BILATERAL · APRIL 3, 2000

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Excellency,

I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Republic of the Philippines concerning a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Republic of the Philippines:

1. A loan in Japanese yen up to the amount of thirty-nine billion four hundred and fifty-seven million yen (Y 39,457,000,000) (hereinafter referred to as "the Loan") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Republic of the Philippines by the Japan Bank for International Cooperation (hereinafter referred to as "the Bank") to implement the projects enumerated in the List attached hereto (hereinafter referred to as "the List") according to the allocation for each project as specified in the List.

2. (1) The Loan will be made available by loan agreements to be conduded between the Government of the Republic of the Philippines and the Bank. The terms and conditions of the Loan as well as the procedures for its utilization will be governed by the said loan agreements which will contain, inter alia, the following principles:

> (a) (i) The repayment period wili be thirty (30) years after the grace period often (10) years;
>
> (ii) The rate of interest will be one per cent (1.0%) per annum;
>
> (b) Notwithstanding sub-paragraph (a) above, where a part of the Loan is made available to cover payments to consultants of the projects mentioned in the List, the rate of interest of the said part will be seventy-five-hundredths per cent (0.75%) per annum; and
>
> (c) The disbursement period will be six (6) years with regard to the project mentioned in 1 of the List, eight (8) years with regard to the project mentioned in 2 of the List and seven (7) years with regard to the project mentioned in 3 of the List from the dates of coming into force of the relevant loan agreements.

(2) Each of the loan agreements mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the project to which such loan agreement relates.

(3) The respective disbursement periods mentioned in sub-paragraph (1) (c) above may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan will be made available to cover payments to be made by the Philippine executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in the List, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above will be agreed upon between the authorities concerned of the two Governments.

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(3) A part of the Loan may be used to cover eligible local currency requirements for the implementation of the projects enumerated in the List.

4. With regard to the shipping and marine insurance of the products purchased under the Loan, the Government of the Republic of the Philippines will refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

5. The Government of the Republic of the Philippines will ensure that the products and/or the services mentioned in sub-paragraph (1) of paragraph 3 are procured in accordance with the guidelines for procurement of the Bank, which set forth, inter alia, the procedures of international tendering to be followed except where such procedures are inapplicable or inappropriate.

6. Japanese nationals whose services may be required in the Republic of the Philippines in connection with the supply of the products and/or the services mentioned in sub-paragraph (1) of paragraph 3 will be accorded such facilities as may be necessary for their entry into the Republic of the Philippines and stay therein for the performance of their work.

7. (1) The Government of the Republic of the Philippines will exempt:

(a) the Bank from all fiscal levies and taxes imposed in the Republic of the Philippines on and/or in connection with the Loan as well as interest accruing therefrom; and

(b) Japanese companies operating as suppliers, contractors and/or consultants from all duties and related fiscal charges imposed in the Republic of the Philippines with respect to the import and re-export of their own materials and equipment required for the implementation of the projects enumerated in the List.

(2) The Government of the Republic of the Philippines will, by itself or through its executing agencies, assume:

(a) all fiscal levies and taxes imposed in the Republic of the Philippines on the Japanese companies operating as suppliers, contractors and/or consultants with respect to the income accruing from the supply of the products and/or services required for the implementation of the projects enumerated in the List; and

(b) all fiscal levies and taxes imposed in the Republic of the Philippines on the Japanese employees engaged in the implementation of the projects enumerated in the List with respect to their personal income derived from Japanese companies operating as suppliers, contractors and/or consultants.

(3) In connection with such tax assumption, the Government of the Republic of the Philippines or its executing agencies will be responsible for the liquidation or settlement of such fiscal levies, duties, taxes and other similar charges.

8. The Government of the Republic of the Philippines will take necessary measures to ensure that:

(a) the Loan be used properly and exclusively for the projects enumerated in the List; and

(b) the facilities constructed under the Loan be maintained and used properly and effectively for the purposes prescribed in this understanding.

9. (1) The Government of the Republic of the Philippines will, upon request, furnish the Government of Japan and the Bank with reports on the progress of the implementation of the projects enumerated in the List.

(2) The two Governments will jointly review from time to time, on the basis of the reports mentioned in sub-paragraph (1) above, the progress of the implementation of the Loan and take, if necessary, appropriate measures to secure their smooth and effective utilization. The Bank will be invited to participate in such review.

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10. The two Governments will consult with each other with respect to any matter that may arise from or in connection with this understanding.

I should be grateful if Your Excellency would confirm the foregoing understanding on behaif of the Government of the Republic of the Philippines.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sgd.) YOSHIHISA ARA
Ambassador Extraordinary and Plenipotentiary
of Japan to the Republic of the Philippines

His Excellency Domingo L. Siazon, Jr.
Secretary of Foreign Affairs
Department of Foreign Affairs
Republic of the Philippines

LIST

(Maximum amount in million yen)

1. LRT Line 1 Capacity Expansion Project (Phase II)

22, 262

2. KAMANAVA Area Flood Control and Drainage

System Improvement Project

8,929

3. Mindanao Container Terminal Project 8,266

Total 39,457

RECORD OF DISCUSSIONS

In connection with the Exchange of Notes dated 3 April 2000, (hereinafter referred to as "the Exchange of Notes"), concerning a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Republic of the Philippines (hereinafter referred to as "the Loan"), the representatives of the Japanese Delegation and of the Philippine Deiegation wish to record the following:

1. With reference to sub-paragraph (3) of paragraph 3 of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects mentioned in the said sub-paragraph,

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the representative of the Japanese Delegation stated that:

> (1) such requirement of local currency as general administrative expenses, interest during construction, taxes and duties, expenses concerning office, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the said projects, as well as purchase of Sand properties, compensation and the like, however, wiii not be considered as eligible for financing under the Loan; and
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> (2) the procurement of products and/or services will be made in accordance with the procedures of international competitive tendering except where such procedures are inapplicable or inappropriate.

2. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, the representative of the Japanese Delegation stated that:

> (a) suppliers and contractors of eligible source countries mean nationals of the eligible source countries or juridical persons incorporated and registered in the mentioned countries, and which have their appropriate facilities for producing or providing the goods and services in those countries and actually conduct their business there; and
>
> (b) consultants of eligible source countries mean nationals of the eligible source countries or juridical persons controlled by nationals of the mentioned countries.

3. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the projects not being covered with the proceeds of the Loan under the loan agreements mentioned in sub-paragraph (1) of paragraph 2 of the Exchange of Notes, will be duly met by the Government of the Republic of the Philippines to assure the smooth implementation of the projects enumerated in the list attached to the Exchange of Notes (hereinafter referred to as the "List").

4. The representative of the Japanese Delegation stated that products procured from a Philippine manufacturing company invested in by one or more Japanese manufacturing companies will be regarded as products procured from Japan, if they meet the following:

> (a) Not less than ten per cent (10%) of the shares of the Philippine manufacturing company are held by a Japanese manufacturing company; and
>
> (b) The proportion of the shares held by a Japanese manufacturing company is the same as or greater than that of the shares held by a company of a third country.

5. The representative of the Japanese Delegation stated that the eligible nationality for contractors of sub-contract directly under any prime contract to be concluded for the implementation of the projects enumerated in the List will be Japan and the Republic of the Philippines, and that the eligible nationality for contractors of further sub-contract may be all countries and areas.

6. The representative of the Japanese Delegation stated that the Philippine side should give such due consideration to the due and prompt procedure of importation of the products required for the implementation of the projects enumerated in the List under the Loan, as it has given in the course of the implementation of the projects under the previous Japanese loan for projects.

7. The representative of the Japanese Delegation stated that the Philippine side should give due consideration to the local residents' support for the projects enumerated in the List and to the environmental impact which the said projects have, in order to assure the smooth implementation of the said projects.

8. With reference to sub-paragraph (2) of paragraph 7 of the Exchange of Notes, the representative of the Japanese Delegation, in view of the Revenue Memorandum Circular No. 42-99 dated June 2, 1999 issued by the Bureau of

Internal Revenue, Department of Finance, the Republic of the Philippines, stated that:

(1) Japanese companies operating as suppliers, contractors and/or consultants will be subject to the Value-Added Tax (hereinafter referred to as the "VAT") imposed in the Republic of the Philippines on their purchases including importations of products and/or services required for the implementation of the projects enumerated in the List;

(2) the Philippine executing agencies will be subject to the VAT imposed in the Republic of the Philippines on their purchases of products and/or services required for the implementation of the said projects from the Japanese companies operating as suppliers, contractors and/or consultants;

(3) the Philippine executing agencies will not withhold any part of fiscal levies and taxes including the VAT when making payments for their purchases of products and/or services to the Japanese companies operating as suppliers, contractors and/or consultants;

(4) the Japanese companies operating as suppliers, contractors and/or consultants will pay to the Government of the Republic of the Philippines the difference between the VAT paid to them by the Philippine executing agencies as provided in (2) above and the VAT to be paid by them for their purchases including importations of products and/or services as provided in (1) above; and

(5) the Japanese companies operating as suppliers, contractors and/or consultants will not be required to withhold the personal income tax on Japanese employees engaged in the implementation of the said projects.

9. With regard to paragraph 8 of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Republic of the Philippines from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3 of the Exchange of Notes; and

(b) the Government of the Republic of the Philippines will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out periodically by independent auditors which the Japan Bank for International Cooperation will designate, in order to ensure fairness and competitiveness of the procurement process.

10. The representative of the Philippine Delegation stated that the Philippine side had no objection to all of the above mentioned statements.

(Sgd.) YOSHIHISA ARA

(Sgd.) DOMINGO L. SIAZON, JR.

Ambassador Extraordinary and

Secretary of Foreign Affairs

Plenipotentiary of Japan to the

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