



Economists like Dr. Gilberto Llanto<sup>1</sup> of PIDS stressed that the risks absorbed by the government when extending comprehensive guarantees "expose taxpayers to potentially huge fiscal burdens that are not necessarily justified especially if the risks covered are commercial in nature."

Dr. Llanto recommends that government should allocate guarantees efficiently to avoid fiscal shocks that may arise once private investors call on the guarantee. He says guarantees create undue problems on the government's fiscal position especially since government relies on cash budgeting and as such, there is no adequate provision on future calls in the national budget. And this has a direct impact on the allocation of resources for social services such as health and education. Whatever deficit the government may incur out of paying a guarantee will have to be covered by a decrease in government expenditures.

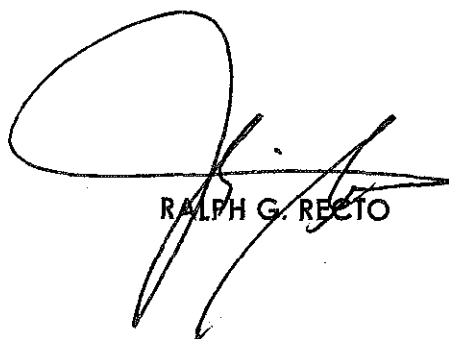
Moreover, the bill also provides that all guarantees on foreign exchange convertibility shall be accompanied by a "fall-away" provision that the guarantee for foreign exchange convertibility shall cease once the country attains an investment grade rating in international capital markets for two consecutive years from Standard and Poor or Moody's or other internationally recognized rating agency of comparable standing.

According to Dr. Llanto, such a provision will minimize the government's risk exposure and potential burden on its fiscal position. He said "the exit strategy will prevent perverse incentives and moral hazard in project management and implementation."

Lastly, the bill provides that BOT contracts shall not be amended or revised except to reduce contract fees or to lift direct government guarantees or to reduce tolls, fees, rentals and charges or when the president deems necessary in the interest of the government and the general public.

Recent experiences in the PIATCO fiasco and the concession agreements of MWSS and the water concessionaires taught us the hazards of revising or amending BOT contracts. It has not only cost the government and the consumers greater financial burden but more importantly it has raised ethical and accountability questions on government's propensity to enter into contracts with the private sector.

In view of these compelling reasons, the immediate passage of this bill is thus earnestly sought.



RALPH G. RECTO

Rga/sb2204-BOT

---

<sup>1</sup> Llanto, Gilbert M. 2000. *Managing Government Guarantees and Contingent Liabilities*. PIDS Policy Notes No. 2000-17. Makati City: Philippine Institute for Development Studies.



1 (B) FOREIGN EXCHANGE CONVERTIBILITY RISKS WHICH  
2 SHALL GIVE THE PROJECT PROPONENT THE RIGHT TO:

3 (i) PURCHASE FOREIGN EXCHANGE IN THE OPEN  
4 MARKET;

5 (ii) TRANSFER ITS FOREIGN CURRENCY FUNDS  
6 ABROAD; AND

7 (iii) MAINTAIN FOREIGN CURRENCY BANK ACCOUNTS  
8 IN THE PHILIPPINES OR ABROAD,

9 PROVIDED, THAT SUCH GUARANTEE SHALL BE  
10 ACCOMPANIED BY AN EXPLICIT PROVISION THAT THE  
11 GUARANTEE FOR FOREIGN EXCHANGE CONVERTIBILITY  
12 SHALL CEASE ONCE THE COUNTRY ATTAINS AN  
13 INVESTMENT GRADE RATING IN INTERNATIONAL CAPITAL  
14 MARKETS FOR TWO CONSECUTIVE YEARS FROM  
15 STANDARD AND POOR OR MOODY'S OR OTHER  
16 INTERNATIONALLY RECOGNIZED RATING AGENCY OF  
17 COMPARABLE STANDING; AND

18 (C) PROJECT SPECIFIC RISKS WHERE THE GUARANTEE SHALL  
19 BE LIMITED TO THE SENIOR LENDER AND FOR THE  
20 ORIGINAL TERM OF THE LOAN EXCLUDING RETURNS TO  
21 EQUITY HOLDERS.

22 GUARANTEES COVERED UNDER SUB-PARAGRAPH (A) SHALL BE  
23 GRANTED FREE TO ALL PROJECT PROPONENTS WHILE  
24 GUARANTEES COVERED UNDER SUB-PARAGRAPHS (B) AND (C)  
25 SHALL HAVE GUARANTEE FEES TO BE DETERMINED BY THE DOF."  
26

27 SEC. 2. Section 7 of the same Act is hereby renumbered as Section 8.  
28

29 SEC. 3. A new section is hereby added after Section 7 of the same  
30 Act and numbered as Section 9, to read as follows:

31 "SEC. 9. *CONTRACT AMENDMENTS AND/OR REVISIONS.* – ALL  
32 DULY SIGNED CONTRACTS ENTERED INTO BY THE GOVERNMENT OR

1 ANY OF ITS AGENCIES OR LOCAL GOVERNMENT UNITS COVERED  
2 UNDER THIS ACT SHALL NOT BE AMENDED OR REVISED EXCEPT TO  
3 REDUCE CONTRACT FEES OR TO LIFT DIRECT GOVERNMENT  
4 GUARANTEES OR TO REDUCE TOLLS, FEES, RENTALS AND CHARGES  
5 OR WHEN THE PRESIDENT DEEMS NECESSARY IN THE INTEREST OF THE  
6 GOVERNMENT AND THE GENERAL PUBLIC."

7  
8 SEC. 4. Sections 9 and the succeeding sections of the same Act are  
9 hereby renumbered accordingly.

10  
11 SEC. 5. *Implementing rules and regulations.* - The DOF, the National  
12 Economic Development Authority (NEDA), the Department of Public  
13 Works and Highways (DPWH), and other appropriate government  
14 agencies shall promulgate rules and regulations necessary for the  
15 effective implementation of this Act.

16  
17 SEC. 6. *Repealing Clause.* - All laws or parts of any law inconsistent  
18 with the provisions of this Act are hereby repealed or modified  
19 accordingly.

20  
21 SEC. 7. *Separability Clause.* - If any provision of this Act is held  
22 invalid, the other provisions not affected thereby shall continue in  
23 operation.

24  
25 SEC. 8. *Effectivity Clause.* - This Act shall take effect fifteen (15) days  
26 after its publication in at least two (2) newspapers of general circulation.

27  
28 Approved,