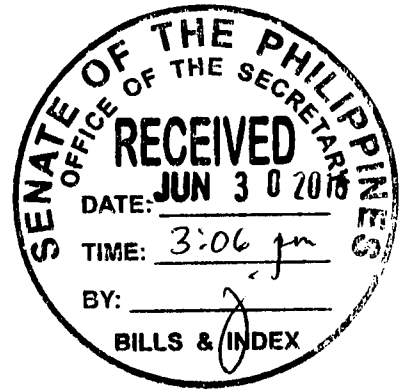


SEVENTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



SENATE

S. No. 66

Introduced by Senator Ralph G. Recto

AN ACT
AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS (PPP), APPROPRIATING
FUNDS THEREFOR, AND FOR OTHER PURPOSES

Explanatory Note

The Philippines is envisioned as a country that has high sustainable growth, generates mass employment and reduces poverty. Towards this end, encouraging public-private partnerships (PPPs) should be a means to develop the country's infrastructure in all sectors and secure our economic global ranking.

With very little fiscal space in the national budget to even make a dent in the country's infrastructure backlog, strengthening laws that provide incentives to PPPs should be a priority legislative policy of this administration.

It is therefore of utmost importance to revisit Republic Act No. 6957, as amended by Republic Act No. 7718, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" or what is otherwise called the "Build-Operate-Transfer" (BOT) law.

This bill is aimed at further improving the "Build-Operate-Transfer" (BOT) law by expanding its coverage and providing more incentives to the private sector who become partners of the government in infrastructure projects.

This bill limits the projects to be implemented as PPP projects to hard infrastructure charging user fee or tariff and excludes social infrastructure projects such as prisons, education and health facilities, and other infrastructure projects like government buildings, tourism projects, power projects, climate change mitigation and adaptation measures.

One salient feature of this bill is the automatic approval by the Regional Development Council of PPP projects which have satisfactorily complied with the requirements to avoid arbitrary and unreasonable withholding of endorsement of projects.

Another salient feature of this bill is the classification of infrastructure projects with a direct economic impact which should not be less than the threshold set by the Investment Coordination Committee (ICC); with a direct positive impact on at least two cities or municipalities; and can create new jobs as "Projects of National Significance". When classified as such, these projects will be exempted from real property tax.

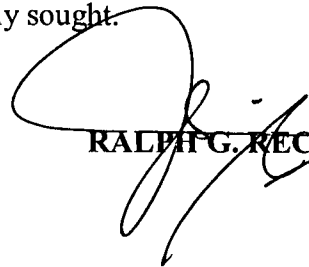
This bill also protects these projects from being the subject of judicial reliefs such as temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions issued by the Supreme Court.

To ensure consumer protection, it gives paramount consideration to the affordability of user fees and efficiency of public services when awarding PPP projects.

In the interest of transparency and good governance, four private sector representatives shall be elected by the concerned private sector associations in the PPP Governing Board, which shall be the overall policy-making body for all PPP-related matters.

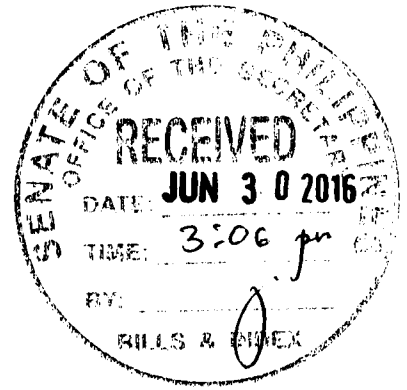
All of these features work to strengthen the BOT law and encourage more PPPs in national and local infrastructure projects.

With these in mind, the passage of this bill is earnestly sought.



RALPH G. RECTO

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SENATE
S. No. 66

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AN ACT
AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS (PPP), 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 **SECTION 1.** This Act shall be known as the “Public-Private Partnership (PPP) Act” of
2 the Philippines.

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

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

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

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

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

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

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

- 1 (c) Concession-based PPP – refers to a PPP where the implementing agency grants the project
2 proponent the right to recover its investment, operating and financing costs by charging the
3 public a user fee or tariff.
- 4 (d) Construction – refers to new construction, rehabilitation, improvement, expansion,
5 alteration, installation, and related works and activities in connection with an infrastructure
6 facility, including the necessary supply of equipment, materials, labor and services and
7 related items.
- 8 (e) Contractor – refers to any person, who may or may not be the project proponent, and who
9 shall undertake the actual construction of an infrastructure facility.
- 10 (f) Cooperation Period – refers to the period of operation of an infrastructure facility, which
11 period, in the case of public utilities requiring a franchise, shall be in accordance with law.
- 12 (g) Facility Operator – refers to a person registered with the Securities and Exchange
13 Commission, who may or may not be the project proponent, and who is responsible for all
14 aspects of operation and maintenance of an infrastructure facility, including but not limited
15 to the collection of tolls, fees, rentals or charges from facility users.
- 16 (h) Grantor – refers to an implementing agency and other government agencies that own the
17 project assets or franchise.
- 18 (i) GOCC – refers to a government-owned or controlled corporation as defined in Republic
19 Act No. 10149.
- 20 (j) ICC – refers to the Investment Coordination Committee of the NEDA Board.
- 21 (k) Implementing Agency – refers to the Department of Public Works and Highways (DPWH),
22 Department of Transportation and Communications (DOTC), Department of Information
23 and Communications Technology (DICT), National Irrigation Administration (NIA),
24 National Housing Authority (NHA), Philippine Reclamation Authority (PRA), local
25 government units (LGUs), and government-owned and controlled corporations (GOCCs)
26 attached to these respective departments and agencies such as: Light Rail Transit Authority
27 (LRTA), North Luzon Railways Corporation (NLRC), Philippine Ports Authority (PPA),
28 Manila International Airport Authority (MIAA), and Mactan Cebu International Airport
29 Authority (MCIAA).
- 30 (l) Infrastructure Facility – refers to such facility as are established by the government in
31 relation to or as may be necessary for the discharge of its functions, whether governmental
32 or proprietary, including highways, railroads and railways, transport systems, ports,
33 airports, telecommunications, information technology systems and infrastructure, dams,
34 water supply, irrigation, sewerage, drainage, dredging, land reclamation projects, housing,
35 markets, slaughterhouses, warehouses and solid waste management.
36 For the construction stage of these infrastructure facilities where the contractor is a
37 foreigner, Filipino labor shall be employed or hired in the different phases of construction.
- 38 (m) IRR – refers to the implementing rules and regulations of this Act.

- 1 (n) LGU – refers to a local government unit.
- 2 (o) Local PPP Project – refers to a PPP Project that will be undertaken by an LGU.
- 3 (p) National PPP Project – refers to a PPP Project that will be undertaken by the national
4 government and shall be approved by the NEDA Board upon Recommendation by the ICC
5 and endorsement by the PPP Governing Board. Such approval shall be carried by the
6 implementing agency or grantor concerned.
- 7 (q) PDMF – refers to the Project Development and Monitoring Facility created under Section
8 8 of this Act.
- 9 (r) PPP BAC – refers to the PPP Bids and Awards Committee.
- 10 (s) PPP or Public-Private Partnership – refers to a contractual arrangement between the
11 implementing agency and the project proponent for the financing, design, construction,
12 operation, and maintenance, or any combination thereof, of an infrastructure facility under
13 this Act.
- 14 (t) PPP Center – refers to the Public-Private Partnership Center of the Philippines created
15 under Executive Order No. 8, series of 2010, as amended.
- 16 (u) PPP Contract – refers to the contract between the implementing agency and the project
17 proponent for the design, financing, construction, operation, or maintenance of an
18 infrastructure facility under a PPP Project.
- 19 (v) PPP Project – refers to a project undertaken under this Act.
- 20 (w) Person – refers to an individual, sole proprietorship, partnership, corporation or any other
21 form of organization, whether domestic or foreign.
- 22 (x) Priority project – refers to a project identified by an implementing agency that may be
23 undertaken under this Act as a PPP project and is consistent with the Philippine
24 Development Plan (PDP) or its equivalent at the local level.
- 25 (y) Project Cost – refers to total capital cost, financing and other expenses for the design,
26 construction, operation, and maintenance of an infrastructure facility, depending on the
27 PPP contractual arrangement as provided for in Section 4 of this Act.
- 28 (z) Project Proponent – refers to any private person who shall undertake a PPP project.
- 29 (aa) Rate of Return – refers to the maximum rate of return that a project proponent shall be
30 entitled to, as determined by the Approving Body, taking into account, among others, the
31 prevailing cost of capital in the domestic and international markets, the risks being
32 assumed by the project proponent, and prevailing tariff on similar projects: *Provided*, That
33 in case of an unsolicited proposal, such rate of return shall be determined by the
34 appropriate Approving Body prior to the call for proposals.
- 35 (bb) Services – refers to technical services and other services related to infrastructure facilities
36 such as, but not limited to, construction supervision, management, operation and
37 maintenance and related services, which may be included as part of a PPP project.
- 38 (cc) Solicited PPP Project – refers to priority projects identified by the implementing agency.

1 (dd) Unsolicited PPP Project – refers to project proposals submitted by a private person which
2 are not in response to a formal solicitation or request issued by the implementing agency.

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

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

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

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

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

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 (v) Build-Transfer-and-Operate – refers to a contractual arrangement whereby the
31 implementing agency contracts out the construction of an infrastructure facility to the
32 project proponent. Once the facility is commissioned satisfactorily, ownership is
33 transferred to the implementing agency. The project proponent, however, operates
34 the infrastructure facility on behalf of the implementing agency.

35 (vi) Contract-Add-and-Operate – refers to a contractual arrangement whereby, the project
36 proponent adds to an existing infrastructure facility which it is renting from the
37 government. It operates the expanded infrastructure facility over an agreed

1 cooperation period. There may, or may not be, a transfer arrangement in regard to
2 said facility.

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

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

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

21 (ix) Operations and Maintenance Contract – refers to a contractual arrangement whereby
22 the project proponent undertakes the day-to-day operation and maintenance of an
23 infrastructure facility owned by the implementing agency. The project proponent
24 shall undertake the acquisition or provision and upgrading of equipment, systems and
25 other items related to operation and maintenance. The project proponent shall be
26 compensated in the form of a performance-based management or service fee during
27 the cooperation period.

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

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

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

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

6 **SEC. 6. Identification of Priority Projects.** – Implementing agencies shall include in
7 their development plans, strategies and investment programs those priority projects that may be
8 undertaken in this Act as PPP Projects. In identifying those projects, the implementing agencies
9 shall be guided by the following principles: effectiveness in meeting government objectives,
10 accountability and transparency, consumer rights, affordability, public access, safety, and
11 security. Priority projects shall be consistent with the Philippine Development Plan or its
12 equivalent at the local level.

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

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

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

22 When a project proponent submits an unsolicited proposal, the implementing agency may
23 either:

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

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

28 (ii) Guided by the principles of transparency and competitiveness, the implementing
29 agency has invited by publication for three (3) consecutive weeks in a newspaper of
30 general circulation, as well as websites of the PPP Center and of the implementing
31 agency, the submission of comparative proposals and no other proposal is received
32 for a period stated in the IRR of this Act, which period should not be less than three
33 (3) months nor more than six (6) months from the date of last publication in a
34 newspaper of general circulation. In the event another proponent submits a superior
35 counter-proposal within the period referred to above and it is accepted by the
36 appropriate Approving Body, the original proponent shall have the right to outbid.

37 (b) Use the unsolicited proposal as the basis for public bidding as provided in Section 10 of
38 this Act. Upon approval by the appropriate Approving Body, the original proponent thereof

1 shall be reimbursed of the cost incurred in the preparation of the proposal, such as the cost
2 of any feasibility study undertaken: *Provided*, That such reimbursement:

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

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

8 (c) Reject the proposal;

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

12 Within ten (10) working days from receipt of the unsolicited proposal, the implementing
13 agency shall inform the PPP Center in writing of such receipt and furnish it with a copy of the
14 proposal. The PPP Center shall provide assistance to the implementing agency in the evaluation
15 of the unsolicited proposal.

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

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

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

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

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

31 **SEC. 9. Project Development and Monitoring Facility (PDMF).** – The Project
32 Development and Monitoring Facility is hereby created to be known as the PDMF, which shall
33 be used for the procurement of advisory and support services related to the preparation,
34 structuring, probity management, procurement, financial close, and monitoring of
35 implementation of PPP projects. The PDMF Fund referred to under Executive Order No. 8,
36 series of 2010, as amended by Executive Order No. 136, series of 2013, shall be transferred to
37 the PDMF under this Act. The PDMF may be funded through and such amount as may be

1 needed and included in the General Appropriations Act, Official Development Assistance or
2 other sources.

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

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

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

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

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

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

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

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

36 C. Award. - The contract shall be awarded to the bidder who has passed the pre-qualification
37 stage for having satisfied the minimum financial, organizational and legal standards
38 required by this Act, has passed the technical proposal evaluation, and has submitted the

1 most favorable financial bid based on the parameters defined in the bid documents.
2 Affordable user fees and efficient public services shall be of paramount importance in
3 awarding PPP projects.

4 D. Single Complying and Responsive Bid. - In case of a single complying and responsive
5 bidder, the implementing agency may award the PPP contract to that bidder upon its
6 compliance with the post-award requirements under the bidding rules of the PPP project.
7 A bid shall be considered a single complying and responsive bid submission if it falls under
8 any of the following circumstances:

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

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

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

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

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

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

24 (b) The decision of the PBAC on the motion for reconsideration in the immediately
25 preceding paragraph may be further questioned by filing an appeal to the head of the
26 implementing agency concerned and paying a non-refundable appeal fee in an
27 amount equivalent to no less than ½ of 1% of the project cost within fifteen (15)
28 working days from receipt thereof.

29 If the head of the implementing agency in the immediately preceding paragraph is
30 not a Department Secretary, the decision of the head of the implementing agency may
31 be further questioned by filing an appeal to the Secretary of the Department to which
32 the implementing agency is attached within a period prescribed in the IRR of this Act.

33 (c) The decision of the Department Secretary in the immediately preceding paragraphs of
34 item (b) may be questioned by filing an appeal to the Office of the President within
35 fifteen (15) working days from receipt thereof.

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

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

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

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

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

23 Any provision of law to the contrary notwithstanding, it shall be mandatory on the part of
24 the regulator or licensing authority to accept and approve the application for administrative
25 franchise, license or permit subject to submission by the project proponent of the requirements
26 by the regulator or licensing authority. Failure to act on a proper and complete application
27 thereof within thirty (30) working days from receipt of the same shall be deemed as approval
28 thereof.

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

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

1 The implementing agency shall transmit to the PPP Center for records and monitoring
2 purposes, a copy of the duly executed contract, within thirty (30) working days from its complete
3 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 mandatory
7 injunction shall be issued by any court, except the Supreme Court, against any
8 implementing agency, its officials or employees, or any person or entity, whether public or
9 private acting under the government direction, to restrain, prohibit or compel the following
10 acts:

11 (a) Bidding, rebidding or declaration of failure of bidding of PPP projects, either national
12 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 acted upon by the
16 implementing agency concerned under Section 9 of this Act;

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

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

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

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

24 B. Bond. - The applicant for such temporary restraining order, preliminary injunction or
25 preliminary mandatory injunction shall file a bond, in an amount to be fixed by the court.
26 The bond shall accrue in favor of the government if the court should finally decide that the
27 applicant was not entitled to the relief sought.

28 C. Void. - Any temporary restraining order, preliminary injunction or preliminary mandatory
29 injunction issued in violation of this section is void and of no force and effect.

30 D. Application. - The foregoing prohibition shall apply in all disputes, cases, or controversies
31 instituted by any and all parties, including but not limited to cases filed by bidders,
32 implementing agencies or those claiming to have rights through such bidders or
33 implementing agencies involving PPP project or contract.

34 E. Liability. - In addition to civil and criminal liabilities as may be incurred under existing
35 laws, any judge who shall issue a temporary restraining order, preliminary injunction or
36 preliminary mandatory injunction in violation of this section, shall be disciplined by the
37 Supreme Court and suffer the penalty of removal from office.

1 **SEC. 17. Regulatory Boards.** – No regulatory body shall be allowed to enter into any
2 PPP contract that they regulate: *Provided*, That a regulatory agency that owns public
3 infrastructure or right-of-way that is intended for a PPP project shall assign the same to the
4 department exercising administrative supervision over it, or to the department to which it is
5 attached, in order that such department may enter into a PPP contract involving such public
6 infrastructure or right-of-way.

7 **SEC. 18. Project Supervision and Monitoring.** – Every PPP project undertaken under
8 the provisions of this Act shall be in accordance with the designs, plans, specifications, and
9 standards as approved by the implementing agency, and the cost as approved by the appropriate
10 Approving Body. Such project shall be under the supervision of the implementing agency
11 concerned.

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

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

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

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

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

- 34 (a) Assist implementing agencies in identifying, developing, prioritizing and maintaining a
35 pipeline of PPP projects;
36 (b) Provide advisory services, technical assistance, trainings, and capacity development to
37 implementing agencies in all PPP-related matters;
38 (c) Manage and administer the PDMF as provided in Section 8 of this Act;

- 1 (d) Work with implementing agencies in setting procurement and implementation timelines for
2 approved PPP projects;
- 3 (e) Recommend plans, policies and implementation guidelines related to PPP, in consultation
4 with appropriate oversight committees or agencies, implementing agencies, private sector
5 and other relevant stakeholders;
- 6 (f) Facilitate, monitor, and evaluate the implementation of PPP programs and projects
7 developed by the implementing agencies;
- 8 (g) Report to the Office of the President and Congress on the implementation of the PPP
9 programs and projects of the government at the end of each year;
- 10 (h) Serve as a link between the government and the private sector;
- 11 (i) Promote and market PPP programs and projects, in collaboration with other government
12 promotion agencies;
- 13 (j) Issue advisory opinions relating solely to technical aspects of PPP;
- 14 (k) Serve as the central repository of all executed PPP contracts and any subsequent
15 amendment or supplement thereto, including settlement agreements, entered into by
16 implementing agencies;
- 17 (l) Provide and transmit copies of duly executed PPP contracts to Congress;
- 18 (m) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP
19 projects are concerned;
- 20 (n) Maintain an integrated projects' bank to serve as an interactive database of all current and
21 past projects;
- 22 (o) Such other functions as may be necessary to achieve the objectives and purposes of this
23 Act.

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

26 The PPP Center shall be headed by an Executive Director with the rank equivalent to an
27 Undersecretary, who shall be appointed by the President of the Philippines, upon
28 recommendation of the PPP Governing Board. The Executive Director shall perform the
29 following functions:

- 30 (a) Undertake the day-to-day management and supervise the operations of the PPP Center;
- 31 (b) Recommend to the PPP Governing Board such policies and measures which are deemed
32 necessary for the effective exercise and discharge of the powers and functions of the PPP
33 Center;
- 34 (c) Sit as an ex-officio, non-voting member of the PPP Governing Board, INFRACOM, ICC
35 and other inter-agency bodies, except for regulatory boards, where a PPP project is a major
36 concern; and
- 37 (d) Perform such other functions as may be assigned by the PPP Governing Board.

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

5 The Board shall be composed of the following:

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

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

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

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

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

36 **SEC. 24. Miscellaneous Provisions.** –

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

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

7 (ii) The implementing agency shall conduct public consultation or dialogue with all
8 potential stakeholders, including the users, in all stages of the PPP project; and

9 (iii) The implementing agency and the PPP Center shall post in their respective websites
10 the approved starting fare or user fee in a PPP project as well as the approved
11 parametric formula on fare increases or adjustments, if applicable.

12 (b) Recovery of Investment. - As may be agreed in the PPP contract, the project proponent
13 may be allowed to collect tolls, fees, rentals, or charges, engage in commercial
14 development, receive viability gap funding, and receive direct government payments,
15 among others, to recover investment.

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

17 (i) Mechanisms and procedures for the transfer of assets to the implementing agency;

18 (ii) The compensation to which the project proponent may be entitled in respect of assets
19 transferred to the implementing agency, or to a successor, or purchased by the
20 implementing agency;

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

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

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

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

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

36 (f) Operation. - The person, whether or not the project proponent, that shall actually operate
37 and maintain the infrastructure facility, including but not limited to the collection of tolls,

1 fees, rentals or charges from users of the infrastructure facility, must be registered with the
2 Securities and Exchange Commission.

3 **SEC. 25. Transitory Provisions.** – All unexpended funds for the calendar year,
4 properties, equipment, contracts and records of the PPP Center are hereby retained. The amount
5 necessary to carry out the organizational changes of PPP Center provided in this Act shall be
6 determined by the PPP Governing Board. Appropriations for succeeding years shall be
7 incorporated in its budget proposals for Congressional action.

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

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

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

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

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

28 **SEC. 29. Repealing Clause.** – Republic Act No. 7718, Republic Act No. 6957, Sec. 3(a)
29 of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and Executive Order (EO) No.
30 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s. 2012), Section 8 of EO No. 423 (s.
31 2005), 2013 Revised Guidelines and Procedures for Entering Into Joint Venture Agreements
32 Between Government and Private Entities, Joint Venture Guidelines issued by LGUs, and PPP
33 Codes issued by LGUs, are hereby repealed. All other laws, rules and regulations or parts thereof
34 inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

35 **SEC. 30. Effectivity.** This Act shall take effect fifteen (15) days from the date of
36 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,