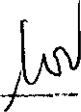




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SENATE

S. No. 2665

RECEIVED BY. 

Introduced by SENATOR FERDINAND R. MARCOS, JR.

**AN ACT AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS,
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.**

EXPLANATORY NOTE

Countries around the world are widely using Public-Private Partnerships (PPP) to build public infrastructure. The Philippines seeks to successfully do the same and expand its use of the PPP to develop and maintain essential public infrastructure.

From the 1970s to the 1990s, few public infrastructure projects in the Philippines were built with private sector participation. To encourage such ventures, Congress passed Republic Act No. 6957 in 1990 (as amended by Republic Act No. 7718 in 1994), otherwise known as the Build-Operate-Transfer ("BOT") Law. The purpose of the BOT Law is to tap into the private sector's financial resources and thereby expand investments for public infrastructure projects, considering the limited fiscal resources of the government. While this objective remains, the benefits of improved public infrastructure, sustainable and well-maintained facilities, and beneficiaries-pay principle have gained importance.

Even so, the Philippines still lags behind other countries in providing essential public infrastructure. Out of 148 economies surveyed by the World Economic Forum in its Global Competitiveness Report 2013-2014, the Philippines ranks 84th in transportation, 113th in airport facilities, and 116th in seaport facilities. The current state of our country's infrastructure is indeed holding back our economic development.

This bill intends to update and replace the BOT Law by incorporating the valuable lessons learned from successful and failed projects in the past, as well as global best practices in PPP. This bill seeks to accelerate public infrastructure development by strengthening the PPP institutional framework; providing financial and technical support through the Project Development and Monitoring Facility (PDMF); optimizing project risks and obtaining government support; expanding the PPP contractual arrangements; providing for transparent and competitive bidding; setting standard contents and implementation of PPP projects for transparency, consistency, and predictability; and granting incentives to PPP projects. In view of the foregoing, the passage of this bill is earnestly sought.

This bill, borne out of the joint endorsement and recommendation of the National Economic Development Authority (NEDA) and the Public-Private Partnership (PPP) Center, is herein being filed in order to initiate parallel and congruent legislative discussions in the Senate, and keep pace with the efforts of House of Representatives, whose Committee on Public Works and Highways has already extensively heard and deliberated a bill of similar nature, i.e., House Bill No. 3951, introduced by House Speaker Feliciano Belmonte, Jr., and Representatives Neptali M. Gonzales II, Ronald M. Cosalan, and Romero S. Quimbo.


FERDINAND R. MARCOS, JR.

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SENATE
S. No. 2665

RECEIVED BY: JW

Introduced by SENATOR FERDINAND R. MARCOS, JR.

**AN ACT AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS,
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.**

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

1 **SEC. 1.** Short Title. - This Act shall be known as the "Public-Private Partnership (PPP)
2 Act" of the Philippines.

3

4 **SEC 2.** Declaration of Policy. – It is the declared policy of the State to recognize the
5 indispensable role of the private sector as the main engine for national growth and
6 development, create an enabling environment for PPP, and provide the most appropriate
7 incentives to mobilize private resources for the purpose of financing, design, construction,
8 operation and maintenance of infrastructure projects and services normally financed and
9 undertaken by the government. Such incentives, aside from financial incentives as provided
10 by law, shall include provision of liberalized government regulations and procedures in
11 support of the private proponent.

12

13 The State recognizes the long-term nature of private investment in infrastructure
14 projects and the need to mitigate the associated risks by ensuring that the validity and
15 enforceability of contracts are respected through the due process of law.

16

17 The State shall protect the public interest by ensuring fair and reasonable pricing and
18 timely delivery of quality infrastructure, goods and services through equitable risk allocation
19 inherent in projects implemented under this Act and its implementing rules and regulations
20 (IRR), and subject to reasonable rules, under the guiding principle of full public disclosure of
21 all transactions.

22

23 The State affirms open, transparent and competitive selection as the central tenet of
24 government procurement in securing private investment in public infrastructure projects.

25

26 **SEC. 3.** Definition of Terms. – The following terms used in this Act shall have the
27 meanings stated below:

- 1 (a) Approving Body – refers to an entity authorized to approve PPP projects proposed
2 under this Act and its IRR, in accordance with Section 6 of this Act.
3
- 4 (b) Availability-based PPP – refers to a PPP where the implementing agency commits to
5 make predetermined payments for contractually-defined performance delivery.
6
- 7 (c) Concession-based PPP – refers to a PPP where the implementing agency grants the
8 project proponent the right to recover its investment, operating and financing costs by
9 charging the public a user fee or tariff.
10
- 11 (d) Construction – refers to new construction, rehabilitation, improvement, expansion,
12 alteration, installation, and related works and activities in connection with an
13 infrastructure facility, including the necessary supply of equipment, materials, labor
14 and services and related items.
15
- 16 (e) Contingent Liability – refers to obligations of the government arising from a valid PPP
17 contract whose occurrence, timing and amount depend on some uncertain future
18 event or circumstance. Under an optimal allocation of risks between the implementing
19 agency and the project proponent, each risk in a PPP project shall be assigned to the
20 party that is best able to control the likelihood of its occurrence, manage its impact on
21 the project, and absorb the risk at the lowest cost.
22
- 23 (f) Contractor – refers to any person, who may or may not be the project proponent, and
24 who shall undertake the actual construction of an infrastructure facility.
25
- 26 (g) Cooperation Period – refers to the period of operation of an infrastructure facility,
27 which period, in the case of public utilities requiring a franchise, shall be in accordance
28 with law.
29
- 30 (h) Facility Operator – refers to a person registered with the Securities and Exchange
31 Commission, who may or may not be the project proponent, and who is responsible
32 for all aspects of operation and maintenance of an infrastructure facility, including but
33 not limited to the collection of tolls, fees, rentals or charges from facility users.
34
- 35 (i) Government Undertakings – refer to any form of support, contribution, assistance,
36 subsidy, among others, which the government may provide to a solicited PPP project.
37
- 38 (j) Grantor – refers to an implementing agency and other government agencies that own
39 the project assets or franchise.
40
- 41 (k) Implementing Agency – refers to the department, bureau, office, instrumentality,
42 commission, or authority of the national government, including government-owned or -

1 controlled corporations (GOCCs), state universities and colleges (SUCs), government
2 financial institutions (GFIs), government instrumentalities with corporate powers
3 (GICPs), government corporate entities (GCEs), and other government corporate
4 entities (OGCEs) as defined in Republic Act No. 10149 or local government units
5 (LGUs), which undertake PPP projects in accordance with this Act.

6
7 (l) Indefinite Delivery Contract – refers to a contract in which individual consultants, firms,
8 or consortia of firms are prequalified and retained to provide advice on the preparation,
9 structuring, procurement, award, financial close, implementation and monitoring of
10 PPP projects.

11
12 (m) Infrastructure Facility – refers to such facility as are established by the government in
13 relation to or as may be necessary for the discharge of its functions, whether
14 governmental or proprietary, including but not limited to, power plants, highways,
15 ports, airports, canals, dams, hydropower projects, water supply, irrigation,
16 telecommunications, railroads and railways, transport systems, land reclamation
17 projects, industrial estates or townships, housing, government buildings, tourism
18 projects, markets, slaughterhouses, warehouses, solid waste
19 management, information technology systems and infrastructure, education and health
20 facilities, sewerage, drainage, dredging, climate change mitigation and adaptation
21 measures, and other similar facility or provision of related services as may be defined
22 in the IRR of this Act or as may be authorized by the implementing agency pursuant to
23 this Act.

24
25 For the construction stage of these infrastructure facilities where the contractor is a
26 foreigner, Filipino labor shall be employed or hired in the different phases of
27 construction where Filipino skills are available.

28
29 (n) PPP or Public-Private Partnership – refers to a contractual arrangement between the
30 implementing agency and the project proponent for the financing, design, construction,
31 operation, and maintenance, or any combination thereof, of an infrastructure facility, in
32 which the project proponent bears significant risk, management responsibility, or both.

33
34 (o) PPP Project – refers to a project undertaken under this Act.

35
36 (p) Person – refers to an individual, sole proprietorship, partnership, corporation or any
37 other form of organization, whether domestic or foreign.

38
39 (q) Project Cost – refers to total capital cost, financing and other expenses for the design,
40 construction, operation, and maintenance of an infrastructure facility.

41
42 (r) Project Proponent – refers to any private person who shall undertake a PPP project.

1 Without limiting the variations as may be defined in the IRR of this Act, PPP projects
2 may be implemented through any of the following PPP contractual arrangements:

3
4 (i) Build-and-Transfer – refers to a contractual arrangement whereby the project
5 proponent undertakes the financing and construction of a given infrastructure
6 facility and after the completion thereof, turns it over to the implementing agency
7 concerned, which shall pay the project proponent on an agreed schedule its total
8 investments expended on the project, plus a rate of return thereon. This
9 arrangement may be employed in the construction of any infrastructure facility,
10 including critical facilities which, for security or strategic reasons, must be
11 operated directly by the government.

12
13 (ii) Build-Lease-and-Transfer – refers to a contractual arrangement whereby a
14 project proponent undertakes to finance and construct an infrastructure facility
15 and upon its completion turns it over to the implementing agency concerned on a
16 lease arrangement for a cooperation period, after which ownership thereof is
17 automatically transferred to the implementing agency concerned.

18
19 (iii) Build-Own-and-Operate – refers to a contractual arrangement whereby a project
20 proponent is authorized to undertake a PPP project, specifically to finance,
21 construct, own, operate and maintain an infrastructure facility from which the
22 project proponent is allowed to recover its total investment, operating and
23 maintenance costs plus a return thereon by collecting tolls, fees, rentals or other
24 charges from facility users.

25
26 (iv) Build-Operate-and-Transfer – refers to a contractual arrangement whereby the
27 project proponent undertakes a PPP project and transfers ownership of the
28 infrastructure facility to the implementing agency at the end of the cooperation
29 period.

30
31 (v) Build-Transfer-and-Operate – refers to a contractual arrangement whereby the
32 implementing agency contracts out the construction of an infrastructure facility to
33 the project proponent.

34 Once the facility is commissioned satisfactorily, ownership is transferred to the
35 implementing agency. The project proponent, however, operates the
36 infrastructure facility on behalf of the implementing agency.

37
38 (vi) Contract-Add-and-Operate – refers to a contractual arrangement whereby, the
39 project proponent adds to an existing infrastructure facility which it is renting
40 from the government. It operates the expanded infrastructure facility over an
41 agreed cooperation period. There may, or may not be, a transfer arrangement in
42 regard to said facility.

1 (vii) Develop-Operate-and-Transfer – refers to a contractual arrangement
2 whereby favorable conditions external to a new PPP project which is to be built by a
3 project proponent are integrated into the arrangement by giving that entity the right to
4 develop adjoining property, and thus, enjoy some of the benefits the investment
5 creates such as higher property or rent values.

6
7 (viii) Joint Venture – refers to a contractual arrangement whereby a private person or
8 a group of private persons, and an implementing agency, contribute money,
9 services, assets, or a combination of any or all of the foregoing, to undertake a
10 PPP project, with the intention to share profits, risks and losses. Assets may
11 include equipment, land, intellectual property or anything of value.

12
13 (ix) Operations and Maintenance Contract – refers to a contractual arrangement
14 whereby the project proponent undertakes the day-to-day operation and
15 maintenance of an infrastructure facility owned by the implementing agency. The
16 project proponent shall undertake the acquisition or provision and upgrading of
17 equipment, systems and other items related to operation and maintenance. The
18 project proponent shall be compensated in the form of a performance-based
19 management or service fee during the cooperation period.

20
21 (x) Rehabilitate-Operate-and-Transfer – refers to a contractual arrangement
22 whereby an existing infrastructure facility is turned over to the project proponent
23 to refurbish, improve, operate and maintain for a cooperation period, at the
24 expiry of which the ownership of the facility is transferred to the implementing
25 agency.

26
27 (xii) Supply-and-Operate – refers to a contractual arrangement whereby the supplier
28 of equipment and machinery for a given infrastructure facility, if the interest of
29 the government so requires, operates such facility. Foreign firms who are
30 allowed to operate the facility shall provide technology transfer and training to
31 Filipino nationals.

32
33 (s) Rate of Return – refers to the rate of return that a project proponent shall be entitled
34 to, as determined by the Approving Body taking into account, among others, the
35 prevailing cost of capital in the domestic and international markets, and risks being
36 assumed by the project proponent; provided, that in case of an unsolicited proposal,
37 such rate of return shall be determined by the appropriate Approving Body prior to the
38 call for proposals.

39
40 (t) Services – refers to services for or related to infrastructure facilities such as, but not
41 limited to, construction supervision, management, operation and maintenance and

1 related services, and other technical services, which may be included as part of a PPP
2 project.

3
4 (u) Solicited PPP Project – refers to priority projects identified by the implementing
5 agency.

6
7 (v) Unsolicited PPP Project – refers to project proposals submitted by a private person
8 which are not in response to a formal solicitation or request issued by the
9 implementing agency.

10
11 (w) Viability Gap Funding (VGF) – refers to such financial support the government may
12 provide to a concession-based PPP project with the objective of making user fees
13 affordable while improving the commercial attractiveness of the project, excluding
14 costs of right-of-way, resettlement and real estate taxes.

15
16 **SEC. 4. Authority of Implementing Agencies.** – Implementing agencies, in accordance
17 with their respective charters, are hereby authorized to undertake PPP projects with any
18 project proponent in accordance with the provisions of this Act and its IRR.

19
20 In undertaking a PPP project under this Act and its IRR, every GOCC and its
21 subsidiaries shall secure the approval of the head of department or agency to which the
22 GOCC is attached. If the procurement thereof will be undertaken by the said department or
23 agency, the governing board of the GOCC cannot withhold its approval to bid the project or
24 award the contract in accordance with the approval of the appropriate Approving Body.

25
26 **SEC. 5. Priority Projects.** – Implementing agencies shall include in their development
27 plans, strategies and investment programs those priority projects that may be financed,
28 designed, constructed, operated and maintained, or any combination thereof, by the project
29 proponent under the provisions of this Act and its IRR. Priority projects shall be consistent
30 with the Philippine Development Plan or its equivalent at the local level.

31
32 The implementing agencies shall submit their list of PPP projects or any update
33 thereto to the PPP Center for information. Each proposed PPP project to be implemented
34 under this Act and its IRR shall be subject to the approval of the appropriate Approving
35 Body.

36
37 **SEC 6. Approval of PPP Projects.** The approval of PPP projects under this Act and its
38 IRR shall be in accordance with the following:

39
40 (a) National Projects – National PPP projects shall be approved by the Investment
41 Coordination Committee (ICC) or by the NEDA Board, or both, depending on the

1 project cost as prescribed in the IRR of this Act. Such approval shall be carried by the
2 implementing agency or grantor concerned.

3
4 For national projects that have impact on the region, the implementing agency shall
5 secure the endorsement of the Regional Development Council (RDC) prior to
6 submitting the project for approval to the Approving Body. The RDC shall have 10
7 working days from receipt of the request of the implementing agency within which to
8 issue its endorsement; otherwise, the same shall be deemed automatically endorsed
9 by the RDC.

10
11 (b) Local Projects – Depending on the project cost as may be prescribed in the IRR of this
12 Act, local PPP projects shall be approved by the local development councils
13 concerned and, if specified in the IRR of this Act, by the ICC or NEDA Board.

14
15 **SEC. 7. Project Development and Monitoring Facility (PDMF).** – A special fund is
16 hereby created to be known as the PDMF, which shall be used for the procurement of
17 advisory and support services related to the preparation, structuring, probity management,
18 procurement, financial close, and monitoring of implementation of PPP projects. The PDMF
19 Fund referred to under Executive Order No. 8, series of 2010, as amended by Executive
20 Order No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF
21 may be funded through and such amount as may be needed and included in the General
22 Appropriations Act, Official Development Assistance or other sources.

23
24 The PDMF shall be managed and administered by the PPP Center as a revolving
25 fund; thus, in addition to the amounts appropriated herein, and in order to sustain the PDMF,
26 the PPP Center may collect and receive fees and recover costs expended through PDMF in
27 accordance with the guidelines that shall be approved by the PPP Governing Board. Such
28 amount shall be retained and authorized to be used by the PPP Center for the purposes
29 indicated herein.

30
31 A PDMF Committee is hereby created which shall approve applications for PDMF
32 support submitted by implementing agencies. It shall be composed of representatives from
33 the National Economic and Development Authority (NEDA), Department of Finance (DOF),
34 Department of Budget and Management (DBM) and the PPP Center.

35
36 To ensure fast procurement of advisory support, the consultants financed through
37 PDMF shall be engaged based on indefinite delivery contracts. Individual advisory contracts
38 shall be drawn from a panel of consultants under indefinite delivery contracts using a fixed
39 budget selection mode or any mode as may be prescribed in the IRR of this Act.

40 In order to facilitate access to global best practices in PPP and enhance value for money,
41 the selection of consultants financed through PDMF shall also be open to international firms.

1 Subject to approval of the PPP Governing Board, the PDMF Committee shall also
2 formulate, prescribe and recommend policies, procedures and guidelines for the use of
3 PDMF and recovery of costs charged to the fund.

4
5 The PPP Center shall serve as Secretariat for the PDMF Committee.

6
7 **SEC. 8. Unsolicited Proposals.** – Projects that are not in the list of priority projects may
8 be considered for unsolicited proposals.. Priority projects shall not be considered for
9 unsolicited proposals, except when they involve a new concept or technology.

10
11 When a project proponent submits an unsolicited proposal, the implementing agency
12 may either:

13
14 (a) Reject the proposal;

15
16 (b) Use the unsolicited proposal as the basis for public bidding as provided in Section 9 of
17 this Act. Upon approval by the appropriate Approving Body, the original proponent
18 thereof shall be reimbursed of the cost incurred in the preparation of the proposal,
19 such as the cost of any feasibility study undertaken; Provided, such reimbursement:

20
21 (i) shall be in an amount specified in the IRR of this Act, but not exceeding three
22 percent (3%) of the project cost excluding those which will be borne by the
23 implementing agency, such as, but not limited to, the cost of right-of-way
24 acquisitions; and

25
26 (ii) shall be paid in full by the winning project proponent as a requirement for the
27 award of the contract.

28
29 If the implementing agency fails to act on the proposal within the period stated in the
30 IRR of this Act, the project proposal shall be deemed rejected, without prejudice to any
31 liability that the erring or negligent officials or employees may incur under existing
32 laws.

33
34 (c) Accept the unsolicited proposal on a negotiated basis: Provided, that the following
35 conditions are met:

36
37 (i) The project does not receive VGF or direct payments from any government
38 agency; and

39
40 (ii) Guided by the principles of transparency and competitiveness, the implementing
41 agency has invited by publication for three (3) consecutive weeks in a
42 newspaper of general circulation, as well as websites of the PPP Center and of

1 the implementing agency, the submission of comparative proposals and no other
2 proposal is received for a period stated in the IRR of this Act, which period
3 should not be less than three (3) months nor more than six (6) months from the
4 date of last publication in a newspaper of general circulation. In the event
5 another proponent submits a superior counter-proposal within the period referred
6 to above and it is accepted by the appropriate Approving Body, the original
7 proponent shall have the right to outbid.

8
9 **SEC. 9. Public Bidding of Projects.** – Upon approval of PPP projects as mentioned in
10 Section 6 of this Act, the head of the implementing agency concerned shall immediately
11 cause the publication of a notice inviting all prospective project proponents to participate in a
12 transparent and competitive public bidding, once every week for three (3) consecutive
13 weeks, in at least two (2) newspapers of general circulation and in at least one (1) local
14 newspaper which is circulated in the region, province, city or municipality where the project
15 will be implemented. Said notice shall also be posted continuously in the websites of the
16 implementing agency and the PPP Center.

17
18 The public bidding shall be conducted under a single or two-stage system. The pre-
19 qualification documents, technical, and financial proposals shall be submitted in at least
20 three (3) separate envelopes. The procedures for public bidding, which shall be transparent
21 and competitive, including the conduct of one-on-one meetings with prequalified bidders,
22 shall be outlined in the IRR of this Act.

23
24 The contract shall be awarded to the bidder who has passed the pre-qualification
25 stage for having satisfied the minimum financial, organizational and legal standards required
26 by this Act and its IRR, has passed the technical proposal evaluation, and has submitted the
27 most favorable financial bid based on the parameters defined in the bid documents.

28
29 In case of a single complying and responsive bidder, the implementing agency may
30 award the PPP contract to that bidder upon its compliance with the post-award requirements
31 under the bidding rules of the PPP project.

32
33 A bid shall be considered a single complying and responsive bid submission if it falls
34 under any of the following circumstances:

- 35
36 (a) If, after advertisement, only one bidder applied for prequalification and it meets the
37 prequalification requirements, after which it is required to submit a bid or proposal
38 which is subsequently found by the implementing agency to be complying;
39
40 (b) If, after advertisement, more than one bidder applied for prequalification but only one
41 meets the prequalification requirements, after which it submits a bid or proposal which
42 is found by the implementing agency to be complying;

1 (c) If, after prequalification of more than one bidder, only one submits a bid which is found
2 by the implementing agency to be complying; or

3
4 (d) If, after prequalification, more than one bidder submits bids but only one is found by
5 the implementing agency to be complying.

6
7 In all stages of the procurement process, the following protest protocol shall be strictly
8 followed:

9
10 (a) Decisions of the Prequalification Bids and Awards Committee (PBAC) may be
11 questioned by filing a motion for reconsideration within a period prescribed in the IRR
12 of this Act.

13
14 (b) The decision of the PBAC on the motion for reconsideration in the immediately
15 preceding paragraph may be further questioned by filing an appeal to the head of the
16 implementing agency concerned and paying a non-refundable appeal fee in an
17 amount equivalent to no less than $\frac{1}{2}$ of 1% of the project cost within a period
18 prescribed in the IRR of this Act.

19
20 If the head of the implementing agency in the immediately preceding paragraph is not
21 a Department Secretary, the decision of the head of the implementing agency may be
22 further questioned by filing an appeal to the Secretary of the Department to which the
23 implementing agency is attached within a period prescribed in the IRR of this Act.

24
25 (c) The decision of the Department Secretary in the immediately preceding paragraphs of
26 item (b) may be questioned by filing an appeal to the Office of the President.

27
28 In no case shall any appeal taken from any decision treated in this Act and its IRR stay
29 or delay the bidding process; Provided, however, that all appeals must first be resolved
30 before any award is made.

31
32 If the winning bidder fails to comply with any post-award requirement or fails to enter
33 into a contract with the implementing agency, the latter may proceed to negotiation with the
34 next technically and financially qualified bidder. This is without prejudice to other legal
35 remedies available to the implementing agency such as, but not limited to, the forfeiture of
36 bid security, the withdrawal of Notice of Award, or both

37
38 **SEC. 10. Private Legal Assistance.** – All the PBAC members and other public officials
39 providing services to the PBAC shall be authorized to engage the services of private
40 lawyers, or shall be provided with free legal assistance, where a civil, criminal, or
41 administrative action is filed against them by reason of the performance of their official

1 functions or duties, unless they are finally adjudged in such action or proceeding to be liable
2 for gross negligence or misconduct or grave abuse of discretion.

3
4 **SEC. 11. Contract Termination.** – In the event that a contract is revoked, cancelled or
5 terminated, either contracting party shall compensate the other pursuant to terms as defined
6 in the contract.

7
8 **SEC. 12. Automatic Grant of Administrative Franchise, License or Permit.** – Once a
9 PPP contract is duly executed, the regulator, licensing authority or LGUs shall automatically
10 grant in favor of the said project proponent an administrative franchise, license permit, or
11 any other form of authorization required for the implementation of a PPP project subject to
12 submission by the project proponent of the requirements by the regulator, licensing authority
13 or LGU.

14
15 Any provision of law to the contrary notwithstanding, it shall be mandatory on the part
16 of the regulator, licensing authority or LGUs to accept and approve the application for
17 administrative franchise, license or permit. Failure to act on a proper and complete
18 application thereof within thirty (30) working days from receipt of the same shall be deemed
19 as approval thereof.

20
21 **SEC. 13. Expansion or Extension of an Existing Infrastructure Facility.** – Subject to
22 conditions specified in the IRR of this Act and upon prior approval by the appropriate
23 Approving Body, the project proponent of an existing PPP infrastructure facility may be
24 allowed to expand or extend the same even without further bidding; Provided, the cost
25 thereof shall not exceed twenty-five percent (25%) of the price-adjusted original project cost;
26 Provided, further, that any subsequent expansion or extension shall no longer be allowed.

27
28 **SEC. 14. Contracts and Public Disclosure.** – Copies of all PPP contracts concluded
29 under this Act and its IRR shall be considered public documents. However, any proprietary
30 information contained in the PPP contract and its annexes may be kept confidential for a
31 limited period, as may be determined by the implementing agency but not to exceed five (5)
32 years.

33
34 The determination of whether or not such contracts shall be kept confidential, as well
35 as the terms and duration of confidentiality, shall be the responsibility of the implementing
36 agency concerned. The implementing agency shall transmit to the PPP Center for records
37 and monitoring purposes, a copy of the duly executed contract, within thirty (30) working
38 days from its complete execution.

39
40 **SEC. 15. Prohibition on the Issuance of Temporary Restraining Orders or Injunctions.**
41 – No temporary restraining order, preliminary injunction or preliminary mandatory injunction
42 shall be issued by any court, except the Supreme Court, against any implementing agency,

1 its officials or employees, or any person or entity, whether public or private acting under the
2 government direction, to restrain, prohibit or compel the following acts:

- 3
- 4 (a) Bidding, rebidding or declaration of failure of bidding of PPP projects, either national or
5 local;
 - 6
 - 7 (b) Qualification or disqualification of bidders;
 - 8
 - 9 (c) Awarding of PPP contract;
 - 10
 - 11 (d) Acceptance of any unsolicited PPP project proposal, even if not acted upon by the
12 implementing agency concerned under Section 8 of this Act;
 - 13 (e) Acquisition, clearance, development of the right-of-way, site or location of any PPP
14 project;
 - 15
 - 16 (f) Construction, operation and maintenance of any PPP project;
 - 17
 - 18 (g) Commencement, execution, implementation, termination or rescission of any PPP
19 contract; and
 - 20
 - 21 (h) Undertaking or authorization of any other lawful activity necessary for such PPP
22 project or contract.
- 23

24 Provided, further, that the temporary restraining order, preliminary injunction or
25 preliminary mandatory injunction issued by the Supreme Court shall be effective for no
26 longer than six (6) months.

27

28 The applicant for such temporary restraining order, preliminary injunction or
29 preliminary mandatory injunction shall file a bond, in an amount to be fixed by the court.
30 The bond shall accrue in favor of the government if the court should finally decide that the
31 applicant was not entitled to the relief sought.

32

33 Any temporary restraining order, preliminary injunction or preliminary mandatory
34 injunction issued in violation of this section is void and of no force and effect.

35

36 The foregoing prohibition shall apply in all disputes, cases, or controversies instituted
37 by any and all parties, including but not limited to cases filed by bidders, implementing
38 agencies or those claiming to have rights through such bidders or implementing agencies
39 involving PPP project or contract.

40

41 In addition to civil and criminal liabilities as may be incurred under existing laws, any
42 judge who shall issue a temporary restraining order, preliminary injunction or preliminary

1 mandatory injunction in violation of this section, shall be disciplined by the Supreme Court
2 and suffer the penalty of removal from office.

3
4 **SEC. 16.** Regulatory Boards. – No regulatory body shall be allowed to enter into any
5 PPP contract that they regulate.

6
7 **SEC. 17.** Project Supervision. – Every PPP project undertaken under the provisions of
8 this Act and its IRR shall be in accordance with the designs, plans, specifications,
9 standards, and costs approved by the implementing agency and appropriate Approving
10 Body, and shall be under the supervision of the implementing agency concerned.

11 **SEC. 18.** Investment Incentives. – Among other incentives, PPP projects in excess of
12 One Billion Pesos (PhP1,000,000,000) shall be entitled to incentives as provided by the
13 Omnibus Investment Code, upon prior endorsement of the PPP Center and registration by
14 the project proponent with the Board of Investments.

15
16 **SEC. 19.** Projects of National Significance. – Upon certification and recommendation
17 by the ICC, and prior consultation with the Department of Interior and Local Government
18 (DILG), the President may classify certain projects, such as energy, toll road, mass transit,
19 water, sewerage and such other projects undertaken under this Act and its IRR as projects
20 of national significance, which shall be entitled to the following incentives:

- 21
22 (a) All real properties which are actually and directly used for the project shall be exempt
23 from any and all real property taxes levied under Republic Act No. 7160;
24
25 (b) All projects of national significance shall likewise be exempt from any and all local
26 taxes, fees and charges; and
27
28 (c) Automatic grant or issuance of the necessary business permits, including renewals
29 thereof, in favor of the winning project proponent.

30
31 For a project to qualify as a project of national significance, it shall meet the following
32 criteria:

- 33
34 (a) The total project cost falls within the threshold set by the ICC;
35
36 (b) The project has a direct economic impact which should not be less than the threshold
37 set by the ICC;
38
39 (c) The project has a direct positive impact on at least two (2) cities or municipalities; and
40
41 (d) The project can create new jobs.

1 **SEC. 20.** Exemption from Payment of Transfer Taxes. – For all PPP projects, the
2 transfer of ownership of infrastructure facility to the implementing agency shall be exempt
3 from capital gains tax, documentary stamp tax and all taxes and fees, whether from national
4 or local, related to the transfer thereof.

5
6 **SEC. 21.** Institutionalization of PPP Center. – To achieve the goals of this Act, the
7 PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive
8 Order No. 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt its
9 current organizational structure, absorb its existing employees, and upgrade its human
10 resource component, as may be necessary, towards a more efficient and effective
11 performance of the following functions:

- 12
- 13 (a) Assist implementing agencies in identifying, developing, prioritizing and maintaining a
14 pipeline of PPP projects;
 - 15
 - 16 (b) Provide advisory services, technical assistance, trainings, and capacity development
17 to implementing agencies in all PPP-related matters;
 - 18
 - 19 (c) Manage and administer the PDMF as provided in Section 7 of this Act;
 - 20
 - 21 (d) Work with implementing agencies in setting procurement and implementation timelines
22 for approved PPP projects;
 - 23
 - 24 (e) Recommend plans, policies and implementation guidelines related to PPP, in
25 consultation with appropriate oversight committees or agencies, implementing
26 agencies, private sector and other relevant stakeholders;
 - 27
 - 28 (f) Facilitate, monitor, and evaluate the implementation of PPP programs and projects
29 developed by the implementing agencies;
 - 30
 - 31 (g) Report to the Office of the President and Congress on the implementation of the PPP
32 programs and projects of the government at the end of each year;
 - 33
 - 34 (h) Serve as a link between the government and the private sector;
 - 35
 - 36 (i) Promote and market PPP programs and projects, in collaboration with other
37 government promotion agencies;
 - 38
 - 39 (j) Sit as member of NEDA-Infrastructure Committee (INFRACOM), ICC, and other inter-
40 agency bodies where a PPP project is a major concern;
- 41

- 1 (k) Issue advisory opinions and interpret the provisions of this Act and its IRR, relating
2 solely to technical aspects of PPP;
3
- 4 (l) Serve as the central repository of all executed PPP contracts and any subsequent
5 amendment or supplement thereto, including settlement agreements, entered into by
6 implementing agencies;
7
- 8 (m) Provide and transmit copies of duly executed PPP contracts to Congress;
9
- 10 (n) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as
11 PPP projects are concerned;
12
- 13 (o) Maintain an integrated projects' bank to serve as an interactive database of all current
14 and past projects;
15
- 16 (p) Such other functions as may be necessary to achieve the objectives and purposes of
17 this Act.
18

19 All positions of the PPP Center shall be governed by a compensation and position
20 classification system and qualification standards consistent with the industry and duly
21 approved by the Governance Commission for Government-Owned or –Controlled
22 Corporations (GCG) based on comprehensive job analysis and audit of actual institutional
23 duties and personal responsibilities. The compensation plan shall be comparable with the
24 prevailing compensation plan of Bangko Sentral ng Pilipinas, GFIs and other GOCCs, and
25 shall be subject to periodic review by the GCG no more than once every two (2) years,
26 without prejudice to yearly merit review or increases based on productivity and efficiency.
27

28 The PPP Center shall report directly to the PPP Governing Board. It shall remain an
29 attached agency under the administrative supervision of the NEDA.
30

31 The PPP Center shall be headed by an Executive Director with the rank equivalent to
32 an Undersecretary, who shall be appointed by the President of the Philippines, upon
33 recommendation of the PPP Governing Board. The Executive Director shall perform the
34 following functions:
35

- 36 (a) Undertake the day-to-day management and supervise the operations of the PPP
37 Center;
38
- 39 (b) Recommend to the PPP Governing Board such policies and measures which he or
40 she deems necessary for the effective exercise and discharge of the powers and
41 functions of the PPP Center;
42

1 (c) Sit as an ex-officio member of the PPP Governing Board, INFRACOM, ICC and other
2 inter-agency bodies where a PPP project is a major concern; and

3

4 (d) Perform such other functions as may be assigned by the PPP Governing Board.

5 **SEC. 22.** PPP Governing Board. – The PPP Governing Board is hereby created,
6 referred to as the Board, which shall be the overall policy-making body for all PPP-related
7 matters, including the PDMF. It shall be responsible for setting the strategic direction of PPP
8 programs and projects and in creating an enabling policy and institutional environment for
9 PPP.

10

11 The Board shall be composed of the following:

12

13 (a) Secretary of Socio-economic Planning as Chairperson;

14

15 (b) Secretary of Finance as Vice-Chairperson;

16

17 (c) Secretary of Budget and Management;

18

19 (d) Secretary of Justice;

20

21 (e) Secretary of Trade and Industry;

22

23 (f) Executive Secretary;

24

25 (g) Executive Director of PPP Center; and

26

27 (h) Private sector Co-chairman of the National Competitiveness Council (NCC).

28

29 The principal members of the Board may designate their respective alternates, who
30 shall be the officials next-in-rank to them, and whose acts shall be considered the acts of
31 their principals.

32

33 The presence of the Chairperson with four (4) other members of the Board shall
34 constitute a quorum and a majority vote of the members present shall be necessary for the
35 adoption of any issuance, order, resolution, decision or other act of the Board in the exercise
36 of its functions. The Board shall act as a collegial body. In the conduct of meetings, the
37 Chairperson shall not vote except to break a tie.

38

39 The Board shall act on any matter for its consideration not later than thirty (30) days
40 from the date of submission thereof.

41

1 The members of the Board shall be entitled to honoraria based on existing government
2 accounting and auditing rules and regulations.

3
4 **SEC. 23. Mandatory Inclusion of Alternative Dispute Resolution (ADR) Mechanisms in**
5 **PPP Contracts.** – All PPP contracts shall include provisions on the use of ADR mechanisms.
6 The contracting parties shall be given complete freedom to choose which venue and forum
7 shall govern their dispute, as well as the rules or procedures to be followed in resolving the
8 same.

9
10 **SEC. 24. Funding of Contingent Liabilities Arising from PPP Projects.** – To ensure
11 fiscal sustainability, enhance ability of the implementing agency to discharge its obligations
12 under risks allocated to it, and improve terms of financing of PPP projects, there is hereby
13 created a Contingent Liabilities Fund which shall be financed through dedicated budgetary
14 appropriations and contributions from the budgets of implementing agencies. It may also be
15 sourced from bid premiums. The fund will provide a reliable pool from which disbursements
16 on government obligations on liabilities that have materialized can be drawn. As such any
17 appropriations and contributions to the fund are permanently appropriated and will not revert
18 to the general fund if not disbursed during the life of the project. The fund shall be
19 administered by the Department of Finance following fiduciary standards for fund
20 management. The operations of the fund can be enhanced through Official Development
21 Assistance.

22
23 As part of the budget submission, the Department of Finance shall submit an annual
24 report on the status of this fund to Congress. Proceeds of the fund shall be invested in risk-
25 free highly liquid assets. The governance structure, specific functions and responsibilities
26 related to the operations of the said fund will be specified in the IRR of this Act.

27
28 **SEC. 25. Miscellaneous Provisions.** –

29
30 (a) **Joint Venture Agreements.** – For joint venture arrangements, the ownership of the
31 infrastructure facility may be transferred to either the implementing agency or to the
32 project proponent; provided, that in the latter case, the transfer shall be made under
33 competitive market conditions; provided further, that the equity contribution of the
34 implementing agency in a joint venture corporation shall in no case exceed fifty
35 percent (50%) of the outstanding capital stock of the said corporation; and provided
36 finally, that the return on investment of either party shall be in proportion to their
37 respective contribution.

38
39 (b) **Recovery of Investment.** – As may be agreed in the PPP contract, the project
40 proponent may be allowed to collect tolls, fees, rentals, or charges, engage in
41 commercial development, receive viability gap funding, and receive direct government
42 payments, among others, to recover investment.

1 (c) Wind-up and Transfer Measures. – The PPP contract shall provide, as appropriate,
2 for:

3
4 (i) Mechanisms and procedures for the transfer of assets to the implementing
5 agency;

6
7 (ii) The compensation to which the project proponent may be entitled in respect of
8 assets transferred to the implementing agency, or to a successor, or purchased
9 by the implementing agency;

10
11 (iii) The transfer of technology required for the operation of the infrastructure facility;

12
13 (iv) The training of the implementing agency's personnel or of a successor in the
14 operation and maintenance of the infrastructure facility; and

15
16 (v) The provision, by the project proponent, of a warranty that the infrastructure
17 facility meets the project technical specifications, agreed system features, and
18 performance standards and services for a certain period as may be defined in
19 the IRR of this Act after the transfer of the infrastructure facility to the
20 implementing agency or to a successor.

21
22 (d) Prescription. – No one shall in any proceedings before any court or tribunal allege the
23 invalidity of any PPP contract on the ground of non-compliance with the provisions of
24 this Act or its IRR after a period of one (1) year has elapsed from the signing of the
25 PPP contract.

26
27 **SEC. 26.** Implementing Rules and Regulations. – The NEDA, DOF, DBM, DPWH,
28 DILG, Department of Justice, Department of Trade and Industry, Office of the President,
29 Department of Transportation and Communications, Department of Environment and Natural
30 Resources, PPP Center and private sector Co-chairman of the NCC shall constitute the IRR
31 Committee. Within sixty (60) days from the effectivity of this Act, the PPP Center shall
32 formulate and prescribe, in consultation with the IRR Committee, after public hearing and
33 publication as required by law, the rules and regulations to implement the provisions of this
34 Act. The IRR shall be approved by the PPP Governing Board.

35
36 From time to time the PPP Governing Board may instruct the PPP Center, in
37 consultation with the IRR Committee, to conduct, formulate and prescribe, after due public
38 hearing and publication, amendments to the IRR, consistent with the provisions of this Act.

39
40 **SEC. 27.** Transitory Provisions. – All unexpended funds for the calendar year,
41 properties, equipment, contracts and records of the PPP Center are hereby retained. The
42 amount necessary to carry out the organizational changes of PPP Center provided in this

1 Act shall be determined by the PPP Governing Board. Appropriations for succeeding years
2 shall be incorporated in its budget proposals for Congressional action.

3
4 All officials and employees of the PPP Center shall be retained and shall not suffer
5 any loss of seniority or rank or decrease in emoluments.

6
7 **SEC. 28.** Repealing Clause. – Republic Act No. 7718, Republic Act No. 6957, Sec.
8 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and Executive Order
9 (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s. 2012), Section 8 of EO
10 No. 423 (s. 2005), 2013 Revised Guidelines and Procedures for Entering Into Joint Venture
11 Agreements Between Government and Private Entities, Joint Venture Guidelines issued by
12 LGUs, and PPP Codes issued by LGUs, are hereby repealed. All other laws, rules and
13 regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed
14 or modified accordingly.

15
16 **SEC. 29.** Separability Clause. – If any provision of this Act is held invalid, the other
17 provisions not affected thereby shall continue in operation.

18
19 **SEC. 30.** Effectivity Clause. – This Act shall take effect fifteen (15) days after its
20 publication in at least two (2) newspapers of general circulation.

21
22 Approved.