
LOAN NO. 1034 PHI

LOAN AGREEMENT
(Ordinary Operations)

(Second Palawan Integrated Area Development Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 25 OCTOBER 1990

LAO: PHI 21049

LOAN AGREEMENT

(Ordinary Operations)

LOAN AGREEMENT dated 25 October 1990 between REPUBLIC OF THE PHILIPPINES (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called the Bank).

WHEREAS

(A) the Borrower has applied to the Bank for a loan from its ordinary capital resources and a loan from its Special Funds resources for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) by an agreement of even date herewith between the Borrower and the Bank (hereinafter called the Special Operations Loan Agreement), the Bank has agreed to lend to the Borrower from the Bank's Special Funds resources an amount in various currencies equivalent to eighteen million two hundred and forty-five thousand six hundred Special Drawing Rights (SDR 18,245,600) for the purposes of the Project;

(C) the Borrower has likewise applied to the Bank for technical assistance in connection with a study on agro-processing and rural enterprises, and by a Technical Assistance Agreement of even date herewith, the Bank has agreed to provide to the Borrower a technical assistance grant amounting to two hundred ninety-five thousand dollars (\$ 295,000); and

(D) the Bank has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from the Bank's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations of the Bank, dated 1 July 1986, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary

Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

- (a) Section 2.01(26) is deleted;
- (b) the words "and the fee for any special commitment pursuant to Section 5.02" are deleted from Section 4.05; and
- (c) Section 4.09 is deleted.

Section 1.02. Wherever used in this Loan Agreement unless the context otherwise requires, the several terms defined in the Loan Regulations and in the preamble of this Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

- (a) "Act" means Republic Act No. 3601, dated 23 June 1963, of the Borrower, establishing the National Irrigation Administration, as amended by Presidential Decree No. 552, dated 11 September 1974, and by Presidential Decree No. 1702, dated 18 July 1980, and as further amended from time to time;
- (b) "CB" means the Central Bank of the Borrower;
- (c) "DA" means the Department of Agriculture of the Borrower;
- (d) "DENR" means the Department of Environment and Natural Resources of the Borrower;
- (e) "DOH" means the Department of Health of the Borrower;
- (f) "DPWH" means the Department of Public Works and Highways of the Borrower;
- (g) "DSWD" means the Department of Social Welfare and Development of the Borrower;
- (h) "Loans" means the Ordinary Operations Loan and the Special Operations Loan;
- (i) "NEDA" means the National Economic and Development Authority of the Borrower;
- (j) "NGO" means Non-Governmental Organization;
- (k) "NIA" means the National Irrigation Administration, a statutory corporation established under the Act;

(l) "OPG" means the Office of the Provincial Governor of Palawan;

(m) "Ordinary Operations Loan" means the loan provided for in this Loan Agreement;

(n) "Ordinary Operations Loan Agreement" means this Loan Agreement;

(o) "PIADPO" means the Palawan Integrated Area Development Project Office of the Borrower;

(p) "Project Executing Agencies" for the purposes of and within the meaning of the Loan Regulations, means the following:

- (i) DA for Part A;
- (ii) NIA for Part B;
- (iii) DPWH for Parts C and D(b);
- (iv) DOH for Part D(a);
- (v) DSWD for Part D(c);
- (vi) DENR for Parts E and G; and
- (vii) OPG/PIADPO for Part F

of the Project;

(q) "PMO(s)" means the Project Management Office(s) referred to in paragraph 3 of Schedule 6 to this Loan Agreement;

(r) "Project facilities" means all equipment and facilities to be constructed or provided under the Project;

(s) "Special Operations Loan" means the Loan provided for in the Special Operations Loan Agreement; and

(t) "Special Operations Loan Agreement" means the Loan Agreement (Special Operations) of even date herewith between the Borrower and the Bank;

Section 1.03. For the purposes of Section 2.01(27) of the Loan Regulations, the "Exchange Risk Pooling System" refers to the Bank's system for distribution of exchange risks on loans among its borrowers, which is described in the "Operational Guide to Exchange Risk Pooling System" dated 3 September 1987, as amended from time to time.

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower from the Bank's ordinary capital resources an amount in various currencies equivalent to thirty-three million United States dollars (\$ 33,000,000).

Section 2.02. The Borrower shall pay to the Bank interest as determined in accordance with Section 3.02 of the Loan Regulations.

Section 2.03. (a) The Borrower shall pay a commitment charge at the rate of three-fourths of one per cent (0.75%) per annum. Such charge shall accrue on amounts of the Loan (less amounts withdrawn from time to time), during successive periods commencing sixty (60) days after the date of this Loan Agreement, as follows: *from 2/15, 1991 effectively.*

during the first twelve-month period, on \$3,750,000;

during the second twelve-month period, on \$11,250,000;

during the third twelve-month period, on \$21,250,000; and

thereafter, on the full amount of the Loan. *\$21,250,000.*

(b) If any amount of the Loan is cancelled, the amount of each portion of the Loan stated in paragraph (a) of this Section shall be reduced in the same proportion as the cancellation bears to the full amount of the Loan before such cancellation.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 March and 15 September in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make the proceeds of the Loan and the Special Operations Loan available to the Project Executing Agencies, in such amounts as shall be required by each of them to carry out its respective Part or Parts of the Project, upon terms and conditions satisfactory to the Bank.

(b) The Borrower shall cause each Project Executing Agency to apply the proceeds of the Loan to the financing of expenditures on the relevant Part or Parts of the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The allocation of the proceeds of the Loan among the different Parts of the Project, the goods and services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such goods and services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and the Bank.

Section 3.03. Except as the Borrower and the Bank may otherwise agree, all goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Loan Agreement. The Bank may refuse to finance a contract where goods or services have not been procured under procedures substantially in accordance with those agreed between the Borrower and the Bank or where the terms and conditions of the contract are not satisfactory to the Bank.

~~Section 3.04~~ Except as the Borrower and the Bank shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

~~Section 3.05~~ The closing date for withdrawals from the Loan Account for the purposes of Section 8.03 of the Loan Regulations shall be 30 June 1997 or such other date as may from time to time be agreed between the Borrower and the Bank.

agency, for the carrying out of the Forestry and Environmental Stabilization component (Part G) of the Project.

Section 4.03. (a) In the carrying out of the Project and operation of the Project facilities, the Borrower shall cause competent and qualified consultants and contractors acceptable to the Borrower and the Bank to be employed to an extent and upon terms and conditions satisfactory to the Borrower and the Bank.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Borrower and the Bank. The Borrower shall furnish or cause to be furnished to the Bank, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as the Bank shall reasonably request.

Section 4.04. The Borrower shall ensure that the activities of the Project Executing Agencies and other relevant departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall make arrangements satisfactory to the Bank for insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the Borrower undertakes to insure or cause to be insured the goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

Section 4.06. (a) The Borrower shall maintain or cause to be maintained records and accounts adequate to identify the goods and services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and, to the extent relevant to the Project, to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the agencies of the Borrower responsible for the carrying out of

*No funds
available
for
this
purpose*

the Project and the operation of the Project facilities, or any part thereof.

(b) The Borrower shall: (i) cause each of the Project Executing Agencies to maintain separate accounts for its respective Part or Parts of the Project; (ii) have such accounts and related financial statements audited annually, in accordance with sound auditing principles, by auditors acceptable to the Bank; (iii) furnish to the Bank, as soon as available but in any event not later than six (6) months after the end of each related fiscal year, unaudited copies of such accounts and financial statements, and not later than nine (9) months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto, all in the English language; and (iv) furnish to the Bank such other information concerning such accounts and financial statements and the audit thereof as the Bank shall from time to time reasonably request.

(c) The Borrower shall enable the Bank, upon the Bank's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time ~~with the Borrower's auditors~~ and shall authorize and require any representative of such auditors ~~to participate~~ in any ~~such discussions requested by the Bank~~, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower ~~unless the Borrower shall otherwise agree.~~

Section 4.07. (a) The Borrower shall furnish or cause to be furnished to the Bank all such reports and information as the Bank shall reasonably request concerning (i) the Loan, and the expenditure of the proceeds and maintenance of the service thereof; (ii) the goods and services and other items of expenditure financed out of the proceeds of the Loan; (iii) the Project; (iv) to the extent relevant to the Project, the administration, operations and financial condition of the agencies of the Borrower responsible for the carrying out of the Project and the operation of the Project facilities, or any part thereof; (v) financial and economic conditions in the territory of the Borrower and the international balance of payments position of the Borrower; and (vi) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the Borrower shall furnish or cause to be furnished to the Bank quarterly progress reports on the carrying out of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as the Bank shall reasonably request and

shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems and proposed program of activities and expected progress during the following quarter.

(c) Promptly after completion of the Project, but in any event not later than six (6) months after the closing date for withdrawals from the Loan Account or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, in such form and in such detail as the Bank shall reasonably request, on the execution and initial operation of the Project, its cost and the benefits derived and to be derived from it, the performance by the Borrower of its obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.

Section 4.08. The Borrower shall enable the Bank's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and any records and documents relevant to the Project.

Section 4.09. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, agricultural, port improvement, road improvement, irrigation, health, fisheries, environmental and other relevant maintenance and operational practices.

Section 4.10. (a) It is the mutual intention of the Borrower and the Bank that no other external debt shall have any priority over the Loan by way of a lien on the assets of the Borrower. To that end, the Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any external debt, such lien will ipso facto equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and that the Borrower, in creating or permitting the creation of any such lien, will make express provision to that effect.

(b) The provisions of paragraph (a) of this Section shall not apply to: (i) any lien created on property at the time of purchase thereof, solely as security for payment of the purchase price of such property; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(c) The term "assets of the Borrower" as used in paragraph (a) of this Section includes assets of any agency of the Borrower including the Central Bank of the Philippines and

any other institution performing the functions of a central bank for the Borrower.

(d) The Borrower further undertakes that, within the limits of the laws in force in its territories, it will make the foregoing undertaking effective with respect to liens on the assets of its political subdivisions and their agencies, and to the extent that the Borrower is unable within the limits of the laws in force in its territories to make this undertaking effective, the Borrower shall give to the Bank an equivalent lien satisfactory to the Bank.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.02(1) of the Loan Regulations:

(a) The Act or any provisions thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of the Bank will or may adversely affect the carrying out the Project or the operation of the Project facilities.

(b) The Borrower shall have failed to perform any of its obligations under the Special Operations Loan Agreement.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: Any, or all, of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: The execution and delivery of the Special Operations Loan

Agreement on behalf of the Borrower shall have been duly authorized or ratified by all necessary governmental action.

Section 6.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Secretary of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purpose of Section 11.01 of the Loan Regulations:

For the Borrower:

Secretary
Department of Finance
Agrifina Circle
Manila, Philippines

Cable Address:

DEPPINANCE
MANILA

Telex Numbers:

40268 CB CONF PM

Facsimile Number:

(632) 521-0106

For the Bank:

Asian Development Bank
P.O. Box 789
Manila, Philippines