

**MALACAÑANG**  
**Manila**

**BY THE PRESIDENT OF THE PHILIPPINES**

**EXECUTIVE ORDER NO. 855**

**DESIGNATING THE NATIONAL DEVELOPMENT COMPANY AS THE  
ACQUIRING VEHICLE FOR METRO RAIL TRANSIT CORPORATION**

**WHEREAS**, pursuant to Memorandum Order No. 181, Series of 2005 (MO 181), an Inter-Agency Committee (IAC) was created to conduct a review of the Metro Rail Transit 3 (MRT 3) Project;

**WHEREAS**, the IAC was tasked, among others, to study the possibility of a government take-over of the MRT 3 Project in accordance with law;

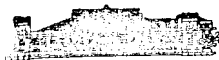
**WHEREAS**, the IAC was composed of the following:

1. Chairman: Representative, Department of Finance
2. Members: Representative, Department of Budget and Management; Representative, National Economic and Development Authority; Representative, Department of Transportation and Communications; Representative; BOT Center; Representative, Office of the Chief Presidential Legal Counsel;

**WHEREAS**, at the end of the IAC review period, the IAC came up with the following conclusions:

1. The MRT 3 agreements and the Government's commitments under the said agreements have legal basis;
2. Certain provisions of these agreements are reported by implementing and regulatory agencies as onerous to the Government;
3. The Build-Lease-and-Transfer Agreement and other project documents limit the Government's ability to act unilaterally;

**WHEREAS**, there is a desire on the part of the Government to completely resolve and terminate the Government's Equity Rental Payment (ERP) obligations to Metro Rail Transit Corporation (MRTC) in a manner and on such basis that would afford the National Government to realize savings;



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**WHEREAS**, in August 2007, a consensus was reached among the Department of Finance (DOF), Department of Transportation and Communications (DOTC) and MRTC for a consensual unwind which would result in full control and ownership of MRT 3 by Government in exchange for a lump sum payment of the Equity Rental Payment (ERP) obligation;

**WHEREAS**, several issues emerged that hampered the implementation of the consensual unwind, such as the securitization structure entered into by original shareholders of MRTC that resulted in the ERPs being converted into securities of bonds and shares;

**WHEREAS**, during the May 9, 2008 meeting of the Economic Managers, the proposed buy-out plan of MRT 3 which included the participation of the DBP, LBP and NDC was approved to realize significant savings for the National Government and avert costly arbitration proceedings.

**WHEREAS**, certain investors of the bonds and shares filed arbitration cases against the Government, thereby necessitating swift action by acquiring the bonds and shares in the market to avert further arbitration proceedings and facilitate the consensual unwind;

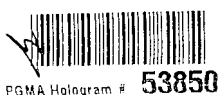
**WHEREAS**, the DOF directed the Development Bank of the Philippines (DBP) and Landbank of the Philippines (LBP) to purchase the shares of stocks, notes and securities representing the economic interest in MRTC in order to gain control of the MRTC Board;

**WHEREAS**, DBP and LBP being banking institutions, cannot hold on to their equity investment in MRTC indefinitely pursuant to Bangko Sentral ng Pilipinas (BSP) regulations;

**WHEREAS**, the National Development Company (NDC), pursuant to Presidential Decree No. 1648, as amended, otherwise known as the "Revised Charter of the National Development Company, is the corporate vehicle of the government, designed to pursue commercial, industrial, agricultural, mining and other enterprises which may be necessary or contributory to the economic development of the country;

**WHEREAS**, the DOF recommended for NDC to participate in the take out of DBP and LBP and serve as the new major investor of MRTC on behalf of the National Government;

**WHEREAS**, it is envisioned that NDC will serve as a catalyst for the amendment of the Build Lease and Transfer (BLT) Agreement between MRTC



and DOTC with the end view of obtaining savings on the part of the National Government;

**WHEREAS**, there is a need to authorize and direct NDC to purchase from DBP and LBP, the two banks' certain economic interest in MRTC;

**NOW, THEREFORE, I, GLORIA MACAPAGAL ARROYO**, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

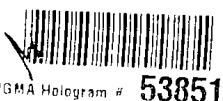
**SECTION 1. DIRECTING NDC TO ACQUIRE ECONOMIC INTEREST IN MRTC** – NDC, on its own, or in partnership with other entities, is hereby directed to acquire economic interest in MRTC in the form of shares, subject to such limitations provided for by its charter.

**SECTION 2. VALUATION OF THE PURCHASE PRICE** – The purchase price of the shares shall be subject to legal and financial due diligence by NDC and verified by the Commission on Audit (COA) and shall be mutually agreed upon among NDC, DBP, and LBP with the end view of obtaining savings for the Government.

**SECTION 3. FUND RAISING AND OTHER AUTHORIZATIONS** – NDC is hereby authorized to issue bonds or request loan facilities in order to acquire and purchase the shares, provided, that the cost to NDC of such borrowings will not dilute the savings of the National Government envisioned from such acquisition. NDC's issuance of bonds or borrowings shall be guaranteed by the National Government. The DOF is hereby authorized to issue sovereign guarantee for NDC's borrowings or issuances.

**SECTION 4. FURTHER DOCUMENTS** – The DOF and the Department of Budget and Management (DBM) are hereby directed to issue such guidelines and execute the necessary documents in order to ensure the repayment by NDC of the borrowings it will incur as a result of its acquisition and purchase of the shares. The DOF is further instructed to coordinate all the needed regulatory processes to facilitate the acquisition, such as but not limited to the Monetary Board approvals and other regulatory requirements of NDC, DBP and LBP.

**SECTION 5. AMENDMENT OF THE EXISTING BLT AGREEMENT** – The NDC, DOF, DBM and the National Economic and Development Authority (NEDA) are authorized to review, and amend the existing BLT Agreement for the purpose of making the MRT 3 Project economically viable to the Government, such amendment or cancellation may include the transfer to NDC of the Operation and Management (O and M) and the Development Rights of the MRT 3 Project, among others.



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NDC shall also have the sole discretion to privatize its interests in MRTC, including the O and M of the MRT 3 Project.

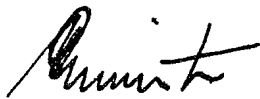
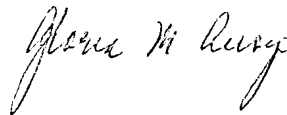
All concerned government agencies, including the DOTC, are directed to give their full support and cooperation in order for NDC to fulfill its mandate under this Executive Order.

**SECTION 6. REPEALING CLAUSE** – All executive issuances, rules and regulations or parts thereof which are inconsistent with this Executive Order are hereby revoked, amended or modified accordingly.

**SECTION 7. EFFECTIVITY** – This Executive Order shall take effect immediately following its publication in a newspaper of general circulation.

Done in the City of Manila, this 18<sup>th</sup> day of January, in the year of our Lord, Two Thousand and Ten.

By the President:



**EDUARDO R. ERMITA**  
Executive Secretary



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