

## **PRESIDENTIAL DECREE NO. 81**

### **AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NUMBERED FOUR THOUSAND EIGHT HUNDRED SIXTY, AS AMENDED (RE: FOREIGN BORROWING ACT)**

**WHEREAS**, the Government is vigorously engaged in a continuing program of reconstruction and development of infrastructure facilities, food production, and industrialization;

**WHEREAS**, for this purpose, the Government has presented, and will continue to present before financial institutions, specific proposals for the funding of both public and private sector projects;

**WHEREAS**, availment of financial assistance from these institutions to be able to undertake these priority projects would require responsible foreign borrowing legislation;

**NOW, THEREFORE, I, FERDINAND E. MARCOS**, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, in order to assure a sustained and accelerated implementation of its development program do hereby order to amend further R.A. 4860, as amended, and to adopt this Decree as part of the law of the land.

**SECTION 1.** Section one of Republic Act Numbered Four Thousand Eight Hundred Sixty, as amended, is further amended to read as follows:

"Sec. 1. The President of the Philippines is hereby authorized, in behalf of the Republic of the Philippines, to contract such loans, credits, including supplier's credit, deferred payment arrangements, or indebtedness as may be necessary and upon terms and conditions as may be agreed upon, not inconsistent with this Act, with Governments of foreign countries with whom the Philippines has diplomatic or trade relations or which are members of the United Nations, their agencies, instrumentalities or financial institutions or with reputable international organizations or non-governmental national or international lending institutions or firms extending supplier's credit deferred payment arrangements to enable the Government of the Republic of the Philippines to:

"(A) Undertake, through any government office, agency or instrumentality, or government-owned or controlled corporation, industrial, agricultural or other economic and social development projects and feasibility studies, which are authorized by law, including but not limited to those enumerated in Annex "A" including lists 1, 2, 3, and 4 hereof, which are made integral parts of the Act and such projects which may from time to time be recommended by the National Economic Development Authority and approved by the President of the Philippines: Provided, That at least seventy-five percent of the loans, credits or indebtedness authorized to be obtained under this paragraph shall be spent for projects which are income-generating. Such foreign loans, credits or indebtedness shall be used to meet the direct and

indirect foreign exchange requirements and up to twenty per centum of the peso costs to cover the costs of studies, technical surveys, equipment, machineries, supplies, construction, installation and related technical services: Provided, further, That whenever necessary, part of the proceeds of such loans, credits or indebtedness shall be used for environmental, health, and ecologic management and control;

"(B) Lend the proceeds of such loans, credits or indebtedness to government-owned or controlled corporations to finance development projects which are authorized by the charters of such corporations or by law: Provided, That the proceeds of said loans, credits or indebtedness shall likewise be used to meet the direct and indirect foreign exchange requirements and up to twenty per centum of the peso costs to cover the costs of studies, technical surveys, equipment, machineries, supplies, construction, installation and related technical services;

"(C) Lend the proceeds of such loans, credits or indebtedness to the Development Bank of the Philippines which shall administer said proceeds in accordance with the agreement with the foreign creditor for relending to individuals, partnerships, cooperatives, associations or private corporations, whose capital stock, if not fully subscribed, is open to subscription by the general public to meet the direct and indirect foreign exchange requirements as well as up to twenty per centum of the peso costs for such industrial, agricultural and other economic development projects, subject to the provisions of the charter, rules and regulations of said bank and to the terms and conditions agreed upon by the Government and the institution providing financing for the projects: Provided, That the Development Bank of the Philippines shall pay the Republic of the Philippines at least for the principal, interests and other charges on such loans, credits or indebtedness turned over to it: Provided, further, That of the total authorized borrowing for relending to the private sector:

1. Sixty per centum shall be for the individual and public utility projects which are approved by the Board of Investments or their corresponding Boards; and
2. Forty per centum must be allocated to agricultural projects which are recommended by the Department of Agriculture and Natural Resources and approved by the National Economic Development Authority and which satisfy any or all of the following criteria:
  - (a) New and/or export-oriented
  - (b) Import-substitute-oriented
  - (c) Necessary to increase agricultural production; or
  - (d) Necessary to improve the quality and marketability of agricultural products.

"The proceeds of the loans, credits or indebtedness under this paragraph shall not be re-loaned to any individual, partnership, cooperative, association or private corporation, the account of which with the Development Bank of the Philippines or with any government financial institution in arrears for three or more installments for causes other than force majeure or those beyond its control, nor shall paid proceeds or portions thereof be used for any purpose other than that for which the loan, credit or indebtedness has been granted. The failure of any debtor to meet three amortization payments of its loan when due, for causes other than force majeure or those beyond its control, will render the entire

obligation or any balance thereof due and demandable, and the debtor shall pay a special penalty of two per centum of the total amount due.

"The authority of the President of the Philippines, as hereby provided in this Section shall include the power to issue, for the purposes stated, bonds, debentures, securities or other evidences of indebtedness for sale in the international market the income from which shall be fully tax-exempt in the Philippines."

**SECTION 2.** Section two of the same Act is hereby further amended to read as follows:

"Sec. 2. The total amount of loans, credits or indebtedness, excluding interest and other normal banking charges which shall not be in excess of those imposed or charged by the International Bank for Reconstruction and Development, the Asian Development Bank or other reputable international organization or non-governmental national or international-lending institution, which the President is authorized to incur under Section one of this Act shall not exceed one billion United States dollars or its equivalent in other foreign currencies at the exchange rate prevailing at the time the loans, credits or indebtedness are incurred at terms of payment of not less than 10 years except those contracted in the interest of national security and rehabilitation resulting from natural calamities: Provided, That the price, interest rates and other charges on loans, credits or indebtedness from non-governmental national or international lending institutions or firms extending supplier's credits or deferred credit arrangements shall be determined by the rules and regulations which may be promulgated by the Central Bank: Provided, finally, That seventy-five per centum of such total authorized amount of one billion United States dollars or its equivalent in other currencies shall be incurred for projects of the public sector contemplated under paragraphs 'A' and 'B' of Section one and twenty-five per centum thereof shall be utilized for projects of the private sector contemplated under paragraph "C" of Section one, and that no individual, partnership, cooperative, association or private corporation shall be allowed to borrow more than fifteen per centum of the total of such loans, credits, indebtedness authorized to be incurred for relending by the Development Bank of the Philippines, except those who may, undertake projects whose financial requirements are in excess of such limitation, in which case the recommendation of National Economic Development Authority and the approval by the President to exceed such limit is required.

The Central Bank of the Philippines shall promulgate and enforce such measures as shall be necessary to eventually reduce the external debt service requirements to an annual level not exceeding twenty per centum of the average of the foreign exchange receipts of the immediately preceding year.

**SECTION 3.** Section three of the same Act is hereby further amended to read as follows:

"Sec. 3. The President of the Philippines, upon recommendation of the Secretary of Finance, the Monetary Board of the Central Bank of the Philippines and the National Economic Development Authority, is further authorized, in behalf of the Republic of the Philippines, to guarantee such loans, credits or indebtedness as may be necessary and upon such terms and conditions, not inconsistent with this Act, as may be agreed upon with the governments of foreign countries with whom the Philippines has diplomatic or

trade relations or which are members of the United Nations, their agencies, instrumentalities or financial institutions or with reputable international organizations or non-governmental national or international lending institutions, loans, credits or indebtedness extended directly to, or bonds, debentures, securities or other evidences of indebtedness for sale in international markets issued by:

"(A) Corporations-owned or controlled by the Government of the Philippines: Provided, that the proceeds of bonds, debentures, securities or other evidences of indebtedness floated or issued, shall be used to undertake industrial, agricultural, or other economic development projects which are authorized by law or by their respective charters, including but not limited to those enumerated in Annex "A" or by their respective charters and such projects which may from time to time be recommended by the National Economic Development Authority and approved by the President of the Philippines.

"(B) Government-owned or controlled financial institutions for relending to individuals, partnerships, cooperatives, associations or private corporations, whose capital stock, if not fully subscribed, is open to subscription by the general public for projects authorized by the charters of such financial institutions or by law.

"Seventy-five per centum of the total amount authorized to be guaranteed under this section shall be incurred for projects under paragraph "B" hereof; and that of the total amount guaranteed no individual, partnership, cooperative, association or private corporation except development finance corporations using funds supplied by International Bank for Reconstruction and Development, the Asian Development Bank and other similar international financial institutions, shall be allowed to borrow more than fifteen per centum of the total amount of loans, credits or indebtedness authorized to be guaranteed hereunder.

**SECTION 4.** Section three-A of the same Act is hereby amended to read as follows:

"Sec. 3-A. Only Filipino citizens, partnerships, cooperatives, associations or private corporations organized under the laws of the Philippines, at least seventy per centum of the outstanding and paid-up capital of which is owned and held by citizens of the Philippines, such proportion to be maintained until such time as the loan is fully paid and whose capital structure is open to public participation are qualified to borrow from Government financial institutions the proceeds of loans, credits or indebtedness incurred under authority of this Act.

"Failure of the private borrower to maintain the capital ownership requirement stipulated herein, throughout the period that any part of a loan remains outstanding, shall render the entire loan immediately due and demandable, together with all interests and penalties, plus an additional special penalty of two per centum of the total amount due for every month or fraction, thereof that the violation of the capital ownership requirement continues to subsist."

**SECTION 5.** Section four of the same Act is hereby repealed and Section four-A shall be renumbered Section Four and further amended to read as follows:

"Sec. 4. In the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines may, when necessary, agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding, including among others, Act Numbered Four Thousand Two Hundred Thirty-Nine, Commonwealth Act Numbered One Hundred Thirty-Eight, the provisions of Commonwealth Act Numbered Five Hundred Forty-One, insofar as such provisions do not pertain to constructions primarily for national defense or security purposes, Republic Act Numbered Five Thousand One Hundred Eighty-Three: Provided, however, That as far as practicable, utilization of the services of qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged: Provided, further, That in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials, or supplies of the growth, production or manufacture of the Philippines: Provided, finally, That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution."

**SECTION 6.** Section five of the same Act is hereby further amended to read as follows:

"Sec. 5. It shall be the duty of the President, within thirty days after the opening of every regular session, to submit a separate report to Congress on the amount of loans, credits and indebtedness contracted and in the process of negotiation and of the bonds, debenture, securities, or other evidences of indebtedness sold in international markets and proposed to be sold, as well as the guarantees extended, their respective terms and conditions, and the purposes and projects for which the loan credits, or indebtedness were incurred and for which the bonds, debentures, securities or other evidences of indebtedness were floated, and the guarantees extended.

**SECTION 7.** Section six of the same Act is hereby further amended to read as follows:

"Sec. 6. Any provision of law to the contrary notwithstanding, and in order to enable the Republic of the Philippines to pay the principal, interest, taxes and other normal banking charges on the loans, credits or indebtedness, or on the bonds, debentures, securities or other evidences of indebtedness sold in international markets incurred under the authority of this Act, the proceeds of which are deemed appropriated for the projects, all the revenue realized from the projects financed by such loans, credits or indebtedness, or on the bonds, debentures, securities or other evidences of indebtedness, shall be turned over in full, after deducting actual and necessary expenses for the operation and maintenance of said projects, to the National Treasury by the government office, agency or instrumentality, or government-owned or controlled corporation concerned, which is hereby appropriated for the purpose as and when they shall become due. In case the revenue realized is insufficient to cover the principal, interest and other charges, such portion of the budgetary savings as may be necessary to cover the balance or deficiency shall be set aside exclusively for the purpose by the government office, agency or instrumentality, or government-owned or controlled corporation concerned: Provided, That if there still remains a deficiency, such amount necessary to cover the payment of the principal and interest on such loans, credit or indebtedness as and when they shall become due is hereby appropriated out of any funds in the National Treasury

not otherwise appropriated: Provided, further, That the Monetary Board shall make provisions out of current foreign exchange receipts for the foreign exchange requirements to service the external debt: And, provided, finally, That this requirement to turnover the net revenues shall not apply in relending arrangements covered under Section 1 (B) and (C)."

**SECTION 8.** Section 6-A of the same Act is hereby repealed.

**SECTION 9.** Any provision of law, executive orders, rules and regulations inconsistent with this Decree are hereby repealed or modified accordingly.

**SECTION 10.** This Decree shall take effect immediately.

Done in the City of Manila, this 14th day of December, in the year of Our Lord, nineteen hundred and seventy-two.