursuant to Annex 2 of the said Protocol.

Likewise, incineration of wastes is specifically prohibited by Article 5 of the Protocol. Article 6 of the Protocol additionally prohibits Contracting Parties from exporting of wastes or other matter to other countries for dumping or incineration at sea.

While Article 8 of the Protocol provides exceptions and permits dumping to be carried out in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels. In other cases when dumping is permitted, Article 9 of the Protocol requires Contracting Parties to designate an appropriate authority or authorities to issue permits in accordance with the Protocol, keep records, and make proper reporting of the same.

Another feature of the Protocol is the provision on Compliance Procedure under Article 11 which provides that the Contracting Parties shall establish in no later than two years after entry into force of the said Protocol the procedures and mechanisms necessary to assess and promote compliance thereof.

Settlement of disputes regarding the interpretation or application of the Protocol is also dealt with under Article 16 thereof. Similarly, matters and procedures pertaining to the amendment of the Protocol are also given consideration under Article 21 of the said Protocol.

Amendments to the annexes, as expressed under Article 22 of the Protocol, are adopted through a tacit acceptance procedure under which they will enter into force not later than 100 days after being adopted. The amendments will bind all Contracting Parties except those which have explicitly expressed their non-acceptance. In relation to the aforementioned provision, an examination of the Annexes of the Protocol would show that Annex 1 of the same covers the wastes or other matter, previously enumerated herein, that may be considered for dumping. Annex 2 is equally indispensable as the same deals with the assessment of the aforementioned wastes or other matter that may be considered_for dumping. Then Annex 3 deals with the arbitral procedure for the settlement of disputes provided under Article 16 of the Protocol.

As of 31 December 2010, the Protocol has thirty nine (39) Contracting Parties comprising thirty three point twenty four percent (33.24%) of the world tonnage. The Philippines, however, is yet to become a Contracting Party to the Protocol.

II. IMPORTANCE AND SIGNIFICANCE OF THE PROTOCOL VIS-A-VIS THE PREVENTION OF POLLUTION BY DUMPING OF WASTES OR OTHER MATTER IN THE PHILIPPINES

The protection and preservation of the marine environment is a paramount duty of the State. This duty is two-fold: to its people and to other States. On one hand, the duty of the State to its people is enshrined in no less than the highest law of the land – the 1987 Constitution of the Philippines.

The 1987 Constitution was drafted at a time when there was a growing concern about the preservation of a healthy environment. The discussions manifested a clear desire to make environmental protection and ecological balance conscious objects of police power.⁴ This is clear under Sec. 16 of Article II of the said Constitution where it states that:

The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

The Philippines is an archipelagic country which explains the natural affinity of its people to the seas, either as the source of food or as a means of livelihood considering that there are fifty-five (55) coastal provinces out of seventy-six (76) provinces in the Philippines. It is of no surprise therefore that in almost all provinces and across the archipelago one can find clusters of fisherfolks, seafarers, boat builders, shipping operators and beach resort owners/operators. Thus, in relation to the aforementioned, Section 2 of Article XII of the 1987 Constitution of the Philippines further mandates that:

x x x

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

On the other hand, the duty of the Philippines to other States emanates from the United Nations Convention on the Law of the Sea (UNCLOS)⁵. The Philippines is a Party to the UNCLOS as it signed and ratified the same on 10 December 1982 and 8 May 1984, respectively.⁶ Under Article 192 of UNCLOS it is expressly provided that, “States have the obligation to protect and preserve the marine environment”.

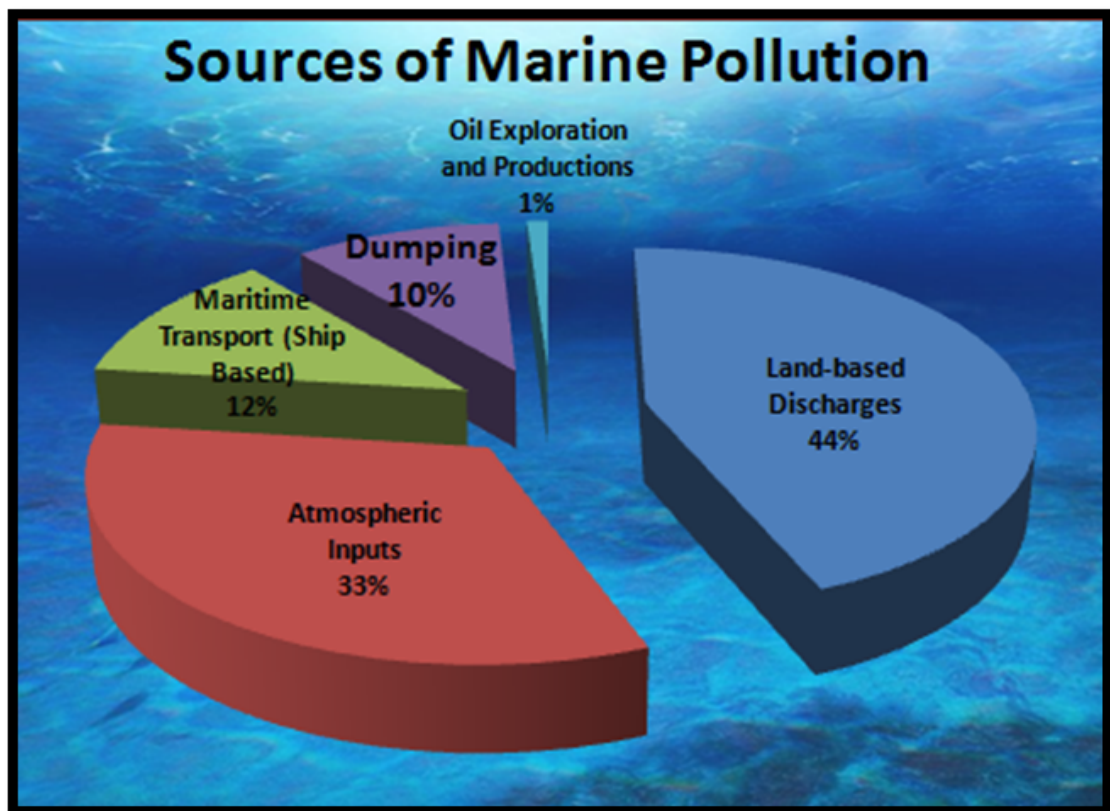
⁴ Bernas, S.J.; *The 1987 Constitution of the Republic of the Philippines: a Commentary*, 2003 Edition, Rex Printing Company, Inc., 2003, page 91.

⁵ United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, in force 16 November 1994, Signatories: 157. Parties: 161, United Nations, Treaty Series, vol. 1833, p. 3.

⁶ <http://treaties.un.org> [Accessed on 23 February 2011].

Sadly, the marine wealth of the Philippines is being threatened and gradually, if not rapidly, being damaged by pollution. In the continuing struggle to protect and preserve the marine environment, it is necessary to take note of the following sources of marine pollution⁷ as illustrated in the hereunder chart:

From the aforementioned statistics it is indubitable that dumping constitutes a substantial source of marine pollution. Unfortunately, although the Philippines is a Contracting Party to the London Convention, no primary legislation has been enacted into law by the Philippine Congress to adopt and incorporate the provisions of the same for implementation and enforcement. It seems, however, that the enactment of primary legislation for the aforementioned purpose has been overtaken by events and rendered outdated with the entry into force of the Protocol which is intended to supersede the London Convention. Hence, the best and most logical course of action would be to enact a primary legislation into law incorporating the provisions of the Protocol instead of the



London Convention.

⁷ See Lecture Materials in Marine Environmental Law dated January 2011 by Mr. Ruben Y. Maceda.

The fact that the Philippines is yet to be a contracting State to the Protocol does not diminish the importance of the said Protocol to the Philippines. On the contrary, with regard to the Philippines, it is indubitable that the Protocol is an indispensable instrument towards the prevention of pollution by dumping of wastes and other matter in all marine waters over which the country exercises sovereignty and jurisdiction including its territorial sea and the exclusive economic zone, and, as provided in the herein Bill, also that of its marine internal waters.

Among the significant innovations introduced by the Protocol which would greatly assist the efforts of the Philippines includes the adherence of the Protocol to the precautionary approach to marine environmental protection from dumping or incineration at sea of wastes or other matter. This approach will definitely brought a radical change in the attitude towards the marine environment. By taking the appropriate preventive measures there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even if there is no conclusive evidence to prove a causal relation between inputs and their effects, the protection and preservation of the marine environment will come first over other considerations including those which are economic in nature.

Moreover, the Protocol will also ensure that it will be the policy of the Philippines not to simply transfer, directly or indirectly, damage or likelihood of damage waste from one part of the environment to another or transform one type of pollution into another.

The “polluter pays principle” enshrined in the Protocol which requires the polluter to bear the cost of pollution will enable the Philippines to recover cost and expenses incurred as a result of the violation of the provisions of the Protocol as incorporated in the herein Bill.

Reflecting on the aforementioned, the Protocol now embodies the so called “reverse list” approach. Instead of prohibiting the dumping of certain hazardous materials, the Philippines in incorporating the provisions of the said Protocol will now be obligated to prohibit the dumping of any waste or other matter not listed under Annex 1 of the said Protocol. In allowing the dumping of those listed in Annex 1, the Philippines will be required to issue a special permit for the same which should be in accordance with Annex 2 of the Protocol. Equally significant is the prohibition by the Protocol on

incineration at sea. In addition, the Protocol also prohibits the export and import of wastes and other matter.

In addition to the above discussed advantages, the Protocol is also significant for the compliance of the Philippines with its obligations under UNCLOS. As regards pollution by dumping, Article 210 of UNCLOS expressly mandates that:

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.

In addition, it is further required under the same Article that:

6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

It is also important to consider that the Philippines is mandated under Article 197 of UNCLOS to cooperate with other States on a global or regional basis to formulate international rules and standards for the protection and preservation of the marine environment. Corollary with the aforementioned, under Article 194 (1) it is settled then that States shall accordingly endeavour to harmonize their policies on the prevention of marine pollution by dumping of wastes or other matter.

Considering all the aforementioned, the Protocol will enable the Philippines to comply with its two-fold duty as the same is an important basis for its laws on the prevention of marine pollution by dumping of wastes or other matter. The provisions of the Protocol will further guide the concerned government agencies of the Philippine Government in the drafting and formulation of appropriate implementing rules and regulations for the enforcement of the said law. This in turn will accrue to the benefit of its people.

The Protocol will also be instrumental for the compliance by the Philippines with its obligations under the UNCLOS as the adoption and incorporation of its provisions will assure that the laws of the Philippines on prevention of marine pollution by dumping of wastes or other matter will be compliant with international rules and standards. This is imperative because under Article 235 of UNCLOS the Philippines has the responsibility to fulfil its international obligations concerning the protection and preservation of the

marine environment. Failure to comply with the same shall held the Philippines liable in accordance with international law.

III. LEGISLATIVE PROCESS OF THE PHILIPPINES

A. How the Principal Sources of International Law are Recognized under the Philippine Constitution

Under the 1987 Constitution of the Philippines, an international convention (or treaty) becomes part of the law of the land by adoption or transformation. This is generally done by means of two methods. First is through the Incorporation Clause under Section 2 of Article II of the said Constitution:

The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Thus, deemed incorporated into Philippine law by virtue of the Incorporation Clause are the customary or general norms of international law on account of their nature as binding on all States.⁸ The second method is through the Treaty Clause provided under Section 21 of Article VII of the same Constitution:

No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

The power to conclude or enter into a treaty is vested with the President. This is implied in the Executive Power of the President under Section 1 of Article VII of the 1987 Constitution of the Philippines which provides that: “The executive power is vested in the President of the Philippines”. The reason for the aforementioned, among others, is that it is the President alone who has access to confidential information that may be essential to the conduct of the negotiation.

The power to ratify treaties is also vested in the President and not in the Senate which is under the Legislative Branch of the Government. The role of the Senate is confined simply to giving or withholding consent to the ratification proposed to be made

⁸ Magalona, Merlin M.; Fundamentals of Public International Law, C & E Publishing, Inc., Quezon City, 2005, page 527.

by the President. This is clearly elucidated under Section 21 of Article VII on Executive Department, of the 1987 Constitution of the Philippines which provides that:

No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

Notwithstanding the immediately above-mentioned provision, the President does not require prior authorization or approval from the Senate for the conclusion, approval, or ratification of an international convention (or treaty). The process, however, is reversed. After the President ratifies the international convention, he has to transmit the same to the Senate for concurrence. The concurrence of the Senate is required for the ratification by the President to be valid and effective.

Thereafter, upon the deposit of the instrument of ratification or accession, as the case may be, the said international convention or treaty becomes part of the law of the land. However, despite the aforementioned, the said international convention or treaty cannot still be enforced in the Philippines. For the said purpose, a bill has to be passed by the Congress incorporating the provisions of the said international convention or treaty into law.

B. Enactment of Laws

In Philippine jurisdiction, legislative power is essentially the authority under the Constitution to make laws and subsequently, when the need arises, to alter and repeal them.⁹ In relation to the aforementioned, Sec. 1 of the 1987 Constitution of the Philippines expressly provides that “the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representative . . .” It is settled then that the primary function of the Congress is to legislate.

⁹ De Leon, Hector S.; Textbook on the Philippine Constitution, 2005 Edition, Rex Book Store, Inc., Quezon City, 2005, page 153.

A proposed law in Congress is called a Bill.¹⁰ Section 26 (2) of the 1987 Constitution of the Philippines provides the requisites for the said Bill to become a law:

No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal.

A Bill approved on Third Reading by both Houses shall be printed and forthwith transmitted to the President as mandated by Section 27 (1) of the 1987 Constitution of the Philippines which provides as follows:

Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof, otherwise, it shall become a law as if he had signed it.

Perusal of the immediately quoted provision would reveal that a Bill passed by Congress may become a law in any of the following ways:




When the President approves the Bill by signing it;



When he vetoes the Bill and returns the same with his objections to the House where it originated, and the same is repassed over his veto by a

¹⁰ Ibid, page 190.

vote of two-thirds of all the members (not merely two-thirds of all the members present constituting a quorum) of both Houses; and

 If the President does not communicate his veto of any Bill to the House where it originated within thirty (30) days after the date of the receipt thereof, in which case it shall become a law as if he had signed it.¹¹

Upon compliance with all the aforementioned, a Bill finally becomes a law. However, notwithstanding that it is already a law, to be valid and effective it must additionally comply with the publication requirements as mandated under Art. 2 of the Civil Code of the Philippines which provides that:

Laws shall take effect after fifteen days following the completion of their publication either in the official gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided. (*As amended by E.O. 200*)

On one hand, at this point a law may already be enforced and implemented. But, on the other hand, there are instances when a law enacted by Congress is not self-executory. These usually happen when it is provided in the law itself that the Congress delegates to the concerned government agencies the drafting of the rules and regulations necessary for the effective implementation of the said law.

C. IMPLEMENTATION OF THE PROTOCOL AS INCORPORATED IN THE HEREIN BILL

The primary objective of the herein Bill is to incorporate the provisions of the Protocol into Philippine domestic law for enforcement and implementation of the same.

Under Article I on General Provisions of the herein Bill, it is declared to be the policy of the State to protect and preserve the marine environment from all sources of pollution and take effective measures to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter. Significantly, it is also declared to be the policy of the State to apply the precautionary

¹¹ Ibid, page 195.

approach to marine environmental protection from dumping or incineration at sea of wastes or other matter.

It is likewise declared to be the policy of the State to take into account the “polluter pays principle” which provides that the polluter should bear the cost of pollution and the State shall also endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea shall bear the cost of meeting the pollution prevention and control requirements for the said authorized activities with due regard to the public interest.

It is further declared to be the policy of the State in the implementation of the herein Bill, not to merely transfer directly or indirectly, damage or likelihood of damage waste from one part of the environment to another or transform one type of pollution to another. This is paramount because any doubt or uncertainty that may come out in the actual implementation of the herein Bill should rightly be resolved in favor of the protection and preservation of the marine environment.

The definitions provided under the Protocol which were used also in the herein Bill were incorporated *in toto* although for convenience they were listed in alphabetical order. However, while the Protocol applies only to all marine waters other than the internal waters of States, the herein Bill is intended to apply also to marine internal waters of the Philippines. Otherwise, there will be numerous areas in the Philippines that will be legally unprotected from dumping or incineration of wastes and other matter.

On one hand, Articles II and III of the herein Bill incorporates the prohibition on dumping of wastes or other matter and incineration at sea, respectively. On the other hand, Article IV thereof is explicit on the prohibition of export and import of wastes or other matter. Article V of the Bill provides for the exceptions from the aforementioned prohibitions. However, the exceptions do not cover Article IV.

Article VI on implementation and enforcement is of vital importance in the herein Bill. Lead agency concept is applied and, as such, the Philippine Coast Guard (PCG) is designated to be that lead agency responsible for the implementation and enforcement of this Bill. The PCG is mandated, among others, to protect the marine environment from

pollution by dumping or incineration of wastes or other matter at sea. In view of the aforementioned, the PCG is authorized to issue permit for the dumping or incineration of wastes or other matter for those listed under Annex 1 of the Protocol in accordance with Annex 2 of the same Protocol. The PCG is likewise mandated to identify and designate dumping sites in accordance with Annex 2 of the Protocol.

To effectively and efficiently carry out the provisions of the herein Bill, the PCG is also mandated to develop policies and guidelines for the enforcement and implementation of the herein Bill. This the PCG will undertake in coordination and consultation with other concerned government agencies and stakeholders. Additionally, the PCG is authorized to impose administrative fines and penalties as may be necessary for the effective enforcement and implementation of the Bill.

Under the same Article VI, the PCG is also mandated to be the lead agency that will undertake and coordinate with the Organization and other concerned countries for the proper compliance and performance by the Philippine Government of its obligations under the Protocol.

Section 11 (j) of Article VI of the herein Bill which provides for the PCG to develop capability necessary for the undertaking of dredging operations itself may be considered as a novel provision. However, the same is incorporated as it is economically practical for the Philippines. This will help the Philippines to avoid contracting with private organizations for its dredging projects thereby saving much needed funding that it can use for its other urgent projects. In the long run, the said provision will be invaluable in the enforcement functions of the PCG. Admittedly, monitoring and apprehending violators of the Bill is not an easy task. Hence, if it will be the PCG itself that will undertake the dredging, faithful compliance with the provisions of the Bill will be assured.

Equally important is the provision under Article VII of the herein Bill on Institutional Mechanism. The PCG cannot successfully implement and enforce the herein Bill on its own. Hence, the responsibilities of other concerned government agencies are also expressly provided. This is essential to avoid redundancy of functions, confusion,

and even conflicts in the performance of the functions by each of the government agencies.

Another indispensable and vital provision of the herein Bill is on penalties for violations under Article VIII thereof. Criminal charges may be filed against the owners, officers, and crew of the vessels or aircraft and the owners, responsible officers, and employees of platforms or other man-made structures at sea found to have violated the herein Bill or other regulations enforcing and implementing the same in accordance with the applicable rules and procedure for the purpose. Moreover, in relation to the aforementioned, to send a strong message that the government is serious in the protection and preservation of the marine environment, commission of the prohibited acts herein shall be punishable by a fine of not less than fifty thousand pesos (P50,000.00) but more than five million pesos (P5,000,000.00) and/or by imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years at the discretion of the court. The said fine and penalty is without prejudice to the civil liabilities of the offender for damages under existing laws. It is further provided that the fines prescribed shall be automatically increased by ten per cent (10%) every three years from the effectivity of the proposed Bill to compensate for inflation and to maintain the deterrent functions of such fines.

Article IX of the herein Bill provides for damages and compensation. This enshrines the “polluter pays principle”. In relation with the aforementioned, the vessels, aircraft, platforms or other man-made structures at sea responsible for the dumping of wastes or other matter in violation of this Bill shall reimburse all the expenses incurred by the PCG and other concerned government agencies for the prevention, abatement, and containment of marine pollution as a consequence of the aforementioned violation.

For the above-mentioned purposes, the PCG may detain vessels, effectively recommend the detention of aircraft, or suspension or revocation of the licenses or permits of the said vessels, aircraft, and that of platforms or other man-made structures at sea including those of the officers, crew, responsible officers, or employees of the aforementioned, as the case may be, until such time that the cost and expenses incurred by the PCG and other concerned government agencies are fully paid or an adequate security is provided to cover the same.

Article IX also identify the persons against whom an action for compensation may be brought on account of Damages incurred by any party resulting from a violation of the herein Bill or any regulation implementing the same. Moreover, the aforementioned persons shall be jointly and severally liable for the cost, expenses, damages, and compensations provided in the Bill without prejudice, however, to their right of recourse against each other. Accordingly, the Court may order the arrest and seizure of the vessels and aircraft responsible for the dumping or incineration of wastes or other matter at sea in violation of this Act or other regulations implementing the same including, when necessary, other vessels and aircraft belonging to the same owners for execution or satisfaction of the judgment rendered by the Court.

Under the said Article IX also, a fund for the protection and preservation of the marine environment is also constituted. All the fees, charges, fines, and damages accruing to the government by reason of violation of the provisions of the herein Bill shall form part of the said fund. Further, an informer's reward is also provided to encourage persons from giving information to the PCG for the discovery of violations of the herein Bill.

IV. CONCLUDING REMARK

We do not inherit the earth from our ancestors; we borrow it from our children.

—*Chief Seattle*

The wisdom of the above quotation is indeed sublime. The present generation owes it to the next generation to protect and preserve the marine environment now; otherwise, the next generation will be deprived of the enjoyment and beneficial uses of the marine resources. This has been recognized by the Philippine Supreme Court as an “inter-generational responsibility” in its landmark decision of a case involving minors as plaintiff / complainants where it held that:

Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a

sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.¹²

All States have common interest in the protection and preservation of the marine environment as a whole. As such, each State must do its share to protect and preserve the sea over which it exercises jurisdiction and authority. In the case of the Philippines, the Protocol can be comparable to a light house - the provisions of the same serving as a bright light that will guide the Philippines in its effort and continuing endeavour to protect and preserve the marine environment for the benefit of the present and future generations of Filipinos and all of mankind.

¹² Philippine Supreme Court, *en banc*, Oposa Minors, et al v The Honorable Fulgencio S. Factoran, Jr., G.R. No. 101083. July 30, 1993, 224 Supreme Court Reports Annotated 792, 803.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH (15th) CONGRESS
First Regular Session

House Bill No. _____

Introduced by: Hon. _____

**An Act to Incorporate the 1996 Protocol to the
Convention on the Prevention of Marine Pollution by Dumping of
Wastes and Other Matter, 1972 Providing Penalties for
Violations thereof and for other Purposes**

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

ARTICLE I
General Provisions

Section 1. *Short Title* - This Act shall be known as the “Prevention of Marine Pollution by Dumping of Wastes and other Matter Act of _____”.

Section 2. *Declaration of Policy* - It is hereby declared the policy of the State to protect and preserve the marine environment from all sources of pollution and take effective measures to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter.

It is also declared to be the policy of the State to apply a precautionary approach to marine environmental protection from dumping or incineration at sea of wastes or other matter by taking appropriate preventive measures when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause

harm even if there is no conclusive evidence to prove a causal relation between inputs and their effects.

It shall likewise be the policy of the State to take into account the principle that the polluter should bear the cost of pollution and shall endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea shall bear the cost of meeting the pollution prevention and control requirements for the said authorized activities with due regard to the public interest.

It is further declared to be the policy of the State, in the implementation of this Act, not to transfer directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution to another.

Section 3. *Adoption and Incorporation of the Protocol* - Subject to the provisions of this Act, the Protocol (as defined hereunder) including the Annexes thereof and subsequent amendments to the said Protocol and Annexes shall form part of the law of the Republic of the Philippines.

Section 4. *Definition of Terms* - For the purposes of this Act:

(a) (1) **"Dumping" means:**

- (1.1) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
- (1.2) any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;
- (1.3) any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and

(1.4) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.

(2) **"Dumping" does not include:**

(2.1) the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;

(2.2) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and

(2.3) notwithstanding Section 3.b.1. (1.4) abandonment in the sea of matter placed for a purpose other than the mere disposal thereof.

(3) The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources is not covered by the provisions of this Act.

(b) (1) **"Incineration at sea"** means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction.

- (2) **"Incineration at sea"** does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.
- (c) **"Organization"** means the International Maritime Organization.
- (d) **"Permit"** means permission granted in advance and in accordance with relevant measures adopted pursuant to Section 6 or 10 herein.
- (e) **"Pollution"** means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.
- (f) **"Protocol"** means the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 7 November 1996.
- (g) **"Sea"** means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.
- (h) **"Vessels and aircraft"** means waterborne or airborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft, whether self-propelled or not.
- (i) **"Wastes or other matter"** means material and substance of any kind, form or description.

Section 5. *Scope and Application* - This Act shall cover all marine waters over which the Philippines exercises sovereignty and jurisdiction including its territorial sea and the exclusive economic zone, and, notwithstanding, the provision under Section 4 (g), shall also include its marine internal waters where such disposal would be “dumping” or “incineration at sea” within the meaning of Section 4 (a) and (b), respectively, if conducted at sea and shall apply to all:

- (a) (1) Vessels and aircraft registered in the Philippines or flying its flag even if found in the high seas;
 - (2) Vessels and aircraft loading within Philippine territory wastes and other matter which are to be dumped or incinerated at sea; and
 - (3) Vessels, aircraft, and platforms or other man-made structures at sea believed to be engaged in dumping or incineration.
- (b) This Act shall not apply to Government warships and naval auxiliary vessels and aircraft and those entitled to sovereign immunity under international law. However, the concerned agencies operating the said vessels and aircraft shall ensure by the adoption of appropriate measures that the same shall act in a manner consistent with the objectives and purposes of this Act.

ARTICLE II

Dumping of Wastes or Other Matter

Section 6. *Prohibition on Dumping of Wastes or Other Matter* - This Act shall prohibit the dumping of any wastes or other matter at sea with the exception of those listed in Annex 1 of the Protocol. Provided that the dumping of wastes or other matter listed in the said Annex 1 shall require a permit in compliance with the provisions of Annex 2 of the Protocol. Provided, further, that particular attention shall be paid to opportunities to avoid dumping in favor of environmentally preferable alternatives.

Section 7. *Breach of Dumping Permit* - Dumping done in breach of the requirements and conditions provided in the dumping permit for the same shall be deemed to be dumping without permit and shall itself be treated as a separate violation from that of the breach of the permit.

ARTICLE III Incineration at Sea

Section 8. *Prohibition on Incineration at Sea* - This act shall prohibit incineration at sea of wastes or other matter.

ARTICLE IV Export and Import of Wastes or Other Matter

Section 9. *Prohibition on Export and Import of Wastes or Other Matter*
- This Act shall not allow the exportation to other countries and the importation of wastes or other matter to the Philippines for dumping or incineration at sea.

ARTICLE V Exceptions

Section 10. *Exempting Circumstances* - The provisions of Sections 6, 7, and 8 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. Such dumping or incineration at sea shall be conducted so as to minimize the likelihood of damage to human or marine life.

ARTICLE VI Implementation and Enforcement

Section 11. *Lead Agency* - The Philippine Coast Guard (PCG) shall be the lead agency responsible for the implementation and enforcement of this Act. In accordance with the aforementioned, the PCG shall perform the following:

- (a) Protect the marine environment against pollution from dumping or incineration of wastes or other matter. In view of the aforementioned, only permits for the dumping or incineration of wastes or other matter listed under Annex 1 of the Protocol may be issued in accordance with Annex 2 of the same Protocol;
- (b) Identify and designate dumping sites in accordance with Annex 2 of the Protocol. For the said purpose, the PCG shall call upon the assistance of other concerned government agencies and competent organizations;
- (c) Issue permits as an exception of Sections 6, 7, and 8 hereof under the circumstances mentioned under Section 10 of this Act;
- (d) Monitor dumping operations and keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping;
- (e) Impose, fix, and collect reasonable fees and charges for the issuance of the aforementioned permits and monitoring operations;
- (f) Monitor the condition of the sea for the purposes of the Protocol. In the performance of the same, the PCG may call upon the assistance of other concerned government agencies or competent organizations;
- (g) Serve as the focal point for notification and reportorial requirements under the Protocol and coordinate and cooperate with the Organization

and other concerned countries in compliance with the objectives and requirements of the Protocol;

- (h) Develop policies and guidelines for the effective implementation and enforcement of this Act and conduct investigation and adjudication for violations of the same;
- (i) Impose administrative fines and penalties as may be necessary for the effective enforcement and implementation of this Act;
- (j) Develop capability necessary for the undertaking of dredging operations whenever required for the effective performance of its duties. Similarly, other government agencies that need to undertake dredging operations shall enter into an agreement with the PCG for the said purpose; and
- (k) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

ARTICLE VII

Institutional Mechanism

Section 12. *Role of the Department of Transportation and Communications (DOTC)* - For purposes of this Act, the DOTC shall have the following functions:

- (a) To formulate a comprehensive program for the prevention of marine pollution by dumping of wastes or other matter with due regard to the policies and objectives of the herein Act in coordination and collaboration with other relevant government departments, offices, agencies, instrumentalities, and stakeholders;

- (b) Oversee and coordinate the efforts of its different line, staff and attached authorities, agencies, and bureaus for the effective and efficient implementation and enforcement of this Act; and
- (c) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 13. *Role of the Department of Environment and Natural Resources (DENR)* - For purposes of this Act, the DENR shall have the following functions:

- (a) Provide technical assistance to the PCG in the identification and designation of dumping sites for wastes or other matter in accordance with Annex 2 of the Protocol and/or such other additional standard it may develop;
- (b) Provide technical assistance to the PCG for the assessment of wastes or other matter that maybe considered for dumping in the implementation of this Act;
- (c) In accordance with Republic Act No. 9275, also known as, "*Philippine Clean Water Act of 2004*" the DENR shall be primarily responsible for establishing water quality guidelines at the dumping sites and such other areas it may determine necessary for purposes of this Act;
- (d) In relation with the immediately aforementioned provision, monitor the condition of the sea for the purposes of the Protocol in coordination with the PCG;
- (e) Develop and provide environmentally preferable alternatives or waste management options to off-shore dumping of wastes or other matter;

- (f) Implement the cancellation, revocation, and/or suspension of appropriate licenses and certificates as endorsed by the PCG;
- (g) Oversee and coordinate the efforts of its different line, staff and attached authorities, agencies, and bureaus for the effective and efficient implementation and enforcement of this Act; and
- (h) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 14. *Role of the Bureau of Fisheries and Aquatic Resources (BFAR)* -

For purposes of this Act, the BFAR shall have the following functions:

- (a) Provide technical assistance to the PCG in the identification and designation of dumping sites for wastes or other matter in accordance with Annex 2 of the Protocol and/or such other additional standard it may develop;
- (b) In accordance with Republic Act No. 8550, also known as "*The Philippine Fisheries Code of 1998*", the BFAR shall be the lead agency responsible for establishing and developing standards and guidelines for the conduct of fishery activities and conservation and management of aquatic resources at the dumping sites and such other areas it may determine necessary for purposes of this Act;
- (c) Monitor the condition of the sea in relation with the immediately aforementioned provision in coordination with the PCG;
- (d) Implement the cancellation, revocation, and/or suspension of appropriate licenses and certificates as endorsed by the PCG; and
- (e) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 15. *Role of the Maritime Industry Authority (MARINA)* - For purposes of this Act, MARINA shall the following functions, to wit:

- (a) In accordance with Republic Act No. 9295, also known as the "*Domestic Shipping Development Act of 2004*", MARINA shall be the lead agency responsible for determining the standard and guidelines for the seaworthiness of vessels to be used for dumping of wastes or other matter for purposes of this Act;
- (b) Implement the cancellation, revocation, and/or suspension of appropriate licenses and certificates as endorsed by the PCG; and
- (c) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 16. *Role of the Civil Aviation Authority of the Philippines (CAAP)* - For purposes of this Act, CAAP shall have the following functions:

- (a) In accordance with Republic Act No. 9497 otherwise known as the "*Civil Aviation Authority Act of 2008*", CAAP shall be primarily responsible to determine the airworthiness of an aircraft to undertake dumping of wastes or other matter for purposes of this Act;
- (b) Implement the detention of the aircraft and / or cancellation, revocation, suspension of appropriate licenses and certificates as endorsed by the PCG; and
- (c) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 17. *Role of the Philippine Port Authority (PPA)* - For purposes of this Act, PPA shall have the following functions:

- (a) To coordinate and collaborate with the PCG as regards its port development and maintenance projects on the aspect of dredging activities and dumping of dredge materials generated from the said activities;
- (b) Deny port departure clearance of vessels upon the endorsement by the PCG for any violation of this Act and such other regulations enforcing and implementing the same; and
- (c) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 18. *Role of the National Mapping and Resource Information Authority (NAMRIA)* - For purposes of this Act, NAMRIA shall have the following functions:

- (a) Provide technical assistance to the PCG for the purpose of identification and designation of dumping sites for wastes or other matter through the conduct of hydrographic and oceanographic survey in accordance with Annex 2 of the Protocol and/or such other additional standard it may develop;
- (b) Incorporate and indicate in the appropriate maps it will print for dissemination the locations of the dumping sites identified and designated by the PCG; and
- (c) Exercise such powers other functions as may be necessary to carry out its duties and responsibilities under this Act.

ARTICLE VIII

Penalty Provisions

Section 19. *Penalties for Violations* - Criminal charges may be filed against the owners, officers, and crew of the vessels or aircraft and the owners, responsible officers, and employees of platforms or other man-made structures at sea found to have violated the herein Act or other regulations enforcing and implementing the same in accordance with the applicable rules and procedure for the purpose and shall be liable for the following:

- (a) Fine of not less than fifty thousand pesos (P50,000.00) but not more than five million pesos (P5,000,000.00) or by imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and/or both such fine and imprisonment, at the discretion of the court, without prejudice to the civil liability of the offender in accordance with existing laws.
- (b) Provided, however, that for a violation of Section 9 herein the fine and/or imprisonment shall be imposed on the maximum.
- (c) The aforementioned fines and penalties are without prejudice to the administrative fines and penalties that the PCG may impose under Section 11 (i) herein.
- (d) The fines prescribed in this Act shall be automatically increased by ten per cent (10%) every three (3) years from the effectivity of this Act to compensate for inflation and to maintain the deterrent function of such fines.

ARTICLE IX

Cost, Expenses, Damages, and Compensation

Section 20. *Polluter Pays Principle* - Those mentioned under Section 19 hereof and the insurers or other persons providing financial security for pollution liability of vessels, aircraft, platforms or other man-made structures at sea that are responsible for the dumping or incineration of wastes or other matter at sea in violation of this Act and other regulations implementing the same shall bear the cost and

expenses incurred by the PCG and other concerned government agencies for the prevention, abatement, and containment of marine pollution as a consequence of the aforementioned violation.

For the above-mentioned purposes, the PCG may detain vessels, effectively recommend the detention of aircraft, or suspension or revocation of the licenses or permits of the said vessels, aircraft, and that of platforms or other man-made structures at sea including those of the officers, crew, responsible officers, or employees of the aforementioned, as the case may be, until such time that the cost and expenses incurred by the PCG and other concerned government agencies are fully paid or an adequate security is provided to cover the same. These actions shall also be available for purposes of Article 11 (i) herein.

Section 21. *Claims and Remedies of Parties in Interest* - A party in interest may file claims and such other remedies against those mentioned under Sections 19 and 20 hereof in accordance with appropriate laws, for damages and compensation resulting from any violation of this Act or regulations implementing the same. Accordingly, the Court may order the arrest and seizure of the vessels and aircraft responsible for the dumping or incineration of wastes or other matter at sea in violation of this Act or other regulations implementing the same including, when necessary, other vessels and aircraft belonging to the same owners for execution or satisfaction of the judgment rendered by the Court.

Section 22. *Joint and Several Liability* - The persons mentioned under Sections 19 and 20 shall be jointly and severally liable for the cost, expenses, damages, and compensations provided under Section 19 and 20 hereof, without prejudice, however, to their right of recourse against each other.

Section 23. *Funding for the Protection and Preservation of the Marine Environment* - All fees and charges collected by the PCG including the fines and damages accruing to the government from violations of the herein Act or such other rules and regulations promulgated pursuant to the same shall form part of the Oil Pollution Management Fund (OPMF) constituted under Republic Act No. 9483 also known as the “Oil Pollution Compensation Act of 2007” or such other Funds which may be constituted

for the protection and preservation of the marine environment. The said OPMF shall also be used for the purposes of this Act.

Section 24. *Informer's Reward* - Any person, other than those who have legal obligations under to this Act, who voluntarily gives definite and sworn information leading to the discovery of a violation of the herein Act or other regulations enforcing and implementing the same which results in the imposition of fines against the guilty party shall be rewarded in a sum equivalent to 10 percent (10%) of the fines imposed and recovered.

ARTICLE X Final Provisions

Section 25. *Implementing Rules and Regulations* – The DOTC, in coordination with the PCG and other concerned government agencies, and sectors, shall within six months after the effectivity of this Act, promulgate rules and regulations for the effective implementation of this Act and immediately cause the publication of the same in a newspaper of general circulation.

Section 26. *Appropriations* - The amount necessary to carry out the purposes of this Act shall be charged against the current year's appropriation of the concerned agencies. Thereafter, such sums as may be necessary for the purposes, operation, and maintenance of this Act shall be included in the General Appropriations Act.

Section. 27. *Separability Clause* – In the event that any provision of this Act is declared unconstitutional, the validity of the reminder shall not be affected thereby.

Section. 28. *Repealing Clause* – All laws, decrees, rules and regulations and executive orders contrary to or inconsistent with this Act are hereby repealed, amended, or modified accordingly.

Section. 29. *Effectivity Clause* – This Act shall take effect fifteen (15) days after the completion of its publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved.