



Press briefing on loan agreements

March 27, 2019

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Ang lupain, kagubatan at iba pang likas na yaman ng Pilipinas ay nauuri bilang public assets, maliban na lamang kung mayroong batas o opisyal na pahayag laban dito. Hindi po ito maaaring agawin basta-basta ng sinumang dayuhan o foreign entity.

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Ang waiver of sovereign immunity ay hindi nagpapahintulot sa sinumang dayuhan o foreign party nakunin o angkinin ang ating mga likas na yaman. Ibig sabihin lamang nito ay pinahihintulutan ang mga counterparty ng Pilipinas sa isang kasunduan na dalhin sa korte ang kaso kung umabot man na ang Pilipinas ay hindi makabayad sa mga utang nito.

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Ang mga rulings o desisyon mula sa arbitration ay napapailalim o hindi maaaring mangibabaw sa ating **Konstitusyon at sa sistema ng hukuman ng Pilipinas.**

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Mariing inuulit ng Department of Finance na **responsable ang pamamahala ng gobyerno sa mga utang ng Pilipinas, maging panloob man ito o panlabas.**



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Choice of governing law

Country	China (Kaliwa, Chico)	Japan (North-South Commuter Rail)	Korea (New Cebu International Container Port)	France (Cebu BRT)	China (Angat)
Governing law	Laws of China	Laws and regulations of Japan	Laws of the Republic of Korea	French Law	Laws of China
Source of provision	Loan agreement	JICA general terms and conditions (Sec. 9.01)	EDCF general terms and conditions (Sec. 10.01)	Loan agreement	Loan agreement
Date of loan agreement	Nov 20, 2018 (Kaliwa) Apr 10, 2018 (Chico)	Jan 21, 2019	June 4, 2018	Feb 26, 2015	Jan 7, 2010
Admin	Duterte			Aquino	Arroyo

Interest rate and maturity

Country	China (Kaliwa, Chico)	Japan (North-South Commuter Rail)	Korea (New Cebu International Container Port)	France (Cebu BRT)	China (Angat)
Nominal interest rate	2% (in USD)	0.08% (in JPY)	0.15% (in KRW)	0.71% (in EUR, as of Nov 2014)	3% (in USD)
Equivalent fixed USD rate	2% (as of signing)	2.7% (as of signing)	1.36% (as of signing)	3.69% (as of Nov 2014)	3% (as of signing)
Maturity (years)	20	40	40	26	20
Grace period (years)	7	12	10	6	5
Date of relevant document	Nov 20, 2018 (Kaliwa) April 10, 2018 (Chico)	Jan 21, 2019	June 4, 2018	Feb 26, 2015	Jan 7, 2010
Admin	Duterte			Aquino	Arroyo

Waiver of immunity and arbitration

Country	China (Kaliwa Dam) Loan agreement	China (Chico River) Loan agreement	France (Cebu BRT) Credit facility agreement	China (Angat Dam) Loan agreement
Signed	Nov 20, 2018	April 10, 2018	Feb 26, 2015	Jan 7, 2010
Admin	Duterte		Aquino	Arroyo
Arbitration venue	Hong Kong	Beijing	Paris	Beijing
Arbitration rules	Hong Kong International Arbitration Centre	China International Economic and Trade Arbitration Commission	<i>Chambre de commerce internationale</i> (International Chamber of Commerce)	China International Economic and Trade Arbitration Commission

Waiver of immunity and arbitration

Country	China (Chico River) Loan agreement	France (Cebu BRT) Credit facility agreement	China (Angat Dam) Loan agreement
Signed	April 10, 2018 (Duterte admin)	Feb 26, 2015 (Aquino admin)	Jan 7, 2010 (Arroyo admin)
Waiver of immunity	<p>“The Borrower hereby irrevocably waives any immunity on the grounds of sovereign or otherwise for itself or its property in connection with any arbitration proceeding pursuant to Article 8.5 hereof or with the enforcement of any arbitral award thereto. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defence agency of the Republic of the Philippines, or (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).”</p>	<p>“The Parties expressly agree that, by accepting this arbitration clause, the Borrower waives any jurisdictional immunity or immunity from execution on which it may be entitled to invoke, the enforcement of an arbitration award being made in accordance with the conditions in article 10.5(b) . Notwithstanding the foregoing, the Borrower does not waive any immunity in respect of its assets which are (i) used by diplomatic or consular mission of the Borrower and (ii) assets of military character and under control of a military authority of defence agency and (iii) located in the Philippines and dedicated to a public or government use (as distinguished from patrimonial assets or assets dedicated for commercial use).”</p>	<p>“The Borrower irrevocably and unconditionally waives, any immunity to which it or its property may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any suit, judgment, service of process upon it or any agent, execution on judgment, set-off, attachment prior to judgment, attachment in aid of execution to which it or its assets may be entitled in any legal action or proceedings with respect to this Agreement or any of the transactions contemplated hereby or hereunder.”</p>

Chico River Pump Irrigation Project loan agreement

Article 8.1 Waiver of Immunity

The Borrower hereby irrevocably waives any immunity on the grounds of sovereign or otherwise for itself or its property in connection with any arbitration proceeding pursuant to Article 8.5 hereof or with the enforcement of any arbitral award thereto. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defence agency of the Republic of the Philippines, or (iii) **located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).**

Chico River Pump Irrigation Project loan agreement

Article 8.6

The arbitral award obtained in accordance with this Article against the Borrower will be recognized and be **enforceable in the Republic of the Philippines provided that:** (a) the arbitral tribunal had jurisdiction over the subject matter of the action in accordance with the jurisdictional rules; (b) the Republic of the Philippines had notice of the proceedings; (c) the arbitral award was **not obtained through collusion or fraud**, and such award was not based on a clear mistake of fact or law; and (d) the arbitral award is **not contrary to public policy in the Republic of the Philippines.**

Inauguration of Angat Water Utilization and Aqueduct Improvement Project (AWUAIP) in July 17, 2012



Recap of key points

1. Ang mga sinasabing 'kontrobersyal' na section sa loan agreements ay standard provisions.
2. Ang waiver of sovereign immunity ay para lamang sa arbitration and enforcement of arbitration.
3. Ang mga rulings o desisyon mula sa arbitration ay kailangan pa ring dalhin sa korte ng Pilipinas.
4. Responsable ang pamamahala ng gobyerno sa mga utang ng Pilipinas, maging panloob man ito o panlabas.



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