

Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank

The GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES and the ASIAN DEVELOPMENT BANK

DESIRING to conclude an agreement regarding the principal office of the ASIAN DEVELOPMENT BANK in the Philippines and the privileges, immunities and facilities to be granted by the Government of the Republic of the Philippines and other related matters;

HAVE AGREED as follows:

ARTICLE I

Definitions

Section 1

The following words, unless otherwise specifically provided, shall mean:

- (a) "Government" -- the Government of the Republic of the Philippines;
- (b) "Bank" -- the Asian Development Bank and its subsidiary bodies;
- (c) "President" -- the President of the Bank and, during his absence or incapacity, the officer authorized to act as President;
- (d) "Laws of the Republic of the Philippines" -- the Constitution of the Philippines, legislative acts, municipal ordinance, judicial and quasi-judicial decisions and government regulations and orders;
- (e) "Headquarters Seat" --
 - (i) the land together with the buildings erected thereon as defined in Annex A hereof;
 - (ii) any land or building which may be added by supplementary agreement; and
 - (iii) the temporary offices as may be agreed upon between the Government and the Bank;
- (f) "Member" -- a member of the Bank;
- (g) "Governors" -- Governors of the Bank and unless otherwise specified, their Alternates and Temporary Alternates;
- (h) "Other Representatives of Members" -- All accredited officials of delegations of

Members;

(i) "Directors" -- Directors of the Bank and, unless otherwise specified, their Alternates and Temporary Alternates;

(j) "Meetings of the Bank" -- Meetings of the Board of Governors, the Board of Directors or any of their Committees or sub-groups or any other meeting convened by the Bank;

(k) "Archives of the Bank" -- Records, correspondence, documents, manuscripts, still and moving pictures, and films and sound recordings, belonging to, or held by the Bank;

(l) "Officers and Staff of the Bank" -- All duly appointed personnel of the Bank;

(m) "Dependents" -- Parents, spouses, children, brothers and sisters of a person entitled to benefits under this Agreement and primarily dependent on such person for financial support;

(n) "Members of the household staff" -- Persons, other than Philippine nationals, employed in the domestic staff of a person entitled to benefits under this Agreement; and

(o) "Property" -- Assets, funds, income and rights belonging to or held or administered by the Bank.

ARTICLE II

Juridical Personality and Freedom of Action

Section 2

The Bank shall possess full juridical personality and, in particular, full capacity:

(a) to contract;

(b) to acquire and dispose of immovable and movable property; and

(c) to institute legal proceedings.

Section 3

The Bank shall have the independence and freedom of action belonging to an international organization.

Section 4

The Bank, its Governors, other representatives of Members, Directors, President, officers and staff, and experts and consultants performing missions for the Bank shall enjoy full freedom of meeting, discussion and decision.

ARTICLE III

Immunity from Judicial Proceeding

Section 5

The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the Republic of the Philippines.

Section 6

Notwithstanding the provisions of Section 5 of this Article, no action shall be brought against the Bank by the Government, or by any of its agencies or instrumentalities or by any entity or person directly or indirectly acting for or deriving claims from the Government or from any of its agencies or instrumentalities.

The Government shall have recourse to such special procedures for the settlement of controversies between the Bank and its Members as may be prescribed in the Agreement Establishing the Asian Development Bank, in the By-Laws and regulations of the Bank or in contracts entered into with the Bank.

Section 7

Property of the Bank shall, wherever located and by whomever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

ARTICLE IV

The Headquarters Seat of the Bank

Section 8

The principal office of the Bank shall be in the headquarters seat and shall not be moved therefrom unless the Bank should so decide.

Section 9

The Government shall not dispose of all or any part of the headquarters seat without the consent of the Bank.

Section 10

The Government grants and the Bank accepts for itself, its subsidiary bodies and affiliated institutions the permanent use and sole occupancy of the headquarters seat on the site described in Annex A hereto where a suitable building consistent with the requirements of the Bank, to be determined in consultation with the Government, will be

built and furnished by the Government.

Section 11

The Government shall be responsible for.

- (i) The land; the cost of landscaping, parking facilities and fencing;
- (ii) The cost of construction of the building; major repairs of non-recurring nature, including, but not limited to the repair of damage resulting from force majeure, structural defects or deterioration: the replacement, within a reasonable period, of any building or part thereof, which may be totally or partially destroyed, and expansion or remodelling as may be agreed upon;
- (iii) The installation and replacement, if necessary, of the necessary facilities and fixtures, including, but not limited to, air conditioning, elevators, electricity, gas, telephone, water, sewerage and drainage, fire prevention and postal system; major repairs of a non-recurring nature of the said facilities, initial cost of providing necessary staff amenities, including canteen, health clinic and recreation rooms; initial cost of partitioning; and initial cost of furniture, furnishings and carpeting as agreed upon between the Bank and the Government.

Section 12

The Bank shall be responsible for:

- (i) The maintenance of the landscape, parking facilities and fencing, and the remodelling thereof;
- (ii) The maintenance and remodelling of partitioning;
- (iii) The cost of maintenance of facilities and fixtures; cost of additional furniture; janitorial services; security services; electricity, telephone and water bills and charges for other public services supplied to the Bank; the cost and maintenance and replacement, if necessary, of office equipment other than furniture, furnishings and fixtures; minor repairs of a recurring nature; the up-keep through the provision of services and materials to maintain the headquarters seat in a proper and suitable condition.

Section 13

Until the permanent headquarters seat is ready for occupancy, the Government shall provide the Bank with suitable office accommodations and facilities to enable the Bank to carry out its purposes.

Section 14

With respect to the temporary offices:

- (i) The Government shall be responsible for: office rentals; furniture and furnishings; and partitioning.

(ii) The Bank shall be responsible for: telephone, electricity and water bills; office equipment, janitorial services; and security services.

ARTICLE V

Inviolability of the Headquarters Seat

Section 15

The laws of the Republic of the Philippines shall apply within the head-quarters seat, and the courts of the Republic of the Philippines shall have jurisdiction over acts done in the headquarters seat except as otherwise provided in this Agreement.

Section 16

The headquarters seat shall be inviolable, and shall be under the control and authority of the Bank, to the extent provided in this Agreement. The bank shall have the power to make rules and regulations operative within the headquarters seat for the full independent exercise of its operations, administration and performance of its functions.

Section 17

Authorities of the Republic of the Philippines, except in connection with suits and judgments against the Bank authorized by the Agreement Establishing the Asian Development Bank, shall not enter the headquarters seat to perform any official duties therein without the consent of, and under conditions agreed to by, the Bank. The Bank and the Government shall agree under what circumstances and in what manner the authorities of the Republic of the Philippines may enter the headquarters seat without prior consent of the Bank in connection with fire prevention, sanitary regulations or emergencies.

Section 18

The Bank shall prevent the headquarters seat from becoming a refuge for fugitives from justice, or for persons subject to extradition, or persons avoiding service of legal process or a judicial proceeding.

ARTICLE VI

Protection of the Headquarters Seat

Section 19

The appropriate authorities of the Republic of the Philippines shall exercise due diligence to ensure that the tranquility of the headquarters seat is not disturbed by the

unauthorized entry of any person or group of persons from outside or by disturbance in its immediate vicinity and shall cause to be provided on the boundaries of the headquarters seat such police protection as is required for these purposes.

Section 20

If so requested by the Bank, the appropriate authorities of the Republic of the Philippines shall provide a sufficient number of police for the preservation of law and order in the headquarters seat and for the removal therefrom of persons as requested under the authority of the Bank.

Section 21

Consistent with applicable zoning, sanitary and building regulations, the appropriate authorities of the Republic of the Philippines shall take all reasonable steps to ensure that the amenities of the headquarters seat are not prejudiced. The Bank shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters seat are not prejudiced by any use made by the Bank of the land or building in the headquarters seat.

ARTICLE VII

Public Services in the Headquarters Seat

Section 22

The appropriate authorities of the Republic of the Philippines shall, upon the request of the Bank, ensure that to the extent possible the Bank shall be provided on terms not less favourable than those accorded to the Government, with the necessary public services, including, but not limited to electricity, water, sewerage, gas, post, telephone, telegraph, local transportation, drainage, collection of refuse and fire protection. In case of any interruption or threatened interruption of any of the said services such authorities shall consider the needs of the Bank of equal importance to those of essential agencies of the Government and shall take steps to ensure that the operations of the Bank are not prejudiced.

Section 23

The Bank shall allow duly authorized representatives of public utilities to inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the headquarters seat and its facilities.

ARTICLE VIII

Communications

Section 24

The Bank shall enjoy in the Republic of the Philippines for its official communications

treatment not less favourable than that accorded by the Government to any international organization or to any other government including its diplomatic mission, in the matter of priorities, rates and surcharges on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

Section 25

The Government shall ensure that the Bank shall be accorded the same rates and treatment as may be granted to resident diplomatic missions with respect to the use of transportation.

Section 26

All communications to and from the Bank, its Governors, other representatives of Members, President, Directors or any of its officers and staff, or experts and consultants performing missions for the Bank, by whatever means or in whatever form transmitted, shall be immune from censorship and any other form of interception or interference with their privacy. Such communications shall include but shall not be limited to publications, documents, still and moving pictures, films and sound recordings. In case of emergencies requiring the enforcement of censorship, the appropriate authorities of the Republic of the Philippines shall consult the Bank on measures to regulate, consistent with the laws of the Republic of the Philippines, the enjoyment of immunity from censorship of communications to and from the Bank. Nothing in this Section shall preclude the adoption, in consultation with the Bank, of such measures where there is reason to believe that the security of the state is threatened.

Section 27

The Bank shall have the right to use codes and to dispatch and receive official correspondence and, without limitation by reason of this enumeration, publications, documents, still and moving pictures, films and sound recordings, either by courier or in sealed bags which shall have immunities and privileges not less favourable than those accorded to diplomatic couriers and bags.

Section 28

The Bank shall be authorized to operate at the headquarters seat point-to-point telecommunication circuits with branch offices or project sites as may be required. The Bank shall also be authorized to operate at the headquarters seat point-to-point telecommunication circuits with other international organization within or outside the Republic of the Philippines.

Section 29

The Bank shall also be authorized to establish and operate at the head-quarters seat:

(i) its own short-wave sending and receiving radio broadcasting facilities, including emergency link equipment, which may be used on the same frequencies, within the tolerances prescribed for the broadcasting service by applicable laws of the Republic of

the Philippines for radio-telegraph, radio-telephone and similar services; and

(ii) such other radio facilities as may be specified by supplementary agreement.

Section 30

The Bank shall make arrangements for the operation of the services referred to in Sections 28 and 29 with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected governments with regard to all frequencies and similar matters.

Section 31

The facilities provided for in Sections 28 and 29 may, to the extent necessary for efficient operation, be established and operated outside the head-quarters seat with the consent of the Government. Any facilities established by the Bank outside the headquarters seat in pursuance of this Section shall enjoy the same inviolability and protection as those accorded to the head-quarters seat under Articles V and VI of this Agreement.

ARTICLE IX

Property of the Bank and Taxation

Section 32

The property of the Bank, wherever located and whomever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference or taking or foreclosure by executive or legislative action.

Section 33

The archives of the Bank shall be inviolable.

Section 34

The Bank, its property and its operations and transactions shall be exempt from:

(a) all taxation and any obligation for the payment, withholding or collection of any tax or duty. The Bank will not claim exemption from taxes or charges which are no more than payments for public utility services;

(b) all customs duties and other levies on any goods, articles, including motor vehicles, spare parts and publications, imported or exported by the Bank for its official use, and any obligation for the payment, withholding or collection of any customs duties. The goods and articles, including vehicles, spare parts and publications imported under such exemption will not be sold in the Republic of the Philippines except under conditions agreed upon with the Government; and

(c) all prohibitions and restrictions on imports and exports in respect of goods or articles, including motor vehicles, spare parts and publications intended for the official use of the Bank.

ARTICLE X

Financial Facilities

Section 35

(a) Notwithstanding financial controls, regulations or moratoria of any kind, the Bank may freely:

(i) purchase, hold and dispose of any funds, currencies, financial instruments, securities and gold, operate accounts in any currency, engage in financial transactions and conclude financial contracts; and

(ii) transfer its funds, currencies, financial instruments, securities or gold, to or from the Republic of the Philippines or within the Republic of the Philippines and convert any currency held by it into any other currency.

(b) This Section shall apply in respect of transactions of Members and other entities with the Bank.

Section 36

The Government shall provide the Bank, at the most favourable exchange rate officially recognized, its national currency, in the amount required to meet expenditures of the Bank in the Republic of the Philippines.

Section 37

The Government shall assist the Bank to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

Section 38

In exercising its rights under this Article, the Bank shall give due regard to representations made by the Government insofar as the Bank considers that effect can be given to such representations without detriment to its interests.

ARTICLE XI

Access and Residence

Section 39

The Government shall take measures to facilitate the entry into, residence and freedom of movement in, and departure from the Republic of the Philippines of the following persons irrespective of nationality, subject to such laws and regulations concerning zones, entry into which is prohibited or regulated for reasons of national security: (i) Governors and other representatives of Members; (ii) the President; (iii) Directors; (iv) experts and consultants performing missions for the Bank; (v) officers and staff of the

Bank; and (vi) other persons invited by the Bank and in possession of written evidence of such invitation.

Section 40

No laws of the Republic of the Philippines restricting the entry of aliens or regulating the conditions of their stay shall apply to the persons provided for in this Article, except those on health and security of the State.

Section 41

The Government shall issue to its embassies, legations and consulates general instructions to grant visas to the persons referred to in Section 39 without any delay, waiting period, or payment of any charges, and without requiring their personal presence.

Section 42

The provisions of this Article shall apply to the spouses, dependents and members of the household staffs of the persons enumerated in (i) to (v) of Section 39 of this Article.

Section 43

The Bank and the Government may consult on methods of facilitating entry into the Republic of the Philippines, and the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters seat and who do not enjoy the privileges conferred by this Article.

ARTICLE XII

Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others

Section 44

Governors, other representatives of Members, Directors, the President, Vice-President and executive officers as may be agreed upon between the Government and the Bank shall enjoy, during their stay in the Republic of the Philippines in connection with their official duties with the Bank:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their official capacity; and

(c) In respect of other matters not covered in (a) and (b) above, such other immunities, exemptions, privileges and facilities as are enjoyed by members of diplomatic missions of comparable rank, subject to corresponding conditions and obligations.

Section 45

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

- (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;
- (b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals;
- (c) Immunity, together with their spouses, dependents, and members of their household staffs, from immigration restrictions, subject to regulations of health and security of the State and aliens' registration;
- (d) Exemption in respect of exchange restrictions no less favourable than that accorded to officials of comparable rank of diplomatic missions;
- (e) Repatriation facilities in time of international crisis, together with their spouses, dependents and members of their household staffs as are no less favourable than those accorded to diplomatic envoys;
- (f) The right to import, free of duty and other levies, prohibitions and restrictions on imports, their furniture and effects including one automobile, within twelve (12) months after first taking up their post in the Republic of the Philippines, and the same right to import one auto-mobile for replacement (3) years after the last importation. Should the previously imported automobile be sold, conveyed, or transferred, due notice shall be given by the Bank to the Government and delivery shall be made at the place designated by the Government in consultation with the Bank; and
- (g) The right to import, free of duty and other levies, prohibitions and restrictions on imports, through the medium of the Bank, reasonable quantities, to be agreed upon in accordance with a procedure to be established between the Government and the Bank, of foodstuffs and other articles for personal use and consumption and not for gift or sale.

Section 46

The Bank shall from time to time communicate to the Government the names of those officers and staff to whom the provisions of this Article and Article XI shall apply.

Section 47

Officers and staff of the Bank, their spouses and dependents and members and their household staffs shall be exempt from national service obligations in the Republic of the Philippines. This exemption shall not apply to Philippine nationals. Should officers and staff of the Bank who are Philippine nationals be called for national service, the Government shall make every effort to grant deferment when in the opinion of the Bank serious dislocation in its essential operations may occur.

Section 48

All persons enjoying the privileges and immunities specified in this Agreement shall be provided by the Government with a special identity card which shall serve to identify the holder in relation to authorities of the Republic of the Philippines and to certify that the holder enjoys the privileges and immunities specified in this Agreement.

ARTICLE XIII

Waiver of Immunities and Prevention of Abuse

Section 49

The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interest of the Bank and not for the personal benefit of the individuals themselves. The Bank shall waive the immunity accorded to any person if, in its opinion, such immunity would impede the course of justice and the waiver would not prejudice the purposes for which the immunities are accorded.

Section 50

The Bank recognizes that not all privileges, immunities, exemptions and facilities enjoyed by members of diplomatic missions are necessary for the effective performance of the functions and duties of the officials mentioned in Section 44 hereof.

Accordingly, the Bank and the Government shall, at the request of either, consult with each other with a view to determining in specific cases what particular privilege, immunity, exemption or facility is not necessary for the effective performance of the duties and functions of such officials and the Bank agrees to waive in such case such particular privilege, immunity, exemption or facility.

Section 51

The Bank shall take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and for this purpose shall establish such rules and regulations as it may deem necessary and expedient. There shall be consultation between the Government and the Bank, should the Government consider that an abuse has occurred.

ARTICLE XIV

Settlement of Disputes

Section 52

Any dispute between the Government and the Bank concerning the interpretation or application of this Agreement or any supplementary agreements, or any question affecting the headquarters seat or the relationship between the Government and the Bank, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be appointed by the Government, one to be appointed by the Bank, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third, the Government and the Bank shall request the President of the International Court of Justice to choose the third arbitrator. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding. The third arbitrator shall be empowered to settle all questions of procedure in any case where there is disagreement with respect thereto.

Section 53

The said tribunal shall adopt and observe the "Rules of Arbitration and Conciliation of the Permanent Court of Arbitration in the Settlement of Disputes".

ARTICLE XV

Final Provisions

Section 54

The Bank and all persons enjoying the immunities, privileges, exemptions and facilities under this Agreement shall co-operate at all times with the appropriate authorities of the Republic of the Philippines to facilitate the proper administration of justice and secure the observance of the laws of the Republic of the Philippines.

Section 55

Wherever this Agreement imposes obligations on appropriate authorities of the Republic of the Philippines other than the Government, the Government shall ensure the fulfilment of such obligations by the appropriate Philippine authorities.

Section 56

None of the provisions of this Agreement shall derogate in any way from the rights, privileges and immunities provided for and specified in the Agreement Establishing the Asian Development Bank.

Section 57

This Agreement shall be registered with the Secretary-General of the United Nations.

Section 58

This Agreement may be revised at the request of either party. In this event the two parties shall consult with each other concerning the revisions to be made in its provisions.

Section 59

The Government and the Bank may enter into such supplementary agreements as may be necessary within the scope of this Agreement.

Section 60

Nothing in this Agreement shall be construed to preclude the adoption of appropriate measures for the security of the State as may be determined by the Government in consultation with the Bank.

Section 61

This Agreement shall be ratified by the Government in accordance with its constitutional processes and shall come into force upon notification by the Government of ratification.

IN WITNESS WHEREOF, the respective representatives, duly authorized thereto, have signed this Agreement.

Done at Manila, Philippines, this 22nd day of December 1966 in two copies in English.

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES

FOR THE ASIAN
DEVELOPMENT BANK

Narciso C. Ramos
Secretary of Foreign Affairs

Takeshi Watanabe
President

ANNEX A. DESCRIPTION OF THE SITE OF THE HEADQUARTERS SEAT OF THE ASIAN DEVELOPMENT BANK

The land, which is a part of the total land area in the City of Pasay as defined in Section 1 of the Republic Act No. 4649 of 9 June 1966, the area of which will be agreed upon between the Government and the Bank for the Bank's whole premises, i.e., buildings to be constructed thereon and facilities pertaining thereto, including landscape, parking and access facilities.