

REPUBLIC ACT NO. 8182

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

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

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

SEC. 2. *Official Development Assistance (ODA).* – For purposes of this Act, ODA is a loan or loan and grant which meets 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 as 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.

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%).

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.

Provided, finally, That the expressed approval of Congress shall be obtained by the Executive Department prior to the negotiation and implementation of projects funded from ODA on or after 1 January 1995 as well as those that have not been finalized.

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.

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.

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\$10B) can be substituted or replaced by non-ODA loans.

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 of 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.

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.

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.

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 preference; (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.

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

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.

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.

Approved, June 11, 1996.