

# FOREIGN FUNDING

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**REPUBLIC ACT NO. 4860**

**AN ACT AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO OBTAIN SUCH FOREIGN LOANS AND CREDITS, OR TO INCUR SUCH FOREIGN INDEBTEDNESS, AS MAY BE NECESSARY TO FINANCE APPROVED ECONOMIC DEVELOPMENT PURPOSES OR PROJECTS, AND TO GUARANTEE, IN BEHALF OF THE REPUBLIC OF THE PHILIPPINES, FOREIGN LOANS OBTAINED OR BONDS ISSUED BY CORPORATIONS OWNED OR CONTROLLED BY THE GOVERNMENT OF THE PHILIPPINES FOR ECONOMIC DEVELOPMENT PURPOSES INCLUDING THOSE INCURRED FOR PURPOSES OF RELENDING TO THE PRIVATE SECTOR, APPROPRIATING THE NECESSARY FUNDS THEREFOR, AND FOR OTHER PURPOSES**

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*Approved: June 11, 1996*

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## REPUBLIC ACT NO. 4860

**Section 1.** The President of the Philippines is hereby authorized in behalf of the Republic of the Philippines to contract such loans, credits and indebtedness with foreign governments, agencies or instrumentalities of such foreign governments, foreign financial institutions, or other international organizations, with whom, or belonging to countries with which, the Philippines has diplomatic relations, as may be necessary and upon such terms and conditions as may be agreed upon, to enable the Government of the Republic of the Philippines to finance, either directly or through any government office, agency or instrumentality or any government owned or controlled corporation, industrial, agricultural or other economic development purposes or projects authorized by law: *Provided*, That at least seventy-five per cent shall be spent for purposes or projects which are revenue producing and self-liquidating, such as electrification, irrigation, river control and drainage, telecommunication, housing, construction and improvement of highways and bridges, airports, ports and harbors, school buildings, waterworks and artesian wells, air navigation facilities, development of fishing industry, and others: *Provided*, That such foreign loans shall be used to meet the foreign exchange requirements or liabilities incurred in connection with said development projects to cover the cost of equipment, related technical services and supplies, where the same are not obtainable within the Philippines at competitive prices as well as part of the pesos costs, other than working capital and operational expenses not exceeding twenty per cent of the loan: *Provided, further*, That in the case of roads, bridges, irrigation, port works, river control, airports, and power, the amount shall not exceed seventy per cent of the loan.

The authority of the President of the Philippines as herein provided shall include the power to issue, for the purposes hereinbefore stated, bonds for sale in the international markets the income from which shall be fully taxexempt in the Philippines.

All loans, credits and indebtedness under the preceding section shall be incurred only for particular projects in accordance with the approved economic program of the Government and after the plans of such projects shall have been prepared by the offices or agencies concerned, recommended by the National Economic Council and the Monetary Board of the Central Bank of the Philippines, and approved by the President of the Philippines.

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**Section 2.** The total amount of loans, credit and indebtedness, excluding interests, which the President of the Philippines is authorized to incur under this Act shall not exceed one billion United States dollars or its equivalent in other foreign currencies at the exchange rate prevailing at the time the loans, credits and indebtedness are incurred: *Provided, however,* That the total loans, credits and indebtedness incurred under this Act shall not exceed two hundred fifty million in the fiscal year of the approval of this Act, and two hundred fifty million every fiscal year thereafter, all in United States dollars or its equivalent in other currencies.

All loans, credits and indebtedness under the preceding section shall be incurred only for particular projects in accordance with the approved economic program of the Government and after the plans of such projects shall have been prepared by the offices or agencies concerned, recommended by the National Economic Council and the Monetary Board of the Central Bank of the Philippines, and approved by the President of the Philippines.

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**Section 3.** The President of the Philippines is, likewise, hereby authorized, in behalf of the Republic of the Philippines, to guarantee, upon such terms and conditions as may be agreed upon, foreign loans extended directly to, or bonds for sale in international markets issued by, corporations owned or controlled by the Government of the Philippines for industrial, agricultural or other economic development purposes or projects authorized by law, such as those mentioned in Section one of this Act, including the rehabilitation and modernization of the Philippine National Railways, the cash capital requirements of the Land Bank, electrification, irrigation, river control and drainage, telecommunication, housing, construction and/or improvement of highways, airports, ports and harbors, school buildings, waterworks and artesian wells, air navigation, development of the fishing industry, iron and nickel exploitation and development, and others: *Provided*, That at least seventy-five per cent shall be spent for purposes or projects which are revenue producing and self-liquidating.

The loans and/or bonded indebtedness of government owned or controlled corporations which may be guaranteed by the President under this Act shall include those incurred by government owned or controlled financial institutions for the purpose of relending to the private sector and the total amount thereof shall not be more than five hundred million United States dollars or its equivalent in other foreign currencies at the exchange rate prevailing at the time the guarantee is made: *Provided*, That the government owned or controlled financial institutions shall relend the proceeds of such loans and/or or bonded indebtedness to Filipinos or to Filipino owned or controlled corporations and partnerships, at least sixty-six and two-thirds per centum of the outstanding and paid-up capital of which is held by Filipino at the time the loan is incurred, such proportion to be maintained until such time as the loan is fully paid: *Provided, however*, That during anytime that any amount of the loan remains outstanding, failure to meet with the capital ownership requirement shall make the entire loan immediately due and demandable, together with all penalties and interests, plus an additional special penalty of two per centum on the total amount due.

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**Section 4.** The implementation of this Act shall be subject to, and governed by, the provisions of Executive Order No. 236, dated February 13, 1957, prescribing procedures for the planning of development finances, the issuance of government securities, and the disbursement of proceeds, and creating the Fiscal Policy Council and the Technical Committee on Development Finance, as amended by Executive Order No. 26, dated May 26, 1966, not inconsistent with this Act, which are hereby adopted by reference and made an integral part of this Act.

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**Section 5.** It shall be the duty of the President, within thirty days after the opening of every regular session, to report to the Congress the amount of loans, credits and indebtedness contracted, as well as the guarantees extended, and the purposes and projects for which the loans, credits and indebtedness were incurred, and the guarantees extended, as well as such loans which may be reloaned to Filipino - owned or controlled corporations and similar purposes.

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**Section 6.** The Congress shall appropriate the necessary amount out of any funds in the National Treasury not otherwise appropriated, to cover the payment of the principal and interest on such loans, credits or indebtedness as and when they shall become due.

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**Section 7.** This Act shall take effect upon its approval.

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**REPUBLIC ACT NO. 8182, as amended by R.A. 8555**

**AN ACT EXCLUDING OFFICIAL DEVELOPMENT ASSISTANCE (ODA) FROM THE FOREIGN DEBT LIMIT IN ORDER TO FACILITATE THE ABSORPTION AND OPTIMIZE THE UTILIZATION OF ODA RESOURCES, AMENDING FOR THE PURPOSE PARAGRAPH 1, SECTION 2 OF REPUBLIC ACT NO. 4860, AS AMENDED.**

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*Approved: June 11, 1996*

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# REPUBLIC ACT NO. 8182

**SECTION 1.** *Title.* - This Act shall be known as the "*Official Development Assistance Act of 1996.*"

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## **REPUBLIC ACT NO. 8182**

**Sec. 2. Official Development Assistance (ODA).** - For purposes of this Act, ODA is a loan or loan and grant which means all of the following criteria:

- (a) It must be administered with the objective of promoting sustainable social and economic development and welfare of the Philippines;
- (b) It must be contracted with governments of foreign countries with whom the Philippines has diplomatic, trade relations or bilateral agreements or which are members of the United Nations, their agencies and international or multilateral lending institutions;
- (c) There are no available comparable financial instruments in the capital market; and
- (d) It must contain a grant element of at least twenty-five percent (25%). Grant element under this Act is the reduction enjoyed by the borrower whenever the debt service payments which shall include both principal and interest and expressed at their present values discounted at ten percent (10%) are less than the face value of the loan or loan and grant. The grant element of a loan or loan and grant is computed at the ratio of (i) the difference between the face value of the loan or loan and grant and the debt service payments to (ii) the face value of the loan or loan and grant.

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## REPUBLIC ACT NO. 8182

**Sec. 3. *Amendatory Clause.*** - Official Development Assistance, as defined in this Act, is hereby excluded from the application of Paragraph 1, Section 2 of Republic Act No. 4860, as amended: *Provided*, That the weighted average grant element of all ODA at anytime shall not be less than forty percent (40%): *Provided, further*, That in no case shall the interest rate on the loan or loan component exceed seven percent (7%).

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**Sec. 4. Use of ODA for Equitable Development.** - The proceeds of ODA shall be used to achieve equitable growth and development in all provinces through priority development projects for the improvement of economic and social service facilities taking into account such factors as land area, population, scarcity of resources, low literacy rate, infant mortality and poverty incidence in the area: *Provided*, That rural infrastructure, countryside development and economic zones established under the PEZA law shall be given preference in the utilization of ODA funds.

Towards this end, the National Economic and Development Authority (NEDA) shall endeavor to obtain ODA funds from donor countries, which shall approximately be five percent (5%) of the total ODA loan from the immediately preceding year. Said funds shall be administered by the NEDA for project identification, feasibility studies, master planning at local and regional levels, and monitoring and evaluation: *Provided, further*, That ODA shall not be availed of or utilized directly or indirectly for the following:

- (a) Telephone programs contracted as of 1 January 1996 except basic telephone programs and projects for rural areas not adequately serviced and/or currently developed by private enterprises shall be entitled to ODA loan availments;
- (b) Projects mandated primarily by law to be served by the private sector; and
- (c) Financing for private corporations with access to commercial credit.

The NEDA shall ensure that the ODA obtained shall be for previously identified national priority projects which are urgent or necessary. ODA shall not be accepted or utilized solely because of its availability, convenience, or accessibility. *(as amended by R.A. 8555)*

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**Sec. 5. *Counterpart Funds.*** - The counterpart funds necessary to implement each ODA project must be included in the Annual Expenditure Program submitted by the President to Congress within thirty (30) days from the opening of every regular session. Any request for funds to cover cost overruns must be submitted to Congress for appropriation.

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# REPUBLIC ACT NO. 8182

**Sec. 6.** *Mechanism for the Distribution and Utilization of ODA Funds.* - The President of the Republic of the Philippines, upon recommendation of the NEDA, shall develop and formulate the mechanism for the equitable distribution and utilization of ODA funds to all provinces consistent with the provisions of this Act.

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**Sec. 7. *Applicability.*** - This Act shall apply to ODA loans and loans and grants contracted on or after 1 January 1995.

Notwithstanding the exclusion of ODA loans as prescribed in Section 3 hereof from the debt ceiling of Ten billion US dollars (US\$10B) prescribed in Section 2 of Republic Act No. 4860, as amended by Presidential Decree No. 1939, nothing contained in this Act shall be interpreted to mean that whatever ODA loans that are within the debt ceiling of Ten billion US dollars (US\$20B) can be substituted or replaced by non-ODA loans.

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**Sec. 8. Oversight.** - Pursuant to its constitutional duties, the Executive Department, particularly NEDA, the Commission on Audit and Congress shall discharge Oversight functions, to wit:

(a) The NEDA shall conduct annual review of the status of all projects financed by ODA, identify causes of delays, reasons for bottlenecks, cost overruns, both actual and prospective, and continued viability, and report to Congress not later than June 30 of each year;

(b) The Commission on Audit shall conduct an audit on each ongoing and completed project and report to Congress not later than June 30 each year; and

(c) There shall be a Congressional Oversight Committee composed of the Chairmen of the Committee on Ways and Means of both the Senate and the House of Representatives, five (5) members each from the Senate and the House representing the majority and two (2) members each from the Senate and the House representing the minority to be designated by the leaders of the majority and minority in the respective chambers.

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**Sec. 9. *Continuous Monitoring.*** - All concerned implementing and oversight agencies shall submit to the NEDA all information and reports as may be required by it to review draft contracts and to assess the performance of individual ongoing projects as well as the overall performance of all projects which are funded in whole or in part by ODA.

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## REPUBLIC ACT NO. 8182

**Sec. 10. Report.** - It shall be the duty of the President of the Republic of the Philippines to submit, within thirty (30) days after the opening of every regular session, a separate report to each member of Congress on the amount of ODA loans and grants incurred under this Act.

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**Sec. 11. *Implementation, Restrictions, Rules and Regulations.*** - In the implementation of the projects: (a) Consultants for the feasibility and design aspects of the project may not participate, directly or indirectly, in any subsequent phase of project implementation; (b) Project execution shall not be delegated by the implementing agency except where the latter does not have the capacity to implement such project; (c) In the hiring of consultants, contractors, architects, engineers, and other professionals necessary for a project's implementation, Filipinos shall be given preferences; (d) In the purchase of supplies and materials, preference shall be given to Filipino suppliers and manufacturers, so long as the same shall not adversely alter or affect the project, and such supplies and materials are to the standards specified by the consultants, contractors, architects, engineers, and other professionals connected with the projects; and (e) ODA projects shall not be exempt from the requirement of first obtaining an Environmental Compliance Certificate (ECC), or other such certificates and clearances necessary or required by law for the purpose of environmental protection, from the Department of Environment and Natural Resources (DENR) or proper government agency, as the case may be.

The NEDA shall promulgate the Implementing Rules and Regulations (IRR) to implement this Act within thirty (30) days from its approval.

The Implementing Rules and Regulations shall take effect five (5) days after publication in a newspaper of general circulation.

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## REPUBLIC ACT NO. 8182

**Sec. 11-A.** In the contracting of any loan, credit or indebtedness under this Act or any law, the President of the Philippines may, when necessary, agree to waive or modify the application of any provision of law granting preferences in connection with, or imposing restrictions on, the procurement of goods or services: *Provided, however,* That as far as practicable, utilization of the services of qualified Filipino citizens or corporations or associations owned by such citizens in the prosecution of projects financed under this Act shall be prepared on the basis of the standards set for a particular project: *Provided, further,* That the matter of preference in favor of articles, materials, or supplies of the growth, production or manufacture of the Philippines, including the method or procedure in the comparison of bids for purposes therefor, shall be the subject of agreement between the Philippine Government and the lending institution. *(as amended by R.A. 8555)*

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**Sec. 12. Separability.** - Provisions herein which may be declared unconstitutional shall not revoke the effectivity and enforcement of other provisions of this Act.

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**Sec. 13. *Repealing Clause.*** - All laws, decrees, executive orders, rules and regulations and other issuances inconsistent with this Act are hereby repealed or amended accordingly.

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## REPUBLIC ACT NO. 8182

**Sec. 14. *Effectivity.*** - This Act shall take effect after five (5) days from its publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever date comes earlier.

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**REPUBLIC ACT NO. 8555 AN ACT AMENDING REPUBLIC ACT NO. 8182, AND FOR  
OTHER PURPOSES**

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*Approved:* February 26, 1998

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# REPUBLIC ACT NO. 8555

**SECTION 1.** Republic Act No. 8182 is hereby amended to include a new Section 11A to read as follows:

"SEC. 11A. In the contracting of any loan, credit or indebtedness under this Act or any law, the President of the Philippines may, when necessary, agree to waive or modify the application of any provision of law granting preferences in connection with, or imposing restrictions on, the procurement of goods or services: *Provided, however,* That as far as practicable, utilization of the services of qualified Filipino citizens or corporations or associations owned by such citizens in the prosecution of projects financed under this Act shall be prepared on the basis of the standards set for a particular project: *Provided, further,* That the matter of preference in favor of articles, materials, or supplies of the growth, production or manufacture of the Philippines, including the method or procedure in the comparison of bids for purposes therefor, shall be the subject of agreement between the Philippine Government and the lending institution."

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# REPUBLIC ACT NO. 8555

**SECTION 2.** Section 4 of Republic Act No. 8182 is hereby amended to read as follows:

"SEC. 4. *Use of ODA for equitable development.* - The proceeds of ODA shall be used to achieve equitable growth and development in all provinces through priority development projects for the improvement of economic and social service facilities taking into account such factors as land area, population, scarcity of resources, low literacy rate, infant mortality and poverty incidence in the area: *Provided*, That rural infrastructure, countryside development and economic zones established under the PEZA law shall be given preference in the utilization of ODA funds. Towards this end, the National Economic and Development Authority (NEDA) shall endeavor to obtain ODA funds from donor countries, which shall approximately be five percent (5%) of the total ODA loan from the immediately preceding year. Said funds shall be administered by the NEDA for project identification, feasibility studies, master planning at local and regional levels, and monitoring and evaluation: *Provided, further*, That ODA shall not be availed of or utilized directly or indirectly for the following:

"(a) Telephone programs contracted as of 1 January 1996 except basic telephone programs and projects for rural areas not adequately serviced and/or currently developed by private enterprises shall be entitled to ODA loan availments;

"(b) Projects mandated primarily by law to be served by the private sector; and

"(c) Financing for private corporations with access to commercial credit. "The NEDA shall ensure that the ODA obtained shall be for previously identified national priority projects which are urgent or necessary. ODA shall not be accepted or utilized solely because of its availability, convenience, or accessibility."

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# REPUBLIC ACT NO. 8555

**SECTION 3.** *Effectivity.* - This Act shall take effect after five (5) days from its publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever date comes first.

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