
LOAN NUMBER 2315-PHI

LOAN AGREEMENT
(Ordinary Operations)

(Development Policy Support Program Cluster - Subprogram 1)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 13 FEBRUARY 2007

PLL: PHI 40538

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 13 February 2007 between the REPUBLIC OF THE PHILIPPINES (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 16 November 2006 (hereinafter called the Policy Letter), setting forth objectives, policies and actions designed to reform the Borrower's infrastructure sectors under a cluster of subprograms forming the Development Policy Support for Philippines Program Cluster (hereinafter called the Program Cluster) some of which are to be implemented under the first subprogram of the Program Cluster (hereinafter called Subprogram 1) as described in Schedule 1 to this Loan Agreement;

(B) the Borrower has applied to ADB for a loan from its ordinary capital resources for the purposes of Subprogram 1;

(C) the Government of the Philippines (hereinafter called GOP) has also applied to ADB for technical assistance to support the effective implementation of Subprogram 1 and for such purposes ADB has agreed to provide a technical assistance grant not exceeding the equivalent of eight hundred thousand dollars (\$800,000); and

(D) ADB has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from ADB'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 Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, 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(49) is deleted and the following is substituted therefor:

49. The term "Program" means Subprogram 1 as referred to in Recital A of the Loan Agreement for which ADB has agreed to make the Loan, as described in the Loan Agreement

and as the description thereof may be amended from time to time by agreement between ADB and the Borrower.

(b) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program".

(c) Section 2.01(51) is deleted and the following is substituted therefor:

51. The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Loan Agreement.

(d) The term "Project Executing Agency" wherever it appears in the Loan Regulations shall be substituted by the term "Program Executing Agency".

(e) Section 6.01(a) is deleted and the following is substituted therefor:

(a) Subject to any conditions or restrictions specified in the Loan Agreement, the Borrower shall be entitled to withdraw from the Loan Account such amounts as shall be required to meet payments for expenditures required for the Program and to be financed under the Loan Agreement.

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

(a) "BIR" means Bureau of Internal Revenue of the Borrower and any successor thereto;

(b) "BSP" means Bangko Sentral Ng Pilipinas of the Borrower and any successor thereto;

(c) "Counterpart Funds" means the Peso proceeds accruing to the Borrower and generated from the proceeds of the Loan under the Program and referred to in Schedules 1 and 5 to this Loan Agreement;

(d) "DA" means the Department of Agriculture of the Borrower and any successor thereto;

(e) "DepEd" means the Department of Education of the Borrower and any successor thereto;

(f) "Deposit Account" means the account referred to in paragraph 4 of Schedule 3 to this Loan Agreement;

(g) "DOF" means the Department of Finance of the Borrower and any successor thereto;

(h) "DOH" means the Department of Health of the Borrower and any successor thereto;

(i) "DPWH" means the Department of Public Works and Highways of the Borrower and any successor thereto;

(j) "Eligible Items" means the goods imported under the Program (except those specifically excluded pursuant to Attachment 1 to Schedule 3 to this Loan Agreement), the foreign exchange costs of which are eligible for financing out of the proceeds of the Loan;

(k) "fiscal year" or "FY" means fiscal year of the Borrower, commencing on the first day of January each year ending on the last day of December of the same year;

(l) "OMB" means the Office of the Ombudsman of the Borrower and any successor thereto;

(m) "Pesos" or the sign "P" means pesos in the currency of the Borrower;

(n) "Policy Letter" means the development policy letter dated 16 November 2006 addressed by the Borrower to ADB and referred to in Recital (A) of this Loan Agreement;

(o) "Policy Matrix" means the policy matrix as agreed between the Borrower and ADB which sets forth actions accomplished or to be accomplished by the Borrower under the Program;

(p) "Program Cluster" has the meaning specified in Recital (A) to this Loan Agreement;

(q) "Program Cluster Period" means the period from November 2004 to December 2009 during which the Program Cluster will be implemented;

(r) "Program Executing Agency" means for the purposes and within the meaning of the Loan Regulations, DOF, which is responsible for the carrying out of the Program; and

(s) "Program Period" means the period from November 2004 until 31 March 2007.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred fifty million Dollars (\$250,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a term of 15 years, including a grace period of 3 years, as provided in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as determined by Section 3.02 of the Loan Regulations.

Section 2.03. The Borrower shall pay to ADB a commitment charge at the rate of three-fourths of one percent (0.75%) per annum on the unwithdrawn amount of the Loan. Such charge shall accrue from a date sixty (60) days after the date of this Loan Agreement to the respective dates on which amounts shall be withdrawn from the Loan Account or shall be cancelled.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 January and 1 July 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 provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures for the Program in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan may be withdrawn from the Loan Account only for the purposes of financing foreign currency expenditures incurred for Eligible Items under the Program 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 ADB.

Section 3.03. Except as ADB may otherwise agree, all Eligible Items to be financed out of the proceeds of the Loan shall be produced in, and procured from, ADB's member countries in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account in respect of expenditures for Eligible Items incurred more than one hundred eighty (180) days prior to the Effective Date.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 March 2007 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Program to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, public policy, social, and governance practices.

(b) In the carrying out of the Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available, promptly as needed, the funds, facilities, services, and other resources, which are required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Program are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. (a) The Borrower shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Loan and to indicate the progress of the Program.

(b) The Borrower shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.05. (a) As part of the reports and information referred to in Section 7.04 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning the implementation of the Program, or the Program Cluster, (subject to Subprogram Two of the Cluster being agreed between ADB and the Borrower), including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter and Policy Matrix.

(b) Without limiting the generality of the foregoing or Section 7.04 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB quarterly reports on the carrying out of the Program, or the Program Cluster, (subject to Subprogram Two of the Cluster being agreed between ADB and the Borrower), and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter and Policy Matrix. These reports shall be used at the completion of the Program Cluster to produce a comprehensive report on the overall impact of the policy reforms described in the Policy Letter and Policy Matrix.

ARTICLE V

Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(l) of the Loan Regulations: all reform actions and measures, as specified in the Policy Matrix relating to the Program, shall be continuing.

Section 5.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Department of Finance
DOF Building
Roxas Boulevard
Manila, Philippines

Facsimile Numbers:

+63 2 523-9216
+63 2 521-9495.

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:


+63 2 636-2444
+63 2 636-2388.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES

By 
MARGARITO B. TEVES
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
LIQUN JIN
Vice President (Operations 1)

SCHEDULE 1

Description of the Program

1. The principle objectives of the Program Cluster are to improve fiscal sustainability and public financial management, create a better investment climate in the Borrower's territory, reorient public expenditures to social sectors and productive needs, and strengthen governance in public financial management. The Program Cluster is described in more detail in the Policy Letter (including the Policy Matrix).

2. The Program is the first of three subprograms in the Program Cluster and will be implemented during the period 1 November 2004 to 31 March 2007. The reform agenda for the two subsequent subprograms will be jointly refined by the Borrower and ADB to reflect the progress made under the Program and the evolving circumstances in the Borrower's economic management and public policy development. The scope of the Program has included reforms to: restore fiscal sustainability, maintain macro-economic stability and improve creditworthiness; enhance governance in public expenditure management and reduce corruption in the revenue collecting agencies of the Bureau of Internal Revenue (BIR) and Bureau of Customs (BOC); and improve the investment climate.

3. In support of the Program:

(a) the proceeds of the Loan shall be used to finance the foreign exchange costs of Eligible Items; and

(b) the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of certain programs and other activities consistent with the objectives of the Program, pursuant to the provisions of paragraph 7 of Schedule 5 to this Loan Agreement.

4. The proceeds of the Loan are expected to be disbursed in a single tranche and utilized by 31 March 2007.

SCHEDULE 2**Amortization Schedule****(Development Policy Support for Philippines Program Cluster - Subprogram 1)**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Date Payment Due</u>		<u>Installment Share</u> (expressed as a %)
1 July	2010	2.25
1 January	2011	2.36
1 July	2011	2.48
1 January	2012	2.60
1 July	2012	2.73
1 January	2013	2.87
1 July	2013	3.01
1 January	2014	3.16
1 July	2014	3.32
1 January	2015	3.49
1 July	2015	3.66
1 January	2016	3.84
1 July	2016	4.04
1 January	2017	4.24
1 July	2017	4.45
1 January	2018	4.67
1 July	2018	4.91
1 January	2019	5.15
1 July	2019	5.41
1 January	2020	5.68
1 July	2020	5.96
1 January	2021	6.26
1 July	2021	6.57
1 January	2022	6.89
TOTAL		100.00

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

4. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3**Withdrawal of Loan Proceeds**

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Loan proceeds from the Loan Account.

2. (a) Withdrawals from the Loan Account shall be made for the financing of the foreign exchange cost of Eligible Items.

(b) No withdrawals from the Loan Account shall be made in respect of any expenditures, which have been financed by credits from official international or bilateral aid agencies or any other loans made by ADB.

3. (a) An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.

(b) Such withdrawal application shall be accompanied by a certificate of the Borrower confirming that with respect to each year during which the proceeds of the Loan are expected to be disbursed, the value of the Eligible Imports is expected to be equal to or greater than the amount of the Loan expected to be disbursed during such year.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Borrower during the relevant period minus the following imports during the same period:

- (i) imports from countries which are not members of ADB;
- (ii) imports for ineligible items specified in the Attachment to this Schedule; and
- (iii) imports financed from credits from official international or bilateral aid agencies or any other loans made by ADB.

(d) The Borrower shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Borrower has certified the value of Eligible Imports in its withdrawal application.

4. (a) Prior to submitting the application to ADB for withdrawal from the Loan Account, the Borrower shall open an account (the Deposit Account) at BSP into which all withdrawals from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with consistently maintained sound accounting principles. Upon ADB's request, the Borrower shall have the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with appropriate auditing standards. Promptly after their preparation but in any

event not later than six (6) months after the date of ADB's request, certified copies of such audited accounts and records shall be furnished to ADB, all in the English language.

(c) Throughout the Program period, the Borrower shall submit trade statistics and any other information as ADB may require from time to time to assess the Borrower's compliance with the formula for determining Eligible Imports.

5. The loan proceeds shall be disbursed in a single tranche upon effectiveness of the Loan Agreement.

Negative List

1. Loan proceeds will finance the foreign currency expenditures for the reasonable cost of imported goods required during the Program.
2. No withdrawals shall be made in respect of:
 - (i) expenditures for goods (included in the following Standard International Trading Commodity chapters or headings):

<u>Group</u>	<u>Sub-Group</u>	<u>Description of Items</u>
112		alcoholic beverages
121		tobacco, unmanufactured; tobacco refuse
122		tobacco, manufactured (whether or not containing tobacco substitutes)
525		radioactive and associated materials
667		pearls, precious and semi-precious stones, unworked or worked
718	718.7	nuclear reactors and parts thereof, fuel elements (cartridges) non-irradiated, for nuclear reactors
897	897.3	jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		gold, non-monetary (excluding gold ores and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or of goods supplied from the territory of the Borrower;
- (iii) payments made for expenditures incurred more than 180 days before the effectiveness date of the loan;
- (iv) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loans from the Asian Development Bank;
- (v) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (vi) expenditures for narcotics; and
- (vii) expenditures for pesticides categorized as extremely hazardous or highly hazardous in classes I-a and I-b, Classification of Pesticides by Hazard and Guidelines to Classification.

SCHEDULE 4

Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of Eligible Items to be financed out of the proceeds of the Loan.

2. (a) Except as provided in paragraph 2(b) below, each contract for Eligible Items shall be awarded on the basis of either the purchaser's normal commercial procurement practices, in the case of procurement by the private sector, or the Borrower's prescribed procurement procedures, in the case of procurement by the public sector, having due regard for the principles of economy and efficiency.

(b) Each supply contract for Eligible Items, which are commonly traded commodities, shall be awarded on the basis of procedures appropriate to the trade and acceptable to ADB.

SCHEDULE 5

Program Implementation and Other Matters

Program Management

1. DOF shall be the Program Executing Agency responsible for Program implementation activities, reporting to ADB, administering and disbursing the Loan proceeds, and maintaining accounts. The Borrower's Department of Budget and Management shall be the implementing agency responsible for implementing the Program, and shall be supported by the relevant line agencies of the Borrower, including the OMB, DPWH, DOH, DepEd, and DA.

2. The DPSP Coordination Committee (the Committee) chaired by the Undersecretary of DOF and comprising officials from DOF, the Borrower's Department of Budget and Management and the National Economic Development Authority shall be responsible for coordinating the implementation and the sustaining of the DPSP actions with the Borrower's Department of Budget and Management and relevant line agencies of the Borrower involved in supporting the Program. The Committee shall meet quarterly to monitor progress and oversee the implementation of the Program, and provide guidance and direction to the Executing Agency and Borrower's Department of Budget and Management and relevant line agencies of the Borrower involved in supporting the Program.

Implementation of the Policy Letter

3. The Borrower shall ensure that the policies adopted and actions taken prior to the date of this Loan Agreement as described in the Policy Letter and the Policy Matrix, continue in effect during the Program Period.

Policy Dialogue

4. The Borrower shall keep ADB informed of, and the Borrower and ADB shall from time to time exchange views on, sector issues, policy reforms and additional reforms during the Program period that may be considered necessary or desirable, including the progress made in carrying out policies and actions set out in the Policy Letter and the Policy Matrix.

5. The Borrower shall promptly discuss with ADB problems and constraints encountered during implementation of the Program and appropriate measures to overcome or mitigate such problems and constraints.

6. The Borrower shall keep ADB informed of policy discussions with other multilateral or bilateral agencies that have implications for implementation of the Program, and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take ADB's views into consideration before finalizing and implementing any such proposals.

Counterpart Funds

7. The Borrower shall ensure that the Counterpart Funds are used to finance the local currency costs relating to the implementation of the Program and other activities consistent with the objectives of the Program and shall provide the necessary budget appropriations to finance the structural adjustment costs relating to the implementation of reforms under the Program.

Monitoring of the Program

8. The Borrower shall ensure that reporting on progress of the Program during the Program Period through periodic meetings is made by the Borrower's Department of Budget and Management and relevant line agencies of the Borrower to DOF which will in turn, report to ADB. DOF will, as needed, hold consultative meetings with the private sector and development partner community to solicit their feedback on emerging regulations and the impact of Program implementation during the Program Period.

9. The Borrower and ADB shall jointly assess the impact and evaluate the benefits of the Program within six months after Loan Effectiveness, in accordance with ADB's Performance Management System. The Borrower and ADB may use the findings of such assessment and evaluation in refining the Program Cluster.