

November 22, 1957

**GUARANTEE AGREEMENT (BINGA PROJECT) BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE INTERNATIONAL BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

Note: The Agreement entered into force, February 26, 1958.

Reference: This Agreement is also published in 293 UNTS, p. 83.

AGREEMENT, dated November 22, 1957, between Republic of the Philippines (hereinafter called the Guarantor) and International Bank for Reconstruction and Development (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and National Power Corporation {herinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement, the Bank has agreed to make to the Borrower a loan in various currencies equivalent to twenty-one million dollars (\$21,000,000) on the terms and conditions set forth in the loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated June 15, 1956, subject, however, to the modifications thereof set forth in Schedule 3 to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

ARTICLE II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this 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 on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the pre-payment of the Loan or the redemption of the Bonds, and further guarantees the punctual performance of all the covenants and agreements of the Borrower in the territory of the Republic of the Philippines, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for carrying out the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause

the Borrower to be provided with such funds as are needed to meet such expenditures.

ARTICLE III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any Hen 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 the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (Hi) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including Central Bank of the Philippines.

Section 3.02. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Section 3.03. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes or fees imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Agreement, the Loan Agreement and the Bonds shall be free from any taxes or fees that shall be imposed under the laws of the Guarantor or laws in

effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Section 3.05. The principal of, and interest and other charges on, Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. Prior to January 5, 1976, the Guarantor shall either extend the corporate life of National Power Corporation for a period extending beyond the final maturity of the Loan or make arrangements satisfactory to the Bank for transfer of the operations and activities of National Power Corporation in the electric power field to, and the assumption of" the obligations of National Power Corporation under the Loan Agreement by, an entity satisfactory to the Bank.

Section 3.07. The Guarantor covenants that it will not take or permit any of its political subdivisions or any of its agencies or any agency of any political subdivision to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained, and will take or cause to be taken all reasonable action which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

ARTICLE IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Bonds to be executed and delivered by the Borrower. The Secretary of Finance of the Guarantor and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 Cb) of the Loan Regulations.

ARTICLE V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations:

For the Guarantor:

Central Bank of the Philippines

Manila

Philippines

Alternative address for cablegrams and radiograms:

Philcenbank

Manila, Philippines

For the Bank:

International Bank for Reconstruction and
Development

1818 H Street, N.W.

Washington 25, D.C.

United States of America

Alternative address for cablegrams and radiograms:

Intbafrad
Washington, D.C.

For the Guarantor: Central Bank of the Philippines Manila Philippines Alternative address for cablegrams and radiograms: Philcenbank Manila, Philippines For the Bank: International Bank for Reconstruction and Development 1818 H Street, N.W. Washington 25, D.C. United States of America Alternative address for cablegrams and radiograms: Intbafrad Washington, D.C.

Section 5.02. The Governor of the Central Bank of the Philippines is designated for the purposes of Section 8.03 of the Loan Regulations.

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 delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of the Philippines: By M. Cuaderno Authorized Representative International Bank for Reconstruction and Development: By Eugene R. Black President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS NO. 4, DATED 15 JUNE 1956

**REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS
OTHER THAN MEMBER GOVERNMENTS**

**[NOT PUBLISHED HEREIN. SEE UNITED NATIONS TREATY SERIES, VOL.,
260 P. 376]**

**LETTER, DATED 21 NOVEMBER 1957, FROM THE REPUBLIC OF THE
PHILIPPINES TO THE INTERNATIONAL BANK FOR RECONSTRUCTION AND
DEVELOPMENT**

CENTRAL BANK OF THE PHILIPPINES MANILA OFFICE OF THE GOVERNOR

Washington, D.C., November 21, 1957

International Bank for Reconstruction
and Development
1818 H Street, N.W.
Washington 25, D.C.

Gentlemen:

In connection with the proposed loan (Binga Project) to the National Power Corporation, to be guaranteed by the Republic of the Philippines, I am pleased to advise you on behalf of my Government as follows:

1. Referring to Section 3.06 of the proposed Guarantee Agreement, my Government will use its best efforts to secure the passage of legislation in the 1958 session of the Philippine Congress which would authorize an extension of the corporate life of the National Power Corporation to a date beyond the final maturity of the proposed loan.

2. Referring to Section 5.08 of the Loan Agreement it is the wish of my Government that the fertilizer plant on Mindanao now owned and operated by the National Power Corporation should be transferred to private ownership as soon as may be practicable. In the meantime, my Government will sponsor legislation similar to that which was introduced in the 1956 session of the Philippine Congress to provide for the transfer of the ownership of the fertilizer plant to another government agency. My Government will use its best efforts to secure passage of such legislation during the 1958 session of Congress and will recommend to Congress that this legislation contain provision to ensure that the calculation of the assets and liabilities attributable to the fertilizer plant will be done on a basis that is fair to the National Power Corporation and that the assets and liabilities so calculated, including any losses incurred in the operation of the fertilizer plant from January 1, 1958, will be transferred to the new owner of the fertilizer plant. The National Power Corporation is making arrangements to segregate at once the accounts and operations of the fertilizer plant from its other operations and my Government supports the proposal that the National Power Corporation should, to the extent that the cash requirements of the fertilizer plant cannot be met from its revenues, meet such requirements from borrowings and should endeavor to secure such borrowings on terms whereby they will, be repayable only from the assets or earnings of the fertilizer plant and will not be a charge against the assets or earnings of the National Power Corporation other than those attributable to the fertilizer plant. Such borrowings will of course be counted amongst the liabilities to be transferred to any new owner. My Government also agrees with the proposal of the National Power Corporation that the Corporation will in all relevant accounts charge the fertilizer operation for the consumption of power at rates which would be appropriate if the Corporation were selling power to a separate enterprise of this kind in accordance with sound commercial principles.

Very truly yours,

Republic of the Philippines :

By **M. CCADERNO, SR.**

Governor

Central Bank of the Philippines

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ARTICLE I

LOAN REGULATIONS

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ARTICLE II

THE LOAN