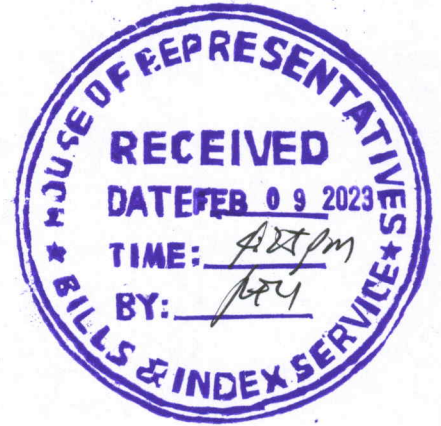


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Nineteenth Congress
First Regular Session

House Bill No. **7135**



Introduced by **Representative JOEY SARTE SALCEDA**

**AN ACT
SETTING STANDARDS FOR THE CONTRACTING OF
OFFICIAL DEVELOPMENT ASSISTANCE, AMENDING FOR THE PURPOSE
SECTIONS 2, 3, 4, 7, AND 11 OF REPUBLIC ACT NO. 8182,
OTHERWISE KNOWN AS THE "OFFICIAL DEVELOPMENT
ASSISTANCE ACT OF 1996"**

EXPLANATORY NOTE

Official Development Assistance packages are a powerful tool for financing national priorities due to their nature as long-tenured, deeply concessional loans with a more diplomatic character. ODA loans allow for the financing of programs and projects where economic returns are not necessarily immediately realizable, or where a viability gap would make a certain project less financial to the open capital markets or to private or commercial institutions.

ODA for national defense purposes also allows the country to prioritize economic services in its current-revenue-funded, cash-based budgeting, while also meeting its national security needs.

As of December 31, 2021, some 43.93% or P1.663 trillion of our external debt is contracted through ODA. The Weighted Average Maturity (WAM) of the entire outstanding ODA loan portfolio, including the undrawn loan commitments that are yet to be availed/repaid in subsequent years, is estimated at 20.80 years. Given the BVAL average rates, similar commercial loans of such maturity should fetch a coupon rate of 8.1250%. Not including the concessional aspect of the ODA due to the grant component, the nominal interest rate of the commercial loan component of the most expensive available multilateral ODA loan, the Asian Infrastructure Investment Bank 12-29 year loans, is 6.48% as of February 9, 2023¹.

Expanding the country's ODA portfolio is thus critical both for our fiscal stability and for funding our long-term priorities.

¹ Using USD LIBOR + 0.64% or 1.04% spread

For large-scale development projects, financial facilities from European bilateral and multilateral partners are often a blend of a sovereign soft loan backed with buyer credits (bank credits guaranteed by the State at a preferential rate). The constitutionality of such arrangements has been affirmed by the Supreme Court in *Neri J. Colmenares, et al. Vs. Rodrigo R. Duterte, et al.*/*Neri J. Colmenares, et al. Vs. Rodrigo R. Duterte, et al.*².

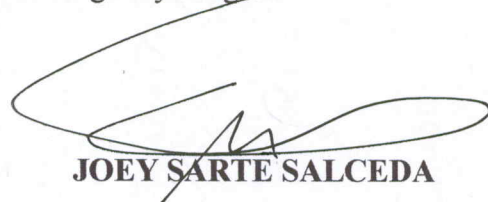
However, the current ODA Law, under Republic Act No. 8182, does not explicitly provide a mechanism for ODAs in the blended financing approach – or financing arrangements where the bilateral or multilateral partners mobilizing funds from a commercial or private financing institutions. As such, similar financing arrangements could be subject to litigation, raising the risks of materially-adverse government action for such projects.

Such risks also restrict bilateral (especially European) partners' ability to provide their expertise in many areas where cooperation could contribute to the development of the Philippines.

To settle such ambiguities in the law, while providing safeguards for such mechanisms, this bill aims to establish the following:

1. Allow blended financing in Official Development Assistance loans as long as they are covered by national or international official instruments in the nature of exchanges of notes, memoranda of understanding, or similar instruments. The ODA partner may mobilize financing from private or commercial institutions in funding the loan or loan grant;
2. Provide the condition that the partner government, bilateral or multilateral agency, or international or multilateral lending institution shall guarantee the timely and complete release of funds committed by such private or commercial institutions;
3. Reduction of the ODA grant component to 15% to attract more ODA, considering that they remain more attractive as a financing option than alternatives. The 40% requirement for the weighted average of the grant component of all ODAs is rendered superfluous and is proposed to be deleted;
4. Expand the use of ODA loans to include human security;
5. Provide more flexibility in the loan component of ODAs, by allowing the Monetary Board to determine the rate and terms that it considers concessional, and including project management costs and other similar charges in the effective interest rate;
6. Preserve the terms and conditions under which ODA loans prior to these amendments were contracted, but allow unutilized balances to be diverted through their corresponding loan agreements, and only apply the new provisions to loans after the effectivity of the amendments; and
7. Allow ODAs to be used to acquire critical capabilities not available in the Philippines by exempting such capabilities from preference for Filipino suppliers.

In view of the foregoing, the approval of this bill is urgently sought.



JOEY SARTE SALCEDA

² G.R. No. 245981/G.R. No. 246594.

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

SECTION 1. Section 2 of Republic Act No. 8182 is hereby amended to read as follows:

Sec. 2. *Official Development Assistance (ODA)*. – For purposes of this Act, ODA is a loan or loan and grant which means all of the following criteria:

(a) It must be administered with the objective of promoting sustainable social and economic development, **HUMAN SECURITY**, and welfare of the Philippines;

(b) It must be [contracted] **COVERED BY NATIONAL OR INTERNATIONAL OFFICIAL INSTRUMENTS IN THE NATURE OF EXCHANGES OF NOTES, MEMORANDA OF UNDERSTANDING, OR SIMILAR INSTRUMENTS**, 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[:]; **PROVIDED, THAT THE PARTNER GOVERNMENT, BILATERAL OR MULTILATERAL AGENCY, OR INTERNATIONAL OR MULTILATERAL LENDING INSTITUTION MAY MOBILIZE FINANCING FROM PRIVATE OR COMMERCIAL INSTITUTIONS IN FUNDING THE LOAN OR LOAN GRANT: PROVIDED FURTHER, THAT THE PARTNER GOVERNMENT, BILATERAL OR MULTILATERAL AGENCY, OR INTERNATIONAL OR MULTILATERAL LENDING INSTITUTION SHALL GUARANTEE THE TIMELY AND COMPLETE RELEASE OF FUNDS**

COMMITTED BY SUCH PRIVATE OR COMMERCIAL 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] **FIFTEEN** percent ([2]15%). 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 at 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. 2. Section 3 of Republic Act No. 8182 is hereby amended to read as follows:

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 **EFFECTIVE** interest rate **AND THE TERMS** on the loan or loan component, **INCLUDING PRIVATE OR COMMERCIAL FINANCING MOBILIZED BY BILATERAL OR MULTILATERAL PARTNERS**, exceed seven percent (7%) **OR A RATE AND TERMS AS MAY BE DETERMINED BY THE DEPARTMENT OF FINANCE AS BEING CONCESSIONAL.**

THE EFFECTIVE INTEREST RATE SHALL INCLUDE ALL INTEREST PAYMENTS AS WELL AS PROJECT MANAGEMENT COSTS AND SIMILAR COSTS INCURRED BY THE BORROWING ENTITY IN THE CONTRACTING OF THE ODA LOAN.

SEC. 3. Section 4 of Republic Act No. 8182 is hereby amended to read as follows:

Sec. 4. *Use of ODA for Equitable Development.* – The proceeds of ODA shall be used to **PROMOTE NATIONAL SECURITY AND DEVELOPMENT AND** 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, **WHEREVER APPROPRIATE**, 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.

NO CONTINGENT LIABILITY ARISING FROM ODA LOANS TO SUBNATIONAL GOVERNMENTS SHALL BE INCURRED BY THE NATIONAL GOVERNMENT. LIABILITIES THAT SUBNATIONAL GOVERNMENTS MAY INCUR FROM ODA LOANS, INCLUDING THOSE ARISING FROM EXPOSURE TO FOREIGN CURRENCY RISKS, SHALL BE SUBJECT TO DEBT LIMITATIONS PRESCRIBED BY THE BUREAU OF LOCAL GOVERNMENT FINANCE.

THE DEPARTMENT OF FINANCE MAY GRANT ODA LOANS AND GRANTS TO SUBNATIONAL GOVERNMENTS ELIGIBILITY TO RELIEF FROM VALUE-ADDED TAX.

SEC. 4. Section 7 of Republic Act No. 8182 is hereby amended to read as follows:

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\$20B) can be substituted or replaced by non-ODA loans.]

ODA LOANS CONTRACTED BETWEEN 1 JANUARY 1995 AND 31 DECEMBER 2023 SHALL BE GOVERNED BY THEIR TERMS AND BY THE LAWS, RULES, AND REGULATIONS UNDER WHICH

THEY WERE CONTRACTED. UNUTILIZED BALANCES UNDER SUCH LOANS MAY BE DIVERTED TO OTHER PROJECTS: PROVIDED, THAT SUCH DIVERSION SHALL BE REFLECTED THROUGH AMENDMENTS IN THEIR CORRESPONDING TERMS, MEMORANDA OF UNDERSTANDING, EXCHANGES OF NOTES, AND OTHER APPLICABLE NATIONAL OR INTERNATIONAL OFFICIAL INSTRUMENTS OF AGREEMENT.

ODA LOANS CONTRACTED ON OR AFTER 1 JANUARY 2024 SHALL BE GOVERNED BY THIS ACT.

SEC. 5. Section 11 of Republic Act No. 8182 is hereby amended to read as follows:

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 preferences; (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 PREFERENCE FOR FILIPINOS AND FILIPINO SUPPLIERS AND MANUFACTURERS SHALL NOT APPLY TO PROJECTS WHOSE NATURE IS INHERENTLY TO ACQUIRE EQUIPMENT OR CAPABILITIES NOT AVAILABLE IN THE PHILIPPINES OR FROM FILIPINOS OR FILIPINO SUPPLIERS AND MANUFACTURERS.

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. 6. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain in full force and effect.

SEC. 7. *Repealing Clause.* – All laws, presidential decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 8. Effectivity. -- This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation in the Philippines.

Approved,