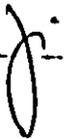


SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
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SENATE

Senate Bill No. 3035

Prepared jointly by the Committees on Public Works; Local Government; Economic Affairs; Ways and Means; and Finance, with Senators Recto, Marcos, Jr., Angara, Ejercito and Legarda, as authors.

**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
2 Partnership (PPP) Act" of the Philippines.

3 **SEC 2. Declaration of Policy.** - It is the declared policy of the State to
4 recognize the indispensable role of the private sector as the main engine for
5 national growth and development, create an enabling environment for PPP,
6 and provide the most appropriate incentives to mobilize private resources for
7 the purpose of financing, designing, constructing, operating and maintaining
8 infrastructure projects and services normally financed and undertaken by the
9 government.

10 The State recognizes the long-term nature of private investment in
11 infrastructure projects and services.

1 The State shall protect the public interest by providing affordable,
2 accessible, and efficient public services. Subject to reasonable rules, and
3 under the guiding principle of full public disclosure of all transactions, the
4 State shall ensure fair and reasonable pricing and timely delivery of quality
5 infrastructure and services through equitable risk allocation inherent in
6 projects implemented under this Act and its implementing rules and
7 regulations (IRR).

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

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

13 (a) Approving Body – refers to an entity authorized to approve PPP projects
14 proposed under this Act and its IRR, in accordance with Section 7 of this
15 Act.

16 (b) Availability-based PPP – refers to a PPP where the implementing agency
17 commits to make predetermined payments for contractually-defined
18 performance delivery.

19 (c) Concession-based PPP – refers to a PPP where the implementing
20 agency grants the project proponent the right to recover its investment,
21 operating and financing costs by charging the public a user fee or tariff.

22 (d) Construction – refers to new construction, rehabilitation, improvement,
23 expansion, alteration, installation, and related works and activities in

- 1 connection with an Infrastructure facility, including the necessary supply
2 of equipment, materials, labor and services and related items.
- 3 (e) Contractor – refers to any person, who may or may not be the project
4 proponent, and who shall undertake the actual construction of an
5 Infrastructure facility.
- 6 (f) Cooperation Period – refers to the period of operation of an
7 Infrastructure facility, which period, in the case of public utilities requiring
8 a franchise, shall be in accordance with law.
- 9 (g) Facility Operator – refers to a person registered with the Securities and
10 Exchange Commission, who may or may not be the project proponent,
11 and who is responsible for all aspects of operation and maintenance of
12 an Infrastructure facility, including but not limited to the collection of
13 tolls, fees, rentals or charges from facility users.
- 14 (h) Grantor – refers to an implementing agency and other government
15 agencies that own the project assets or franchise.
- 16 (i) GOCC – refers to a government-owned or controlled corporation as
17 defined in Republic Act No. 10149.
- 18 (j) ICC – refers to the Investment Coordination Committee of the NEDA
19 Board.
- 20 (k) Implementing Agency – refers to the Department of Public Works and
21 Highways (DPWH), Department of Transportation and Communications
22 (DOTC), Information and Communications Technology Office (ICTO),
23 National Irrigation Authority (NIA), National Housing Authority (NHA),
24 Philippine Reclamation Authority (PRA), local government units (LGUs),

1 and government-owned and controlled corporations (GOCCs)
2 attached to these respective departments and agencies such as: Local
3 Water Utilities Administration (LWUA), Toll Regulatory Board (TRB), Light
4 Rail Transit Authority (LRTA), Philippine National Railways (PNR), North
5 Luzon railways Corporation (NLRC), Philippine Ports Authority (PPA),
6 Manila International Airport Authority (MIAA), Mactan Cebu
7 International Airport Authority (MCIAA), and Metropolitan Waterworks
8 and Sewerage System (MWSS).

9 (l) Infrastructure Facility – refers to such facility as are established by the
10 government in relation to or as may be necessary for the discharge of its
11 functions, whether governmental or proprietary, including highways,
12 railroads and railways, transport systems, ports, airports,
13 telecommunications, information technology systems and infrastructure,
14 dams, water supply, irrigation, sewerage, drainage, dredging, land
15 reclamation projects, housing, markets, slaughterhouses, warehouses
16 and solid waste management.

17 For the construction stage of these Infrastructure facilities where
18 the contractor is a foreigner, Filipino labor shall be employed or hired in
19 the different phases of construction.

20 (m) IRR – refers to the implementing rules and regulations of this Act.

21 (n) LGU – refers to a local government unit.

22 (o) Local PPP Project – refers to a PPP Project that will be undertaken by an
23 LGU.

- 1 (p) National PPP Project – refers to a PPP Project that will be undertaken by
2 the national government.
- 3 (q) PDMF – refers to the Project Development and Monitoring Facility
4 created under Section 8 of this Act.
- 5 (r) PPP BAC – refers to the PPP Bids and Awards Committee.
- 6 (s) PPP or Public-Private Partnership – refers to a contractual arrangement
7 between the implementing agency and the project proponent for the
8 financing, design, construction, operation, and maintenance, or any
9 combination thereof, of an infrastructure facility under this Act.
- 10 (t) PPP Center – refers to the Public-Private Partnership Center of the
11 Philippines created under Executive Order No. 8, series of 2010, as
12 amended.
- 13 (u) PPP Contract – refers to the contract between the implementing
14 agency and the project proponent for the design, financing,
15 construction, operation, or maintenance of an Infrastructure facility
16 under a PPP Project.
- 17 (v) PPP Project – refers to a project undertaken under this Act.
- 18 (w) Person – refers to an individual, sole proprietorship, partnership,
19 corporation or any other form of organization, whether domestic or
20 foreign.
- 21 (x) Priority project – refers to a project identified by an implementing
22 agency that may be undertaken under this Act as a PPP project and is
23 consistent with the Philippine Development Plan (PDP) or its equivalent
24 at the local level.

- 1 (y) Project Cost – refers to total capital cost, financing and other expenses
2 for the design, construction, operation, and maintenance of an
3 infrastructure facility, depending on the PPP contractual arrangement
4 as provided for in Section 4 of this Act.
- 5 (z) Project Proponent – refers to any private person who shall undertake a
6 PPP project.
- 7 (aa) Rate of Return – refers to the maximum rate of return that a project
8 proponent shall be entitled to, as determined by the Approving Body,
9 taking into account, among others, the prevailing cost of capital in the
10 domestic and international markets, the risks being assumed by the
11 project proponent, and prevailing tariff on similar projects: *Provided,*
12 That in case of an unsolicited proposal, such rate of return shall be
13 determined by the appropriate Approving Body prior to the call for
14 proposals.
- 15 (bb) Services – refers to technical services and other services related to
16 infrastructure facilities such as, but not limited to, construction
17 supervision, management, operation and maintenance and related
18 services, which may be included as part of a PPP project.
- 19 (cc) Solicited PPP Project – refers to priority projects identified by the
20 implementing agency.
- 21 (dd) Unsolicited PPP Project – refers to project proposals submitted by a
22 private person which are not in response to a formal solicitation or
23 request issued by the implementing agency.

1 (ee) Viability Gap Funding (VGF) – refers to such financial support the
2 government may provide to a concession-based PPP project with the
3 objective of making user fees affordable while improving the
4 commercial attractiveness of the project.

5 **SEC. 4. Variations of Contractual Arrangements.** PPP Projects may be
6 undertaken through any of the following contractual arrangements and such
7 other variations as may be approved by the ICC:

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

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

23 (iii) Build-Own-and-Operate – refers to a contractual arrangement
24 whereby a project proponent is authorized to undertake a PPP

1 project, specifically to finance, construct, own, operate and
2 maintain an infrastructure facility from which the project proponent
3 is allowed to recover its total investment, operating and
4 maintenance costs plus a return thereon by collecting tolls, fees,
5 rentals or other charges from facility users.

6 (iv) Build-Operate-and-Transfer – refers to a contractual arrangement
7 whereby the project proponent undertakes a PPP project and
8 transfers ownership of the infrastructure facility to the implementing
9 agency at the end of the cooperation period.

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

13 Once the facility is commissioned satisfactorily, ownership is
14 transferred to the implementing agency. The project proponent,
15 however, operates the infrastructure facility on behalf of the
16 implementing agency.

17 (vi) Contract-Add-and-Operate – refers to a contractual arrangement
18 whereby, the project proponent adds to an existing infrastructure
19 facility which it is renting from the government. It operates the
20 expanded infrastructure facility over an agreed cooperation
21 period. There may, or may not be, a transfer arrangement in regard
22 to said facility.

23 (vii) Develop-Operate-and-Transfer – refers to a contractual
24 arrangement whereby favorable conditions external to a new PPP

1 project which is to be built by a project proponent are integrated
2 into the arrangement by giving that entity the right to develop
3 adjoining property, and thus, enjoy some of the benefits the
4 investment creates such as higher property or rent values.

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

11 For joint venture arrangements, the ownership of the
12 infrastructure facility may be transferred to either the implementing
13 agency or to the project proponent: *Provided*, That in the latter
14 case, the transfer shall be made under competitive market
15 conditions: *Provided, further*, That the equity contribution of the
16 implementing agency in a joint venture corporation shall in no case
17 exceed fifty percent (50%) of the outstanding capital stock of the
18 said corporation; and *Provided, finally*, That the return on investment
19 of either party shall be in proportion to their respective contribution.

20 (ix) Operations and Maintenance Contract – refers to a contractual
21 arrangement whereby the project proponent undertakes the day-
22 to-day operation and maintenance of an infrastructure facility
23 owned by the implementing agency. The project proponent shall
24 undertake the acquisition or provision and upgrading of

1 equipment, systems and other items related to operation and
2 maintenance. The project proponent shall be compensated in the
3 form of a performance-based management or service fee during
4 the cooperation period.

5 (x) Rehabilitate-Operate-and-Transfer – refers to a contractual
6 arrangement whereby an existing infrastructure facility is turned
7 over to the project proponent to refurbish, improve, operate and
8 maintain for a cooperation period, at the expiry of which the
9 ownership of the facility is transferred to the implementing agency.

10 (xi) Supply-and-Operate – refers to a contractual arrangement
11 whereby the supplier of equipment and machinery for a given
12 infrastructure facility, if the interest of the government so requires,
13 operates such facility. Foreign firms who are allowed to operate the
14 facility shall provide technology transfer and training to Filipino
15 nationals.

16 **SEC. 5. Authority of Implementing Agencies.** – Implementing agencies,
17 in accordance with their respective charters, are hereby authorized to
18 undertake PPP projects with any project proponent in accordance with the
19 provisions of this Act.

20 In undertaking a PPP project under this Act, every GOCC and its
21 subsidiaries shall secure the approval of the head of the implementing
22 agency to which the GOCC is attached.

23 **SEC. 6. Identification of Priority Projects.** – Implementing agencies shall
24 include in their development plans, strategies and investment programs those

1 priority projects that may be undertaken in this Act as PPP Projects. In
2 Identifying those projects, the implementing agencies shall be guided by the
3 following principles: effectiveness in meeting government objectives,
4 accountability and transparency, consumer rights, affordability, public
5 access, safety, and security. Priority projects shall be consistent with the
6 Philippine Development Plan or its equivalent at the local level.

7 The implementing agencies shall submit their list of PPP projects or any
8 update thereto to the PPP Center for information. Each proposed PPP project
9 to be implemented under this Act shall be subject to the approval of the
10 appropriate Approving Body.

11 The PPP Center must ensure that the Congress and the public shall be
12 provided with adequate and timely information on PPP projects.

13 **SEC 7. Unsolicited Proposals.** – Projects that are not in the list of priority
14 projects may be considered for unsolicited proposals. Priority projects shall
15 not be considered for unsolicited proposals, except when they involve a new
16 concept or technology or do not have feasibility studies.

17 When a project proponent submits an unsolicited proposal, the
18 implementing agency may either:

19 (a) Accept the unsolicited proposal on a negotiated basis: *Provided*, That
20 the following conditions are met:

21 (i) The project does not receive VGF or direct payments from any
22 government agency; and

23 (ii) Guided by the principles of transparency and competitiveness, the
24 implementing agency has invited by publication for three (3)

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

11 (b) Use the unsolicited proposal as the basis for public bidding as provided
12 in Section 10 of this Act. Upon approval by the appropriate Approving
13 Body, the original proponent thereof shall be reimbursed of the cost
14 incurred in the preparation of the proposal, such as the cost of any
15 feasibility study undertaken: *Provided, That* such reimbursement:

16 (i) shall be in an amount specified in the IRR of this Act, but not
17 exceeding three percent (3%) of the project cost excluding those
18 which will be borne by the implementing agency; and

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

21 (c) Reject the proposal;

22 If the implementing agency fails to act on the proposal within the
23 period stated in the IRR of this Act, the project proposal shall be deemed

1 rejected, without prejudice to any liability that the erring or negligent officials
2 or employees may incur under existing laws.

3 Within ten (10) working days from receipt of the unsolicited proposal, the
4 implementing agency shall inform the PPP Center in writing of such receipt
5 and furnish it with a copy of the proposal. The PPP Center shall provide
6 assistance to the implementing agency in the evaluation of the unsolicited
7 proposal.

8 **SEC. 8. Approval of PPP Projects.** The approval of PPP projects under this
9 Act shall be in accordance with the following:

10 (a) National PPP Projects – National PPP projects shall be approved by the
11 NEDA Board depending on the project cost as prescribed by the PPP
12 Governing Board. Such approval shall be carried by the implementing
13 agency or grantor concerned.

14 For national projects that have impact on the region, the
15 implementing agency shall secure the endorsement of the Regional
16 Development Council (RDC) prior to submitting the project for
17 approval to the Approving Body. The RDC shall have thirty (30) days
18 from receipt of the request of the implementing agency within which
19 to issue its endorsement; otherwise, the same shall be deemed
20 automatically endorsed by the RDC.

21 (b) Local Projects – Local PPP projects shall be confirmed by the local
22 development councils concerned and approved by the local
23 Sanggunians.

1 The Approving Body shall assess all PPP projects based on its overall
2 feasibility analysis and accord paramount importance on the affordability of
3 user fees and efficiency in public service.

4 **SEC. 9. Project Development and Monitoring Facility (PDMF).** – The
5 Project Development and Monitoring Facility is hereby created to be known
6 as the PDMF, which shall be used for the procurement of advisory and
7 support services related to the preparation, structuring, probity management,
8 procurement, financial close, and monitoring of implementation of PPP
9 projects. The PDMF Fund referred to under Executive Order No. 8, series of
10 2010, as amended by Executive Order No. 136, series of 2013, shall be
11 transferred to the PDMF under this Act. The PDMF may be funded through
12 and such amount as may be needed and included in the General
13 Appropriations Act, Official Development Assistance or other sources.

14 The PDMF shall be managed and administered by the PPP Center as a
15 revolving fund; thus, in addition to the amounts appropriated herein, and in
16 order to sustain the PDMF, the PPP Center may collect and receive fees and
17 recover costs expended through PDMF in accordance with the guidelines
18 that shall be approved by the PPP Governing Board. Such amount shall be
19 retained and authorized to be used by the PPP Center for the purposes
20 indicated herein.

21 A PDMF Committee is hereby created which shall approve applications
22 for PDMF support submitted by implementing agencies. It shall be composed
23 of representatives from the National Economic and Development Authority

1 (NEDA), Department of Finance (DOF), Department of Budget and
2 Management (DBM) and the PPP Center.

3 To facilitate access to global best practices in PPP and enhance value
4 for money, the selection of consultants for project preparation and
5 transaction support, and probity advisors, all with PPP expertise, as well as
6 independent consultants, and such other consultancy services that may be
7 financed through PDMF shall be open to qualified consultancy firms, subject
8 to existing laws on the practice of profession reserved to Filipino nationals.

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

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

13 **SEC. 10. Public Bidding of Projects.** – The public bidding of projects shall
14 be in accordance with the following:

15 A. Publication. - Upon approval of PPP projects as mentioned in Section 8
16 of this Act, the head of the implementing agency concerned shall
17 immediately cause the publication of a notice inviting all prospective
18 project proponents to participate in a transparent and competitive
19 public bidding, once every week for three (3) consecutive weeks, in at
20 least two (2) newspapers of general circulation and in at least one (1)
21 local newspaper which is circulated in the region, province, city or
22 municipality where the project will be implemented. Said notice shall
23 also be posted continuously in the websites of the implementing agency
24 and the PPP Center.

1 B. Public Bidding. - The public bidding shall be conducted under a single or
2 two-stage system. The pre-qualification documents, technical, and
3 financial proposals shall be submitted in at least three (3) separate
4 envelopes. The procedures for public bidding, which shall be transparent
5 and competitive, including the conduct of one-on-one meetings with
6 prequalified bidders, shall be outlined in the IRR of this Act.

7 C. Award. - The contract shall be awarded to the bidder who has passed
8 the pre-qualification stage for having satisfied the minimum financial,
9 organizational and legal standards required by this Act, has passed the
10 technical proposal evaluation, and has submitted the most favorable
11 financial bid based on the parameters defined in the bid documents.
12 Affordable user fees and efficient public services shall be of paramount
13 importance in awarding PPP projects.

14 D. Single Complying and Responsive Bid. - In case of a single complying
15 and responsive bidder, the implementing agency may award the PPP
16 contract to that bidder upon its compliance with the post-award
17 requirements under the bidding rules of the PPP project.

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

20 (a) If, after advertisement, only one bidder applied for prequalification
21 and it meets the prequalification requirements, after which it is
22 required to submit a bid or proposal which is subsequently found by
23 the implementing agency to be complying;

1 (b) If, after advertisement, more than one bidder applied for
2 prequalification but only one meets the prequalification
3 requirements, after which it submits a bid or proposal which is found
4 by the implementing agency to be complying;

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

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

9 E. Protest. - In all stages of the procurement process, the following protest
10 protocol shall be strictly followed:

11 (a) Decisions of the PPP Prequalification Bids and Awards Committee
12 (PPP PBAC) may be questioned by filing a motion for
13 reconsideration within fifteen (15) working days from receipt thereof.

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

20 If the head of the implementing agency in the immediately
21 preceding paragraph is not a Department Secretary, the decision
22 of the head of the implementing agency may be further questioned
23 by filing an appeal to the Secretary of the Department to which the

1 Implementing agency is attached within a period prescribed in the
2 IRR of this Act.

3 (c) The decision of the Department Secretary in the immediately
4 preceding paragraphs of Item (b) may be questioned by filing an
5 appeal to the Office of the President within fifteen (15) working days
6 from receipt thereof.

7 In no case shall any appeal taken from any decision treated
8 in this Act stay or delay the bidding process: *Provided, however,*
9 That all appeals must first be resolved before any award is made.

10 F. Failure to Comply or Execute the Contract. - If the winning bidder fails to
11 comply with any post-award requirement or fails to enter into a contract
12 with the implementing agency, the latter may proceed to negotiation
13 with the next technically and financially qualified bidder. This is without
14 prejudice to other legal remedies available to the implementing agency
15 such as, but not limited to, the forfeiture of bid security, the withdrawal of
16 Notice of Award, or both.

17 **SEC. 11. PPP BAC.** - The head of the implementing agency shall create a
18 PPP BAC which shall be responsible for all aspects of the pre-bidding and
19 bidding process in the case of solicited proposals, and for the comparative
20 bidding process in the case of unsolicited proposals. The PPP BAC shall be
21 chaired by at least a third ranking regular official of the said agency and its
22 composition shall be specified in the IRR of this Act: *Provided, That the PPP*
23 BAC constituted for National PPP Projects shall also include other relevant
24 government agencies as may be determined in the IRR of this Act.

1 **SEC. 12. Contract Termination.** – In the event that a contract is revoked,
2 cancelled or terminated, either contracting party shall compensate the other
3 pursuant to terms as defined in the contract.

4 **SEC. 13. Issuance of Administrative Franchise, License or Permit.** – Upon
5 receipt of notice that an implementing agency and a project proponent
6 have entered in a PPP contract, the regulator or licensing authority shall
7 automatically grant in favor of the said project proponent an administrative
8 franchise, license, permit, or any other form of authorization required for the
9 implementation of a PPP project subject to submission by the project
10 proponent of the requirements by the regulator or licensing authority.

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

16 **SEC. 14. Expansion or Extension of an Existing Infrastructure Facility.** –
17 Subject to prior approval by the appropriate Approving Body, the project
18 proponent of an existing PPP infrastructure facility may be allowed to expand
19 or extend the same even without further bidding: *Provided*, That the cost
20 thereof shall not exceed twenty-five percent (25%) of the price-adjusted
21 original project cost: *Provided, further*, That any subsequent expansion or
22 extension shall no longer be allowed.

23 **SEC. 15. Contracts and Public Disclosure.** – Copies of all PPP contracts
24 concluded under this Act shall be considered public documents.

1 The implementing agency shall transmit to the PPP Center for records
2 and monitoring purposes, a copy of the duly executed contract, within thirty
3 (30) working days from its complete execution.

4 **SEC. 16. Prohibition on the Issuance of Temporary Restraining Orders or**
5 **Injunctions. –**

6 A. No temporary restraining order, preliminary injunction or preliminary
7 mandatory injunction shall be issued by any court, except the Supreme
8 Court, against any implementing agency, its officials or employees, or
9 any person or entity, whether public or private acting under the
10 government direction, to restrain, prohibit or compel the following acts:

11 (a) Bidding, rebidding or declaration of failure of bidding of PPP
12 projects, either national or local;

13 (b) Qualification or disqualification of bidders;

14 (c) Awarding of PPP contract;

15 (d) Acceptance of any unsolicited PPP project proposal, even if not
16 acted upon by the implementing agency concerned under Section
17 9 of this Act;

18 (e) Acquisition, clearance, development of the right-of-way, site or
19 location of any PPP project;

20 (f) Construction, operation and maintenance of any PPP project;

21 (g) Commencement, execution, implementation, termination or
22 rescission of any PPP contract; and

23 (h) Undertaking or authorization of any other lawful activity necessary
24 for such PPP project or contract.

- 1 B. Bond. - The applicant for such temporary restraining order, preliminary
2 injunction or preliminary mandatory injunction shall file a bond, in an
3 amount to be fixed by the court. The bond shall accrue in favor of the
4 government if the court should finally decide that the applicant was not
5 entitled to the relief sought.
- 6 C. Void. - Any temporary restraining order, preliminary injunction or
7 preliminary mandatory injunction issued in violation of this section is void
8 and of no force and effect.
- 9 D. Application. - The foregoing prohibition shall apply in all disputes, cases,
10 or controversies instituted by any and all parties, including but not limited
11 to cases filed by bidders, implementing agencies or those claiming to
12 have rights through such bidders or implementing agencies involving
13 PPP project or contract.
- 14 E. Liability. - In addition to civil and criminal liabilities as may be incurred
15 under existing laws, any judge who shall issue a temporary restraining
16 order, preliminary injunction or preliminary mandatory injunction in
17 violation of this section, shall be disciplined by the Supreme Court and
18 suffer the penalty of removal from office.

19 **SEC. 17. Regulatory Boards.** - No regulatory body shall be allowed to
20 enter into any PPP contract that they regulate.

21 **SEC. 18. Project Supervision and Monitoring.** - Every PPP project
22 undertaken under the provisions of this Act shall be in accordance with the
23 designs, plans, specifications, and standards as approved by the
24 implementing agency, and the cost as approved by the appropriate

1 Approving Body. Such project shall be under the supervision of the
2 implementing agency concerned.

3 **SEC. 19. Projects of National Significance.** – Upon certification and
4 recommendation by the ICC, and prior consultation with the Department of
5 Interior and Local Government (DILG), the President may classify certain
6 projects, such as toll road, mass transit, water, sewerage and such other
7 projects undertaken under this Act as projects of national significance. All
8 real properties which are actually, directly and exclusively used for the
9 projects shall be exempt from any and all real property taxes levied under
10 Republic Act No. 7160.

11 For a project to qualify as a project of national significance, it shall meet
12 the following criteria:

- 13 (a) The project has a direct economic impact which should not be less than
14 the threshold set by the ICC;
- 15 (b) The project has a direct positive impact on at least two (2) cities or
16 municipalities; and
- 17 (c) The project can create new jobs.

18 **SEC. 20. Exemption from Payment of Transfer Taxes.** – For all PPP projects,
19 the transfer of ownership of infrastructure facility to the implementing agency
20 shall be exempt from capital gains tax, documentary stamp tax, donor's tax,
21 and all national taxes and fees related to the transfer thereof.

22 **SEC. 21. Institutionalization of PPP Center.** – To achieve the goals of this
23 Act, the PPP Center created under Executive Order No. 8, series of 2010, as
24 amended by Executive Order No. 136, series of 2013, is hereby

1 institutionalized. It is hereby authorized to adopt its current organizational
2 structure, absorb its existing employees, and upgrade its human resource
3 component, as may be necessary, towards a more efficient and effective
4 performance of the following functions:

5 (a) Assist implementing agencies in identifying, developing, prioritizing and
6 maintaining a pipeline of PPP projects;

7 (b) Provide advisory services, technical assistance, trainings, and capacity
8 development to implementing agencies in all PPP-related matters;

9 (c) Manage and administer the PDMF as provided in Section 8 of this Act;

10 (d) Work with implementing agencies in setting procurement and
11 implementation timelines for approved PPP projects;

12 (e) Recommend plans, policies and implementation guidelines related to
13 PPP, in consultation with appropriate oversight committees or agencies,
14 implementing agencies, private sector and other relevant stakeholders;

15 (f) Facilitate, monitor, and evaluate the implementation of PPP programs
16 and projects developed by the implementing agencies;

17 (g) Report to the Office of the President and Congress on the
18 implementation of the PPP programs and projects of the government at
19 the end of each year;

20 (h) Serve as a link between the government and the private sector;

21 (i) Promote and market PPP programs and projects, in collaboration with
22 other government promotion agencies;

23 (j) Issue advisory opinions relating solely to technical aspects of PPP;

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

11 The PPP Center shall report directly to the PPP Governing Board and
12 under the administrative supervision of the NEDA.

13 The PPP Center shall be headed by an Executive Director with the rank
14 equivalent to an Undersecretary, who shall be appointed by the President of
15 the Philippines, upon recommendation of the PPP Governing Board. The
16 Executive Director shall perform the following functions:

- 17 (a) Undertake the day-to-day management and supervise the operations
18 of the PPP Center;
- 19 (b) Recommend to the PPP Governing Board such policies and measures
20 which are deemed necessary for the effective exercise and discharge
21 of the powers and functions of the PPP Center;
- 22 (c) Sit as an ex-officio, non-voting member of the PPP Governing Board,
23 INFRACOM, ICC and other inter-agency bodies where a PPP project is a
24 major concern; and

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

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

8 The Board shall be composed of the following:

- 9 (a) Secretary of Socio-economic Planning as Chairperson;
- 10 (b) Secretary of Finance as Vice-Chairperson;
- 11 (c) Secretary of Budget and Management;
- 12 (d) Secretary of Public Works and Highways;
- 13 (e) Secretary of Transportation and Communication;
- 14 (f) One (1) private sector representative from the field of architecture or
15 urban planning, elected by the Philippine Institute of Architects/United
16 Architects of the Philippines/Philippine Institute of Environmental
17 Planners/Intelligent Community Forum Philippines;
- 18 (g) One (1) private sector representative from the construction industry,
19 elected by the Philippine Constructors Association (PCA);
- 20 (h) One (1) private sector representative from the business sector, elected
21 by the Management Association of the Philippines (MAP); and
- 22 (i) One (1) private sector representative from the finance industry, elected
23 by the Bankers Association of the Philippines (BAP).

1 The principal members of the Board may designate their respective
2 alternates, with a rank not lower than assistant secretary or its equivalent, and
3 whose acts shall be considered the acts of their principals.

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

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

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

17 **SEC. 24. Miscellaneous Provisions.** –

18 (a) **Safeguard Mechanisms to Protect Public Interest.** - In order to improve
19 transparency and to promote bankability and social acceptability of
20 PPP projects, the following mechanisms shall be observed:

21 (i) Whenever applicable, the implementing agency shall assess the
22 affordability of fee or tariff, and conduct a willingness-to-pay
23 survey among the users of the infrastructure facility;

- 1 (ii) The Implementing agency shall conduct public consultation or
2 dialogue with all potential stakeholders, including the users, in all
3 stages of the PPP project; and
- 4 (iii) The Implementing agency and the PPP Center shall post in their
5 respective websites the approved starting fare or user fee in a PPP
6 project as well as the approved parametric formula on fare
7 increases or adjustments, if applicable.
- 8 (b) Recovery of Investment. – As may be agreed in the PPP contract, the
9 project proponent may be allowed to collect tolls, fees, rentals, or
10 charges, engage in commercial development, receive viability gap
11 funding, and receive direct government payments, among others, to
12 recover investment.
- 13 (c) Wind-up and Transfer Measures. – The PPP contract shall provide, as
14 appropriate, for:
- 15 (i) Mechanisms and procedures for the transfer of assets to the
16 implementing agency;
- 17 (ii) The compensation to which the project proponent may be entitled
18 in respect of assets transferred to the implementing agency, or to a
19 successor, or purchased by the implementing agency;
- 20 (iii) The transfer of technology required for the operation of the
21 infrastructure facility;
- 22 (iv) The training of the implementing agency's personnel or of a
23 successor in the operation and maintenance of the infrastructure
24 facility; and

1 (v) The provision, by the project proponent, of a warranty that the
2 infrastructure facility meets the project technical specifications,
3 agreed system features, and performance standards and services
4 for a certain period as may be defined in the IRR of this Act after
5 the transfer of the infrastructure facility to the implementing agency
6 or to a successor.

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

11 (e) Construction. - If the person, whether or not the project proponent, that
12 shall actually perform the construction of the infrastructure facility is a
13 foreigner, such person shall hire Filipino employees throughout the period
14 of construction.

15 (f) Operation. - The person, whether or not the project proponent, that shall
16 actually operate and maintain the infrastructure facility, including but
17 not limited to the collection of tolls, fees, rentals or charges from users of
18 the infrastructure facility, must be registered with the Securities and
19 Exchange Commission.

20 **SEC. 25. Transitory Provisions.** - All unexpended funds for the calendar
21 year, properties, equipment, contracts and records of the PPP Center are
22 hereby retained. The amount necessary to carry out the organizational
23 changes of PPP Center provided in this Act shall be determined by the PPP

1 Governing Board. Appropriations for succeeding years shall be incorporated
2 in its budget proposals for Congressional action.

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

5 **SEC. 26. Joint Oversight Committee.** - There is hereby created a Joint
6 Congressional Oversight Committee to oversee the implementation of this
7 Act. The Committee shall be composed of the Chairmen of the Senate
8 Committees on Public Works, on Finance, and on Economic Affairs, and the
9 Chairmen of the House Committees on Public Works and Highways, on
10 Appropriations, and on Economic Affairs. To effectively monitor the
11 implementation of this Act, the Philippine Development Plan (PDP) and the
12 priority list of national and local projects shall be submitted to the Joint
13 Congressional Oversight Committee.

14 **SEC. 27. Implementing Rules and Regulations.** The members of the PPP
15 Governing Board shall designate its representatives who shall constitute the
16 IRR Committee. Within sixty (60) days from the effectivity of this Act, the PPP
17 Center shall formulate and prescribe, in consultation with the IRR Committee,
18 after public hearing and publication as required by law, the rules and
19 regulations to implement the provisions of this Act. The IRR shall be approved
20 by the PPP Governing Board.

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

1 **SEC. 28. Separability Clause.** – If any provision of this Act is held invalid,
2 the other provisions not affected thereby shall continue in operation.

3 **SEC. 29. Repealing Clause.** – Republic Act No. 7718, Republic Act No.
4 6957, Sec. 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894,
5 and Executive Order (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013),
6 EO 78 (s. 2012), Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and
7 Procedures for Entering Into Joint Venture Agreements Between Government
8 and Private Entities, Joint Venture Guidelines issued by LGUs, and PPP Codes
9 issued by LGUs, are hereby repealed. All other laws, rules and regulations or
10 parts thereof inconsistent with the provisions of this Act are hereby repealed
11 or modified accordingly.

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

Approved,