
LOAN NUMBER 2186-PHI

GUARANTEE AGREEMENT
(Ordinary Operations)

(Small and Medium Enterprise Development Support Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 16 DECEMBER 2005

GAL: PHI 36419

GUARANTEE AGREEMENT (Ordinary Operations)

GUARANTEE AGREEMENT dated 16 December 2005 between REPUBLIC OF THE PHILIPPINES (hereinafter called the Guarantor) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) by a loan agreement (hereinafter called the Loan Agreement) of even date herewith between ADB and Small Business Guarantee and Finance Corporation (hereinafter called the Borrower), ADB has agreed to make to the Borrower from ADB's ordinary capital resources a loan of two billion, seven hundred forty six thousand, six hundred twenty five thousand Yen (¥2,746,625,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agrees to guarantee the obligations of the Borrower in respect of such loan as hereinafter in this Guarantee Agreement set forth; and

(B) the Guarantor, in consideration of ADB's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

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 Guarantee Agreement with the same force and effect as if they were fully set forth herein (said Ordinary Operations Loan Regulations being hereinafter called the Loan Regulations).

Section 1.02. Wherever used in this Guarantee Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) shall have the respective meanings therein set forth.

ARTICLE II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Guarantee Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges (including the front-end fee) on, the Loan, the premium, if any, on the prepayment of the Loan, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement.

Section 2.02. The Guarantor covenants that whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, the Guarantor will make arrangements, satisfactory to ADB, promptly to provide the Borrower, or cause the Borrower to be provided, with such funds as are needed to meet such expenditures.

Section 2.03. The Guarantor shall not take any action, or permit any of its political subdivisions or agencies or any agency of any such political subdivisions to take any action, which would prevent or interfere with the successful carrying out of the Project or the successful operation of the Project facilities.

Section 2.04. (a) It is the mutual intention of the Guarantor and ADB that no other external debt shall have any priority over the Loan by way of a lien on the assets of the Guarantor. To that end, the Guarantor undertakes (i) that, except as ADB may otherwise agree, if any lien shall be created on any assets of the Guarantor 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 (ii) that the Guarantor, 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 Guarantor" as used in paragraph (a) of this Section includes assets of any political subdivision or any agency of the Guarantor and assets of any agency of any such political subdivision, including the Bangko Sentral ng Pilipinas and any other institution performing the functions of a central bank for the Guarantor.

(d) The Guarantor shall, within the limits of the laws in force in its territories, 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 Guarantor is unable within the limits of the laws in force in its territories to make this undertaking effective, the Guarantor shall give to ADB an equivalent lien satisfactory to ADB.

ARTICLE III

Section 3.01. The Secretary of Finance of the Guarantor is designated as representative of the Guarantor for the purposes of Section 12.02 of the Loan Regulations.

Section 3.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Guarantor

Department of Finance
DOF Building
Roxas Boulevard
Manila, Philippines

Facsimile Numbers:

+63 2 526 9990
+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 2382.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee 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

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ASIAN DEVELOPMENT BANK

By


HARUHIKO KURODA
President