



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

'22 AUG 31 P 4 :59

SENATE

S.B. No. 1251

RECEIVED BY: _____

Introduced by **SENATOR IMEE R. MARCOS**

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

EXPLANATORY NOTE

Article 2, Section 9 of the 1987 Constitution provides that *"the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."* Section 20 of the same article further states that *"the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."*

Infrastructure, such as roads and railways, is a major premise for economic development, as well as improving people's lives and contributing to poverty reduction. The pandemic, however, have resulted a tightening of fiscal space available for infrastructure development. As of the 2nd quarter of 2022, the debt-to-GDP ratio of the country is at 62.1%, which is still above the threshold of 60%. As the government works to reduce the debt burden to 52.5% by 2028, there is an urgent need for government to access private capital in order to address the infrastructure gap, as well as its social protection program.

This proposed measure aims to create an enabling environment for Public-Private Partnerships by revising 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" otherwise known as the "Build-Operate-Transfer" (BOT) Law. This measure improves the BOT Law by expanding its coverage and offering more benefits to private sector partners of the government in infrastructure projects. It also provides for the automatic endorsement after 40 days of non-action by the Approving Body which have satisfactorily complied with the requirements, avoiding arbitrary and unreasonable withholding of endorsement of projects. In addition, it also protects PPP projects from

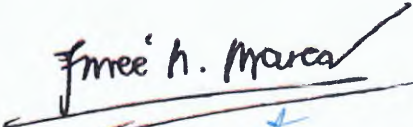
being the subject of judicial delays in the form of temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions issued by any court, except the Supreme Court.

This measure also facilitates the process of dealing with unsolicited proposals. The sixty (60) -working-day challenge period under the existing BOT Law is too short for interested challengers to submit their counterproposals in an unsolicited project. As such, the measure gives the Implementing Agency the ability to determine the challenge period. The measure also gives the implementing agencies the option to convert unsolicited proposals into a solicited project, and thereafter offer it as the basis for competitive bidding.

This way, the government will realize the full benefits of competitive bidding. This measure also establishes the role of local government units (LGU) in initiating and monitoring their own PPP projects, simplifying the processes by which an LGU can undertake a PPP Project.

Lastly, the measure seeks to uphold transparency by requiring full public disclosure of PPP projects and contracts. The PPP Center is directly responsible for giving the public and Congress with adequate and timely information about PPP projects.

In light of this, the approval of this bill is earnestly sought.


IMEE R. MARCOS

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AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS, APPROPRIATING
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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

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

3 **SEC. 2.** *Declaration of Policy.* – Section 20, Article II, of the Constitution declares
4 that the State recognizes the indispensable role of the private sector, encourages
5 private enterprise, and provides incentives to needed investments. To this end, the
6 State shall provide an enabling environment for the private sector to mobilize its
7 resources for the purpose of financing, designing, constructing, operating and
8 maintaining development programs and projects traditionally undertaken by the
9 government. As provided by law, the government shall foster robust private sector
10 participation by providing financial Incentives and by reducing costs of doing business.

11 It is further declared that the State shall protect the public interest by providing
12 affordable, accessible, and efficient public services. In order to achieve better quality
13 of PPP Projects at lower costs, the State shall ensure equitable risk allocation in PPP
14 Projects, and take into account that all PPP Projects yield sufficient value for money,
15 value for people, and value for planet.

16 The State shall pursue a policy of maintaining a reasonable balance on financing
17 of infrastructure and other development projects through all means available that will
18 most effectively meet the objectives of the government. These may include
19 appropriations, official development assistance, and PPPs, as well as combinations
20 thereof. The government shall determine the appropriate financing by considering
21 budget availability, timelines, stakeholder commitments, and market capacity.

22 Finally, it is declared that the State shall affirm open, fair, transparent, and
23 competitive selection as the central tenet for securing private investment in PPP
24 Projects. It shall implement a policy of full public disclosure of all its transactions

1 involving public interest, subject to terms and conditions as prescribed by pertinent
2 laws.

3 **SEC. 3. *Scope and Application.*** – This Act shall apply to all PPP Projects
4 undertaken by Implementing Agencies, through PPP contracts with a Private
5 Proponent, including Joint Ventures, as defined under this Act. It shall likewise apply
6 to and be enforceable among all parties to said PPP contracts.

7 Implementing Agencies are hereby authorized to undertake PPP Projects through
8 PPP contracts with a Private Proponent in accordance with this Act.

9 **SEC. 4. *Definition of Terms.*** – As used in this Act:

10 (a) *Approving Body* – refers to an entity authorized to approve PPP Projects, in
11 accordance with Section 7 of this Act;

12 (b) *Construction* – refers to new construction, rehabilitation, improvement,
13 expansion, alteration, and related works and activities including the necessary
14 supply and installation of equipment, materials, labor and services, and related
15 items;

16 (c) *Contractor* – refers to any entity allowed under Philippine laws, which may or
17 may not be the Private Proponent, and which shall undertake the actual
18 construction or supply of equipment or services for PPP Projects;

19 (d) *Contingent Liability* – refers to an obligation that may or may not arise from
20 events specified in a PPP contract, the occurrence, timing, and amount of which
21 is uncertain. These events include regulatory risks, force majeure, breach of
22 government warranties, and material adverse government action, among others;

23 (e) *Facility Operator* – refers to an entity with legal personality authorized under
24 existing laws, which may or may not be the Private Proponent, that shall be
25 responsible for operating and maintaining a facility, including, but not limited to,
26 the collection of tolls, fees, rentals or charges from facility users;

27 (f) *Government Undertakings* – refers to any form of contribution and support,
28 which the government may extend to a Private Proponent for the implementation
29 of PPP Projects, as defined under this Act. The procedures on proposing and
30 granting of Government Undertakings shall be prescribed in the IRR of this Act;

31 (g) *Greenfield Project* – refers to a project which entails the creation of an entirely
32 new facility or service, which does not depend on the improvement of an existing
33 facility;

34 (h) *Green Financing* – refers to investments that create environmental benefits in
35 support of green growth, low-carbon, and sustainable development;

36 (i) *Guarantee on Demand* – refers to an agreement whereby the Implementing
37 Agency guarantees to assume market risks in a PPP Project;

- 1 (j) *Guarantee on Loan Repayment* – refers to an agreement whereby the
2 Implementing Agency guarantees to assume responsibility for the repayment of
3 debt directly incurred by the Private Proponent in implementing the project in
4 case of a loan default;
- 5 (k) *Guarantee on Private Sector Return* – refers to an agreement whereby the
6 Implementing Agency guarantees to provide a pre-identified rate of return on
7 the investment of the Private Proponent;
- 8 (l) *Implementing Agency* – refers to a department, bureau, office, instrumentality,
9 commission, authority of the national government, state universities and colleges
10 (SUCs), local government units (LGUs), or government owned-or-controlled
11 corporation (GOCC) as defined in Republic Act No. 10149, including government
12 instrumentalities with corporate powers (GICP), government corporate entities
13 (GCE), government financial institutions (GFIs), which is authorized to undertake
14 PPP Projects;
- 15 (m) *Joint Venture (JV)* – refers to a contractual arrangement whereby both the
16 Implementing Agency and the Private Proponent contribute to pool resources
17 comprising of capital, services, or assets (including equipment, land or
18 intellectual property) to jointly undertake a specific investment activity. The
19 investment activity shall be for the purpose of accomplishing a specific goal with
20 the end view of facilitating private sector initiative in a particular industry or
21 sector, and eventually transfer the activity to either the private sector under
22 competitive market conditions or to the government. The JV involves a
23 community or pooling of interests in the performance of the investment activity,
24 and each party shall have the right to direct and govern the policies in connection
25 therewith with the intention to share both profits* and risks and losses subject
26 to agreement by the parties. A JV may be undertaken through a contract or by
27 creating a JV entity;
- 28 (n) *Local PPP Project* – refers to a PPP Project that shall be undertaken by LGUs,
29 and local universities and colleges (LUCs) as defined in RA 10931;
- 30 (o) *National PPP Project* – refers to a PPP Project that shall be undertaken by the
31 national government, GOCCs Including water districts, GICPs, GCEs, GFIs, and
32 SUCs as defined in RA 10931;
- 33 (p) *Operation and Maintenance* – refers to activities necessary and incidental to
34 preserve or restore the operational status of an asset or system based on
35 specified performance indicators;
- 36 (q) *Original Proponent* – refers to the Private Proponent which submitted an
37 unsolicited proposal which has been accepted and pre-qualified by the
38 Implementing Agency, and has been conferred the "Original Proponent" status,
39 as mentioned in Section 10 of this Act;

1 (r) *PPP Project* – refers to infrastructure or development programs, projects,
2 activities, facilities, and related services normally financed and undertaken by
3 the public sector, but which shall now be wholly or partly financed, designed,
4 built, operated and maintained by the private sector;

5 (s) *Private Proponent* – refers to the private sector entity which shall either have
6 submitted an unsolicited proposal, or a bid submission in relation to a solicited
7 PPP Project, and/or have a contractual responsibility for the PPP Project. The
8 Private Proponent may be Filipino or foreign-owned, and may engage the
9 services of a foreign Contractor or foreign Facility Operator, subject to
10 requirements and limitations provided under the Philippine Constitution;

11 (t) *Project Cost* – refers to the estimated cost of the PPP Project. The guidelines in
12 determining the Project Cost shall be prescribed in the IRR of this Act;

13 (u) *Subsidy* – refers to an agreement whereby the Implementing Agency will: (a)
14 defray, pay for, or shoulder a portion of the Project Cost or the expenses and
15 costs in operating or maintaining the project; (b) contribute any property or
16 assets to the project; (c) waive or grant special rates on real property taxes on
17 the project during the term of the contractual arrangement; and/or (d) waive
18 charges or fees relative to business permits or licenses that are to be obtained
19 for the construction of the project, all without receiving payment or value from
20 the Private Proponent and/or Facility Operator for such payment, contribution,
21 or support. *Provided*, That under no circumstance shall the total subsidy exceed
22 fifty percent (50%) of the total Project Cost;

23 (v) *Termination Payment* – refers to the amount payable by the government or the
24 Private Proponent on the occurrence of an event or series of events provided for
25 in the PPP contract that results in the termination of said contract;

26 (w) *Viability Gap Funding (VGF)* – refers to a type of Subsidy in the form of a financial
27 support that the government may provide to a revenue-based PPP Project with
28 the objective of making fees affordable, while improving the commercial
29 attractiveness of the project, excluding costs of right-of-way, resettlement,
30 and real estate taxes.

31 **SEC. 5. *Public-Private Partnership.*** – A PPP is a contractual arrangement
32 between the Implementing Agency and the Private Proponent for the financing,
33 designing, constructing, operating and maintaining, or any combination thereof, of
34 projects which are normally provided by the public sector. PPP Projects may be
35 undertaken through contractual arrangements, including joint ventures, authorized
36 under the Implementing Rules and Regulations (IRR) of this Act, and such other
37 variations thereof as may be approved by the appropriate Approving Body.

38 **SEC. 6. *Identification of PPP Projects.*** – Implementing Agencies shall include in
39 their development plans, strategies, and investment programs those priority PPP

1 Projects that they want to undertake. In identifying those projects, the Implementing
2 Agencies shall be guided by the following principles: effectiveness in meeting
3 government objectives, appropriateness of the chosen procurement modality and
4 source of funding, value for money, accountability and transparency, consumer rights,
5 affordability, public access, safety, and security. Priority projects shall be consistent
6 with the national and local development and Investment plans.

7 The Implementing Agencies shall submit their list of PPP Projects or any update
8 thereto to the PPP Center, referred to in Section 22 of this Act, for information. Each
9 proposed PPP Project shall be subject to the approval of the appropriate Approving
10 Body.

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

13 **SEC. 7. Approval of PPP Projects.** – (a) The approval of PPP Projects under this
14 Act shall be in accordance with the following:

15 (1) *National PPP Projects.* National PPP Projects shall be approved as follows:

- 16 (i) Projects costing five billion pesos (PhP5,000,000,000.00) and below,
17 shall be submitted to the Investment Coordination Committee of the
18 National Economic and Development Authority (ICC-NEDA) for approval;
19 (ii) Projects costing above five billion pesos (PhP5,000,000,000.00) shall be
20 submitted to the NEDA Board for approval, upon favorable
21 recommendation by the ICC-NEDA.

22 The ICC-NEDA may, from time to time, update the aforementioned amounts
23 when the need arises.

24 (2) *Local PPP Projects.* Local PPP Projects shall be approved by the local
25 Sanggunians, regardless of the Project Cost, Provided, that Local PPP Projects
26 involving Government Undertakings using national government funds shall require the
27 approval of the ICC-NEDA. National Government Undertakings shall include, among
28 others, the following items to be provided by the national government to a Local PPP
29 Project: (i) Guarantees on Demand, (ii) Guarantees on Private Sector Return, (iii)
30 Guarantees on Loan Repayment; (iv) Viability Gap Funding and other forms of
31 Subsidy; (v) payment of Contingent Liability, including Termination Payments.

32 *Provided, Further,* That, permits, clearances, licenses or endorsements from
33 national government agencies required for Local PPP Projects under laws, rules, and
34 regulations, shall not be considered as Government Undertakings by the national
35 government for Local PPP Projects.

36 (b) The Approving Body shall assess all PPP Projects based on its overall
37 feasibility analysis and accord paramount importance on the affordability of user fees
38 and efficiency in public service. To ensure that all risks associated with PPP Projects

1 are managed and mitigated accordingly, all PPP contracts to be entered into by the
2 Implementing Agency shall adhere to the principles stipulated under the Generic
3 Preferred Risk Allocation Matrix (GPRAM) issued by the ICC-NEDA.

4 (c) The appropriate Approving Body shall notify and advise, in writing, the
5 Implementing Agency of its receipt and assessment of the completeness, in form and
6 in substance, of the PPP Project proposal. Upon complete submission of the
7 requirements by the Implementing Agency, the appropriate Approving Body shall
8 render its decision on the project within forty (40) working days therefrom. The
9 Implementing Agency shall be duly notified in writing of the decision of the Approving
10 Body on or before the end of the 40-day period. The failure of the appropriate
11 Approving Body to render its decision on the project within the specified period shall
12 be deemed an approval thereof and the concerned Implementing Agency may proceed
13 with the procurement of the PPP Project, without prejudice to any liability that the
14 erring or negligent officials or employees may incur under existing laws.

15 In cases of Local PPP Projects requiring national government undertakings, the
16 ICC-NEDA shall be given twenty (20) working days from the receipt of the proposal
17 for the Local PPP Project to render its decision on the requested government
18 undertaking. In the event of disapproval of the requested government undertaking,
19 the Implementing Agency has the right to resubmit the request for approval of the
20 national government undertaking in accordance with the provisions of the IRR of this
21 Act. The disapproval of the requested government undertaking shall not be construed
22 as a disapproval of the Local PPP Project.

23 (d) In order to facilitate a comprehensive and timely review of the PPP Project,
24 the PPP Center, in coordination with the ICC-NEDA, shall formulate forms and
25 templates that shall be used by the Implementing Agency and the Approving Body In
26 reviewing and approving the PPP Project, as well as the national government
27 undertaking involved in local PPP Projects.

28 (e) The decision of the appropriate Approving Body to approve and implement
29 the project under any of the contractual arrangements or variations thereof under this
30 Act shall be final and executory, unless the Implementing Agency can provide
31 sufficient justifiable reason to convert the PPP Project to another project under a
32 different procurement modality.

33 **SEC. 8. PPP Pre-qualification, Bids and Awards Committee.** – The head of the
34 Implementing Agency undertaking PPP Projects shall create a PPP Pre-qualification,
35 Bids and Awards Committee (PBAC), which shall be responsible for all aspects of pre-
36 bidding and bidding process in solicited proposals, or the comparative bidding process
37 in unsolicited proposals. The composition and specific functions of the PBAC for
38 National PPP Projects and Local PPP Projects shall be specified in the IRR of this Act,
39 which may include other relevant government entities.

1 **SEC. 9. Solicited Proposals.** – (a) Solicited Proposals refer to submissions by the
2 Private Proponent to bid for PPP Projects through open, fair, transparent, and
3 competitive public bidding initiated by the Implementing Agency. Government
4 Undertakings are allowed, subject to the approval of the Approving Body.

5 (b) *General.* The public bidding may be conducted in a single-stage or two-stage
6 bidding process, either manually or electronically, subject to the rules provided for in
7 the IRR of this Act.

8 The contract shall be awarded to the bidder who satisfied all pre-qualification
9 and eligibility requirements and has submitted the most favorable financial bid based
10 on the parameters defined in the bid documents. In all instances, affordable user fees
11 and efficient public services shall be of paramount Importance in awarding a PPP
12 contract.

13 If the winning bidder fails to comply with any post-award requirement or fails to
14 enter into a contract with the Implementing Agency, the latter may proceed to
15 consider the next technically and financially qualified bidder. In case the contract is
16 awarded to the next technically and financially qualified bidder, it shall be without
17 prejudice to legal remedies available to the Implementing Agency like forfeiture of bid
18 security, withdrawal of award, and such other remedies allowed under existing laws,
19 rules, and regulations.

20 Any change in control of the Private Proponent or composition of the consortium
21 after the submission of a solicited proposal shall be subject to the approval of the
22 Implementing Agency.

23 (c) *Failure of Bidding.* The Implementing Agency shall declare failure of bidding
24 in case of any of the following:

- 25 (1) If no bids are received; or
26 (2) If there are no complying bids.

27 The ICC-NEDA or the local Sanggunian may also declare a failure of bid if, after
28 advertisement, only one bidder applied for and met the pre-qualification requirements,
29 unless otherwise provided in this Act.

30 The procedures and mechanisms in dealing with a failure of bidding shall be
31 prescribed in the IRR of this Act.

32 (d) *Single Complying Bid.* Without prejudice to paragraph (a) of this Section, the
33 Implementing Agency may consider, on a negotiated basis, a single complying and
34 responsive bid in case of any of the following:

- 35 (1) If, after advertisement, more than one bidder applied for pre19
36 qualification but only one met the pre-qualification requirements;

1 (2) If, after advertisement, only one bidder applied for and met the pre-
2 qualification requirements, provided such was allowed by the ICC-
3 NEDA or the local Sanggunian, whichever is applicable;

4 (3) If, after pre-qualification of more than one bidder, only one submitted
5 a bid; or

6 (4) If, after pre-qualification, more than one bidder submitted bids but only
7 one is found by the Implementing Agency to be complying.

8 In any of the four (4) instances described in sub-paragraphs (1) to (4) of the
9 preceding paragraph, the Implementing Agency shall not consider negotiating with
10 the single complying and responsive bid when there is a reasonable showing of
11 collusion between or among prospective bidders or collusion between the remaining
12 bidder with the officers of the Implementing Agency or any member or officer of the
13 PBAC.

14 **SEC. 10. Unsolicited Proposals.** – (a) *General.* Unsolicited Proposals refer to
15 project proposals submitted by a Private Proponent not in response to a formal
16 solicitation or request issued by the Implementing Agency.

17 The Implementing Agency may accept, reject, or convert an unsolicited proposal
18 into a solicited proposal, subject to the evaluation of eligibility and merits of the
19 project, and other conditions set forth in this Section and the IRR of this Act.

20 (b) *Limitations.* Unsolicited proposals may be considered for projects that are not
21 in the priority list and projects that are in the priority list. *Provided,* That in case the
22 Implementing Agency has already incurred any development cost for the priority
23 project, such as the conduct of feasibility study, business case, and surveys, among
24 others, for the last five (5) years, the Private Proponent must undertake to reimburse
25 the Implementing Agency of such documented development costs. Reimbursable
26 development costs for a specific priority project shall be determined by the
27 Implementing Agency.

28 *Provided, further,* That any unsolicited proposal shall not contain any of the
29 following Government Undertakings:

- 30 (i) Viability Gap Funding and other forms of Subsidy;
- 31 (ii) Payment of Right-of-Way related costs;
- 32 (iii) Performance undertaking;
- 33 (iv) Exemption from any taxes as required by laws, except local taxes
34 imposed by local government units;
- 35 (v) Guarantee on Demand;
- 36 (vi) Guarantee on Loan Repayment;

- 1 (vii) Guarantee on Private Sector Return;
- 2 (viii) Government equity except in JV arrangements; and
- 3 (ix) Contribution of assets, properties, and rights except in JV
- 4 arrangements.

5 As an exception, items (ii) and (ix) above may be allowed if the government
6 receives appropriate compensation, which shall in no way be lower than the value of
7 the Right-Of-Way, assets, properties, and rights contributed.

8 (c) *Special Requirements.* (1) Within ten (10) working days from receipt of the
9 unsolicited proposal, the Implementing Agency shall inform the PPP Center in writing
10 of such receipt and shall furnish it with a copy of the proposal.

11 (2) Upon submission of an unsolicited proposal, the Private Proponent shall pay
12 an administrative fee to the Implementing Agency for processing of the same, subject
13 to the guidelines as may be set in the IRR of this Act.

14 (3) An unsolicited proposal involving Right-of-Way acquisition of a property,
15 whether owned or not owned by the Original Proponent, may only be considered if
16 the submission includes proof that the Original Proponent can acquire the entire
17 property it identified in the unsolicited proposal, and/or a detailed Right-of-Way and
18 resettlement plan indicating the specific assistance it needs from the government in
19 acquiring the Right-of-Way for the entire property it identified in the unsolicited
20 proposal, as may be applicable.

21 (4) Any change in control of the Original Proponent or composition of the
22 consortium after the submission of the Unsolicited Proposal shall be subject to the
23 approval of the Implementing Agency.

24 (5) In evaluating unsolicited proposals, the Implementing Agency shall use a first
25 in time approach. Under this approach, the first complete proposal is evaluated and
26 decided upon. The second complete proposal shall only be processed if the first one
27 is rejected or if there is a failure in the negotiation of the first proposal. In all instances,
28 the Implementing Agency may seek the assistance of the PPP Center in the
29 assessment, evaluation, and review of unsolicited proposals.

30 (d) *Rejection of an Unsolicited Proposal.* The Implementing Agency shall have
31 the right to automatically reject the unsolicited proposal upon receipt thereof, or
32 formally reject it after evaluation. If the Implementing Agency fails to act on an
33 unsolicited proposal within sixty (60) working days from receipt thereof, the project
34 proposal shall be deemed rejected, without prejudice to any liability that the erring or
35 negligent officials or employees may incur under existing laws.

36 In cases of automatic rejection and rejection resulting from inaction, the paid
37 administrative fee shall be returned to the appropriate Private Proponent, and shall be
38 without prejudice to the right of the Private Proponents to resubmit their proposals

1 until such time that the proposal has been formally rejected by the Implementing
2 Agency, in which case, the administrative fee shall not be returned. A formal rejection
3 is a written rejection notice to the Private Proponent stating the reason/s why the
4 submitted proposal was rejected.

5 (e) *Conversion of an Unsolicited Proposal.* The Implementing Agency may be
6 allowed to convert an unsolicited proposal to a solicited proposal, subject to the
7 conditions set forth in the IRR of this Act. If the Implementing Agency converts an
8 unsolicited proposal and uses it as basis for public bidding, the Private Proponent shall
9 be reimbursed of the cost incurred in the preparation of the proposal, such as the cost
10 of any feasibility study undertaken: *Provided,* That such reimbursement shall be in an
11 amount not exceeding six percent (6%) of the total Project Cost, excluding the cost
12 of right-of-way acquisition: *Provided, further,* that reimbursement shall be paid in full
13 by the winning bidder as a requirement for the award of the contract, or by the
14 Implementing Agency in case of two consecutive failures of bidding. In the event the
15 original Private Proponent wins the solicited bid, it shall return to the Implementing
16 Agency the reimbursed amount. The PPP Governing Board, as referred to in Section
17 23 of this Act, may adjust such reimbursement amount as the need arises.

18 (f) *Acceptance of an Unsolicited Proposal.* If the Implementing Agency accepts,
19 on a negotiated basis an unsolicited proposal, it shall grant the Private Proponent who
20 submitted the unsolicited proposal an "Original Proponent" status, which shall be valid
21 for a period not exceeding one (1) year, and may be extended by the head of the
22 Implementing Agency; *Provided,* That such extension shall not exceed a period of one
23 (1) year.

24 (g) *Comparative Challenge.* The Implementing Agency shall publish an invitation
25 for the submission of comparative proposals.

26 The comparative challenge shall be conducted either manually or electronically,
27 by the Implementing Agency within the period proposed by it and approved by the
28 appropriate Approving Body, taking into consideration the nature and complexity of
29 the PPP Project; *Provided,* that the period shall start from the date of last publication
30 of the invitation for the submission of comparative proposals and shall be reasonable,
31 fair, and upholds the competitive nature of public bidding. Comparative proposals shall
32 be evaluated based on the best-and-final offer method and the bid bonus system, the
33 procedure of which shall be discussed in the IRR.

34 If no other proposal is received after the challenge period, the PPP contract shall
35 be awarded to the Original Proponent.

36 **SEC. 11. Protest Mechanism.** – In all stages of the procurement process, the
37 following protest protocol shall be strictly followed:

38 (a) In case of National PPP Projects:

1 (i) Decisions of the PBAC may be questioned by filing a motion for
2 reconsideration within fifteen (15) working days from receipt thereof. The PBAC shall
3 act on the motion and render a decision within thirty (30) calendar days, otherwise it
4 shall be deemed denied.

5 (ii) The decision of the PBAC on the motion for reconsideration in the
6 immediately preceding paragraph may be further questioned by filing an appeal to the
7 head of the Implementing Agency concerned, and paying a non-refundable appeal fee
8 in an amount equivalent to no less than ½ of 1% of the Project Cost within fifteen
9 (15) working days from receipt thereof. The head of the Implementing Agency shall
10 act on the appeal and render a decision within thirty (30) calendar days, otherwise it
11 shall be deemed denied. The PPP Governing Board may adjust the appeal fee as the
12 need arises.

13 If the head of the Implementing Agency in the immediately preceding
14 paragraph is not a Department Secretary, the decision of the head of the
15 Implementing Agency may be further questioned by filing an appeal to the Secretary
16 of the Department to which the Implementing Agency is attached within fifteen (15)
17 working days from receipt thereof. The Department Secretary shall act on the appeal
18 and render a decision within thirty (30) calendar days, otherwise it shall be deemed
19 denied.

20 (iii) The decision of the Department Secretary in the immediately
21 preceding paragraph may be questioned by filing an appeal to the Office of the
22 President within fifteen (15) working days from receipt thereof. If, within sixty (60)
23 calendar days, the Office of the President does not act on the appeal, the same is
24 deemed denied.

25 (b) In the case of Local PPP Projects:

26 (i) Decisions of the PBAC may be questioned by filing a motion for
27 reconsideration within seven (7) calendar days from receipt thereof. The PBAC shall
28 act on the motion and render a decision within thirty (30) calendar days, otherwise it
29 shall be deemed denied.

30 (ii) The decision of the PBAC on the motion for reconsideration in the
31 immediately preceding paragraph may be further questioned by filing an appeal to the
32 local chief executive or his authorized representative concerned within seven (7)
33 calendar days from receipt thereof, and paying a non-refundable appeal fee in an
34 amount equivalent to no less than ½ of 1% of the Project Cost.

35 The local chief executive shall resolve the appeal within thirty (30) calendar
36 days from receipt thereof, otherwise it shall be deemed denied. The selection process
37 will be suspended for a maximum period of thirty (30) calendar days while the appeal
38 is being evaluated. The decision of the local chief executive or his authorized
39 representative on the appeal shall be final and immediately executory.

1 Unless otherwise provided in this Act, in no case shall a motion for
2 reconsideration or an appeal from any decision by the PBAC, Head of Implementing
3 Agency, or Department Secretary stay or delay the bidding process. No award shall
4 however be made until a decision on any pending appeal is rendered, or deemed
5 denied.

6 **SEC. 12. Adoption of Contract Management and Risk Mitigation Plans in PPP**
7 *Projects.* – In order to manage the fiscal risks arising from PPP Projects, strengthen
8 the credibility of the PPP program and projects among the private sector, and to
9 ensure the timely compliance with the contractual obligations of Implementing
10 Agencies, projects undertaken shall require the adoption of a contract management
11 and risk mitigation plan (CMRMP). The CMRMP shall contain the agreed project
12 execution plan and risk mitigation plans of the contractual parties, which shall ensure
13 that value for money derived from undertaking a PPP Project shall not be diminished
14 and that all risks are mitigated, to avoid contingent liabilities from being realized. All
15 CMRMPs shall be submitted to the PPP Center for monitoring. The procedures in
16 creating, managing, and monitoring the CMRMP shall be prescribed in the IRR.

17 **SEC. 13. Project Supervision, Monitoring, and Impact Evaluation.** – Every PPP
18 Project shall be implemented in accordance with the project terms as approved by the
19 appropriate Approving Body, as well as the signed PPP contract. The coverage of the
20 project terms and the minimum required provisions in a PPP contract shall be set forth
21 in the IRR of this Act. The Implementing Agency shall be entitled to exercise sufficient
22 powers of supervision, monitoring, and control over the implementation of each PPP
23 contract it has entered into.

24 (a) *Supervision.* The Implementing Agency shall be responsible for the overall
25 supervision of the PPP Project and for submission of periodic monitoring reports,
26 executed under oath, to the appropriate oversight agencies. The approval by any
27 public officer of any certificate of compliance or certificate of completion that is
28 submitted by the Private Proponent shall also be made under oath. The liability of the
29 public officer or former public officer for any criminal act under existing pertinent laws
30 related to the actions made on such reports and such approvals shall survive the
31 retirement of the public officer, the termination of the project contract, and the lapse
32 of the applicable warranty period/s.

33 (b) *Monitoring.* The PPP Governing Board shall set the framework for
34 monitoring of the compliance of the parties to PPP contracts.

35 The PPP Center shall be responsible for the coordination and monitoring of
36 projects implemented under this Act. For this purpose, the Implementing Agency shall
37 submit to the PPP Center all executed PPP contracts, information on the status of
38 projects implemented by, as well as copies of all unsolicited proposals and related
39 documents received by, the former. At the end of every calendar year, the PPP Center
40 shall submit a report to the President of the Philippines and to the Congress of the

1 Philippines – particularly to the Senate President and the Speaker of the House of
2 Representatives, and the Chairpersons of the Committee on Public Works – on the
3 progress of all projects implemented under this Act.

4 (c) *Impact Evaluation.* As the primary socio-economic policy think tank of the
5 national government, the Philippine Institute for Development Studies (PIDS) is
6 hereby mandated to conduct periodic impact evaluation studies of PPP Projects
7 implemented under this Act. The results of these studies shall be submitted to the PPP
8 Governing Board, the PPP Center, and other relevant oversight agencies.

9 **SEC. 14. *Investment Incentives.*** – PPP Projects undertaken through this Act
10 shall be entitled to various incentives under applicable laws and existing policies of the
11 government.

12 **SEC. 15. *Investment Recovery Scheme.*** – In undertaking PPP Projects, the
13 Private Proponent shall be allowed to recover its investments and earn profit through
14 any of the following schemes or a combination thereof:

15 (a) *Revenue-based* – refers to a scheme where the Private Proponent is
16 authorized to charge and collect, in whole or in part, from the public reasonable user
17 fees or tariffs subject to appropriate regulation in accordance with Section 16 of this
18 Act. Where applicable, the Private, Proponent may likewise be repaid in the form of a
19 share in the revenue of the project; and

20 (b) *Availability-based* – refers to a scheme where the Implementing Agency
21 commits to make predetermined payments, which do not take the form of charges
22 paid by the users of the works or of the service, but of regular payments by the
23 Implementing Agency based on contractually-defined performance delivery.

24 Other non-monetary payments, such as commercial development rights, or the
25 grant of a portion or percentage of the reclaimed land, subject to the constitutional
26 requirements on land ownership, may also be allowed to supplement the foregoing
27 schemes.

28 The framework and mechanism in determining the allowable return of the Private
29 Proponent on a PPP Project shall be prescribed in the IRR of this Act.

30 **SEC. 16. *Regulation.*** – All PPP Projects shall be subject to regulation by the
31 appropriate regulatory body or by contract In the absence of the former.

32 **SEC. 17. *Variation, Expansion, or Extension of an Existing PPP Project.*** – A
33 contract variation or extension, or an expansion or extension of an existing PPP Project
34 may be allowed by the Implementing Agency, subject to the rules and procedures as
35 provided in the IRR of this Act: *Provided*, That upon prior approval by the Approving
36 Body, the Private Proponent of an existing PPP Project may be allowed to expand or
37 extend the same even without further bidding: *Provided*, That the cost thereof shall
38 not exceed twenty-five percent (25%) of the price-adjusted original approved Project

1 Cost: *Provided, further*, That any subsequent expansion or extension shall no longer
2 be allowed, and such shall be considered a new project and shall be tendered
3 accordingly.

4 Application for contract variation or extension, or expansion or extension of an
5 existing PPP Project shall be governed by existing laws, decrees, orders, rules and
6 regulations at the time of application.

7 **SEC. 18. Divestiture/Divestment.** – Subject to the approval of the head of the
8 Implementing Agency, a Private Proponent may divest its ownership, rights, or interest
9 In a PPP Project: *Provided*, That the divestiture shall be after a holding or lock-in
10 period as indicated in the PPP contract: *Provided further*, That the new Private
11 Proponent has equal or better qualifications as with the previous Private Proponent.

12 The Implementing Agency may divest its ownership, rights, or interest in a
13 project: *Provided*, That projects which involve full or partial divestment or transfer of
14 ownership of government assets or properties shall be subject to approval of the
15 appropriate Approving Body and applicable laws, decrees, orders, rules and
16 regulations.

17 **SEC. 19. Contract Termination.** – If a PPP contract is revoked, cancelled, or
18 terminated prior to its completion, either contracting party shall compensate the other
19 party pursuant to terms as defined in the PPP contract. Depending on the contractual
20 stipulations, the grounds for contract termination which would warrant the right of
21 compensation may include, but are not limited to, default, insolvency, unlawful
22 divestment or divestiture, or other unlawful acts, by the Private Proponent or by the
23 government.

24 **SEC. 20. Wind-up and Transfer Measures.** – All PPP contracts shall provide for
25 wind-up and transfer measures. Such provision shall include, among others, the
26 following:

- 27 (a) Mechanisms and procedures for the transfer of assets to the Implementing
28 Agency;
- 29 (b) The transfer, of technology required for the operation of the PPP Project, subject
30 to limitations under existing laws, rules and regulations;
- 31 (c) The training of the personnel of the Implementing Agency or of a successor in
32 the operation and maintenance of the PPP Project;
- 33 (d) The provision, by the Private Proponent, of a warranty that the PPP Project meets
34 the project technical specifications, agreed system features, and performance
35 standards and services for a certain period as may be defined in the IRR of this
36 Act after the transfer of the PPP Project to the Implementing Agency or to a
37 successor; and

1 (e) In case of JV Projects, the compensation to which the Private Proponent may be
2 entitled in case of buy-out and transfer of assets to the Implementing Agency,
3 or to a successor.

4 **SEC. 21.** *Prohibition on the issuance of Temporary Restraining Orders,*
5 *Preliminary Injunctions and Preliminary Mandatory Injunctions.* – No temporary
6 restraining order, preliminary injunction, or preliminary mandatory injunction shall be
7 issued by any court, except the Supreme Court, against any Implementing Agency or
8 the PPP Center, 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
10 following acts:

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

23 This prohibition shall apply in all cases, disputes or controversies instituted by
24 any person, including, cases filed by bidders or those claiming to have rights through
25 such bidders. This prohibition shall not apply when the matter is of extreme urgency
26 involving a constitutional issue, such that unless a temporary restraining order is
27 issued, grave injustice and irreparable injury will arise.

28 In addition to any civil and criminal liabilities a judge may incur under existing
29 laws, any judge who shall issue a temporary restraining order, preliminary injunction
30 or preliminary mandatory injunction in violation of this Section, shall suffer the penalty
31 of suspension of at least sixty (60) days without pay.

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

35 **SEC. 22.** *PPP Center.* - To achieve the goals of this Act, the PPP Center created
36 under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136,
37 series of 2013, is hereby institutionalized. It is hereby authorized to adopt its current

1 organizational structure, absorb its existing employees, and upgrade its human
2 resource component, as may be necessary, subject to evaluation and approval by the
3 DBM.

4 In order to work towards a more efficient and effective performance of its
5 mandate, the PPP Center shall have the following powers and functions:

- 6 (a) Assist Implementing Agencies in identifying, developing, prioritizing, and
7 maintaining a pipeline of PPP Projects;
- 8 (b) Provide advisory services, technical assistance, trainings, and capacity
9 development to Implementing Agencies, Approving Bodies, and other oversight
10 agencies in all PPP-related matters, and act as a procurement agent upon the
11 request of the Implementing Agency;
- 12 (c) Manage and administer the Project Development and Monitoring Facility (PDMF)
13 as provided in Section 24 of this Act;
- 14 (d) Recommend plans, policies, and implementation guidelines related to PPP, in
15 consultation with appropriate oversight committees or agencies. Implementing
16 Agencies, private sector and other relevant stakeholders;
- 17 (e) Ensure sustainability of the implemented PPP program and projects through
18 monitoring, documenting, and sharing the lessons learned and best practices to
19 Implementing Agencies and appropriate oversight committees or agencies;
- 20 (f) Provide regular monitoring and status reports on the implementation of all PPP
21 programs and projects entered into by Implementing Agencies, including
22 potential public interest concerns and violations of the PPP Act, to the Office of
23 the President, the Congress of the Philippines, relevant oversight committees
24 and agencies, and publish the same in the official website of the PPP Center;
- 25 (g) Promote and market the implemented PPP programs and projects, in
26 collaboration with other government investment promotion agencies;
- 27 (h) Review PPP contracts and issue advisory opinions relating to PPPs, including how
28 the PPP Act and its IRR shall be implemented;
- 29 (i) Serve as the central repository of all PPP Project documents, including all
30 executed PPP contracts and any subsequent amendment or supplement thereto,
31 including settlement agreements, entered into by Implementing Agencies;
- 32 (j) Act as Secretariat to the PDMF Committee and the PPP Governing Board;
- 33 (k) Perform such other functions as may be necessary to achieve the objectives and
34 purposes of this Act.

35 The PPP Center shall report directly to the PPP Governing Board and shall be
36 attached to the National Economic and Development Authority (NEDA) for purposes
37 of policy and program coordination.

1 The PPP Center shall be headed by an Executive Director with the rank equivalent
2 to an Undersecretary, who shall be appointed by and co-terminus with the President
3 of the Philippines. The Executive Director shall perform the following functions:

- 4 (a) Undertake the day-to-day management and supervise the operations of the PPP
5 Center;
- 6 (b) Recommend to the PPP Governing Board such policies and measures which are
7 deemed necessary for the effective exercise and discharge of the powers and
8 functions of the PPP Center;
- 9 (c) Sit as a non-voting member of the PPP Governing Board, INFRACOM, and ICC-
10 NEDA; resource person/observer in the NEDA Board on PPP matters; and as a
11 member of other inter-agency bodies in cases where PPPs are concerned; and
- 12 (d) Perform such other functions as may be assigned by the PPP Governing Board.

13 **SEC. 23. PPP Governing Board.** – The PPP Governing Board, created under
14 Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is
15 hereby institutionalized. It shall be the overall policy-making body for ail PPP-related
16 matters, including the PDMF. It shall be responsible for setting the strategic direction
17 of PPP programs and projects and in creating an enabling policy and institutional
18 environment for PPP.

19 The Board shall be composed of the following:

- 20 (a) The Secretary of Socio-Economic Planning as Chairperson;
- 21 (b) The Secretary of Finance as Vice-Chairperson;
- 22 (c) The Secretary of Budget and Management;
- 23 (d) The Secretary of Justice;
- 24 (e) The Secretary of Trade and Industry;
- 25 (f) The Executive Secretary;
- 26 (g) The Secretary of Interior and Local Government;
- 27 (h) The Executive Director of the PPP Center, as non-voting member; and
- 28 (i) Any one of the two (2) private sector representatives of the Ease of Doing
29 Business and Anti-Red Tape Advisory Council.

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

33 The presence of the Chairperson and four (4) other members of the Board shall
34 constitute a quorum and a majority vote of the members present shall be necessary
35 for the adoption of any issuance, order, resolution, decision or other act of the Board

1 in the exercise of its functions. The Board shall act as a collegial body. In the conduct
2 of meetings, the Chairperson shall not vote except to break a tie.

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

5 **SEC. 24. *Project Development and Monitoring Facility.*** – (a) The PDMF is hereby
6 established and shall be used for the procurement of advisory and support services
7 related to the preparation, structuring, probity management, procurement, financial
8 close, project evaluation, and monitoring of implementation of PPP Projects, in
9 accordance with the relevant provisions of Republic Act No. 9184 or the Government
10 Procurement Reform Act and its Implementing Rules and Regulations.

11 (b) The PDMF referred to under EO No. 8, series of 2010, as amended by EO
12 No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF
13 may be funded through and such amount as may be needed and included in the
14 general appropriations act, official development assistance, or other sources.

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

20 A PDMF Committee is hereby created which shall approve applications for PDMF
21 support submitted by the Implementing Agencies.

22 The PDMF Committee shall be composed of: (1) the Secretary of Socio24
23 Economic Planning as chairperson; (2) the Secretary of Finance, (3) the Secretary of
24 Budget and Management, and (4) the Executive Director of the PPP Center, as
25 members. The PPP Center shall serve as the Secretariat for the PDMF Committee.

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

29 **SEC. 25. *Creation of a Risk Management Fund.*** – To ensure fiscal sustainability
30 and negotiate better financing terms of PPP Projects, there is hereby created a PPP
31 Risk Management Fund to be used for the payment of contingent liabilities arising
32 from PPPs in accordance with its contract terms.

33 The target amount in the PPP Risk Management Fund is to be determined by the
34 Development Budget Coordination Committee (DBCC) using risk-adjusted methods or
35 such other means that estimate the exposure of the Government of the Philippines to
36 PPP contingent liabilities.

37 The PPP Risk Management Fund shall be funded from the following sources:

38 (a) Concession fees;

- 1 (b) Implementing Agency reimbursements;
- 2 (c) Interest earnings from the PPP Risk Management Fund; and
- 3 (d) National government contributions.

4 National government contributions shall cover only the difference between the
5 target amount of the PPP Risk Management Fund, as mentioned above, and the
6 current value of the fund. The DOF shall regularly monitor and review the viability of
7 the PPP Risk Management Fund in relation to the magnitude of PPP Projects
8 undertaken by Government, and if necessary, recommend the increase in the target
9 amount of the PPP Risk Management Fund and the reason therefor. All national
10 government contributions to the PPP Risk Management Fund shall be included in the
11 proposed DOF budget.

12 When the value of the PPP Risk Management Fund is in excess of the target
13 amount, excess funds may be transferred to the general fund of the national
14 government. The agency implementing PPP Projects must seek confirmation from the
15 DOF that the national government can bear the additional contingent liabilities
16 associated with the project taking into consideration fiscal sustainability.

17 Further, to foster accountability and efficiency in implementing PPP Projects, it
18 is mandatory for implementing agencies to enter into a recourse agreement with the
19 DOF before any payment can be drawn from the PPP Risk Management Fund for
20 contingent liabilities that have materialized within contract terms.

21 The Bureau of the Treasury shall maintain the PPP Risk Management Fund in the
22 Treasury Single Account. Interest earnings therefrom shall accrue to the PPP Risk
23 Management Fund. Notwithstanding the establishment of this fund, the government
24 may still provide an un-programmed appropriation for unforeseen risks that the
25 government may incur from PPP Projects.

26 To monitor such government obligations on liabilities that have materialized and
27 other unforeseen risks that may arise from PPP Projects; and to develop the guidelines
28 to access the PPP Risk Management Fund, the inter-agency technical working group
29 created under DBCC Resolution No. 2015-2, is hereby institutionalized.

30 The procedures and mechanisms in managing the PPP Risk Management Fund
31 shall be prescribed in the IRR of this Act.

32 In the case of Local PPP Projects, a similar PPP Risk Management Fund may be
33 established by the LGU. The details pertaining to maintaining and administering such
34 fund shall be provided in the IRR of this Act. Sources of the fund may include the
35 budget of the LGU and the income of the LGU from PPP Projects

36 **SEC. 26. *Establishment of a PPP Unit.*** – Each concerned Implementing Agency
37 shall organize a PPP unit headed by a senior official, who shall be responsible for
38 planning, overseeing, and monitoring PPP Projects of the Implementing Agency. In

1 the case of LGUs undertaking PPP Projects, the local chief executive shall organize
2 such PPP unit.

3 The PPP units may include as members, among others, technical and legal
4 personnel who are knowledgeable on the technical and legal aspects, respectively, of
5 the PPP Projects. The rules on membership and specific functions of which shall be
6 identified in the IRR of this Act.

7 **SEC. 27. Safekeeping and Public Disclosure of Contracts.** – Copies of all PPP
8 contracts executed under this Act shall be considered and appropriately kept safe and
9 preserved as public documents. Except those provisions in the contract which are
10 proprietary, or may pose threats to national security or public safety, the procedures
11 for the disclosure of such documents shall be consistent with existing policies, laws,
12 decrees, orders, rules and regulations, including the IRR of this Act. The Implementing
13 Agency and the PPP Center shall publicly make available copies of PPP contracts
14 through their respective websites, unless otherwise prohibited by existing laws, rules
15 and regulations, including national security and public safety concerns.

16 **SEC. 28. Miscellaneous Provisions.** – (a) *Mitigation of Interconnectivity and*
17 *Interface Risks.* – All PPP Projects which will interconnect or interface with a local or
18 national facility, shall be required to submit a Memorandum of Agreement (MOA)
19 containing an interconnection/interface plan agreed upon by all relevant parties. For
20 National PPP Projects, said MOA shall be submitted to the ICC3 NEDA; while for Local
21 PPP Projects, said MOA shall be submitted to the local Sanggunian.

22 (b) *Issuance of Franchise.* Subject to the provisions of the Constitution and other
23 existing laws, rules and regulations, once a PPP contract is executed by the Private
24 Proponent and the Implementing Agency, a presumption arises that the public interest
25 will be served by the implementation of the PPP Project covered thereby, and
26 immediately upon application by the Private Proponent, the regulator shall
27 automatically grant in favor of the Private Proponent a franchise to operate the facility
28 and collect the tolls, fees, rentals, and other charges stipulated under the PPP contract.

29 (c) *Standardization of Required Endorsements, Permits, and Licenses for PPP*
30 *Projects.* All relevant government and regulatory agencies, bodies, institutions and
31 LGUs, shall, in coordination with the PPP Center, adopt standard timelines and
32 requirements for the issuance of relevant endorsements, approvals, and permits for
33 PPP Projects.

34 (d) *Real Property Tax for PPPs.* The DOF shall issue the guidelines on real
35 property tax valuation of PPP Projects to ensure uniform and consistent
36 implementation among all LGUs. All real properties which are actually, directly, and
37 exclusively used for a Greenfield PPP Project shall be exempted from the payment of
38 real property taxes during the period of construction and until such time the facility is

1 used or operational, whether partial or full. The details of the exemption shall be
2 prescribed in the IRR of this Act.

3 (e) *Exemption from Payment of Transfer Taxes.* For all PPP Projects, the transfer
4 of ownership of the PPP Project to the Implementing Agency shall be exempt from
5 capital gains tax, documentary stamp tax, donor's tax, and all taxes and fees, whether
6 from national or local, related to the transfer thereof.

7 (f) *Mandatory Inclusion of Dispute Avoidance and Alternative Dispute Resolution*
8 *Mechanisms in PPP Contracts.* All PPP contracts shall include provisions on the use of
9 dispute avoidance and Alternative Dispute Resolution (ADR) mechanisms. The
10 contracting parties shall be given complete freedom to choose which ADR mechanisms
11 and venue shall govern their dispute, as well as the rules or procedures to be followed
12 involving the same.

13 (g) *Conflict of Interest.* Conflict of interest shall be prohibited at all times in the
14 interpretation and implementation of this Act. Conflict of interest, which refers to any
15 act or omission tending to oppose or disrupt the faithful performance of one's duty or
16 mandate, shall include personal, pecuniary, and regulatory conflicts of Interests:
17 *Provided,* That no national Implementing Agency shall implement a PPP Project that
18 it regulates; *Provided further,* That any regulatory agency or body which implements
19 a PPP Project shall adopt a conflict mitigation and management plan.

20 (h) *Alternative Sources of Financing.* In addition to Private Proponent equity and
21 debt, alternative financial instruments such as Green Financing, corporate or project
22 bonds and securities, and other forms of capital market financing may be allowed for
23 PPP Projects, subject to the approval of relevant regulatory bodies for such
24 instruments under existing laws, rules, and regulations.

25 (i) *Private Legal and Medical Assistance.* All the PPP PBAC members and other
26 public officials providing services to the PPP PBAC shall be authorized to engage the
27 services of private lawyers, or shall be provided with free legal assistance, where a
28 civil, criminal, or administrative action is filed against them by reason of the
29 performance of their official functions or duties, unless they are finally adjudged in
30 such action or proceeding to be liable for gross negligence or misconduct or grave
31 abuse of discretion. The PPP PBAC members shall also be entitled to medical
32 assistance for injuries incurred in the performance of their functions.

33 (j) *Preferential Hiring of Filipino Workers.* For the construction stage of
34 infrastructure facilities where the Contractor is a foreigner, Filipino labor shall be
35 employed or hired in the different phases of construction where Filipino skills are
36 available.

37 (k) *Safeguard Mechanisms to Protect Public Interest.* In order to improve
38 transparency and to promote bankability and social acceptability of PPP Projects, the
39 following mechanisms shall be observed: (1) Whenever applicable, the Implementing

1 Agency shall assess the affordability of fee or tariff, and conduct a willingness-to-pay
2 survey among the users of the infrastructure facility; (2) The Implementing Agency
3 shall conduct public consultation or dialogue with all potential stakeholders, the details
4 of which shall be threshed out in the IRR; and (3) The Implementing Agency and the
5 PPP Center shall post in their respective websites the approved starting fare or user
6 fee in a PPP Project as well as the approved parametric formula on fare increases or
7 adjustments, if applicable.

8 **SEC. 29. *Implementing Rules and Regulations.*** – The IRR Committee shall be
9 composed of representatives from the NEDA, DOF, DBM, DPWH, DOTr, DILG, DOJ,
10 DTI, DENR, Office of the President, PPP Center, and Private Sector Representatives
11 and other agencies, as may be identified by the PPP Governing Board. Within forty
12 (40) working days from the effectivity of this Act, the PPP Center shall formulate and
13 prescribe, in consultation with the IRR Committee, after public hearing and publication
14 as required by law, the rules and regulations to implement the provisions of this Act.
15 The IRR shall be approved by the PPP Governing Board.

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

20 **SEC. 30. *Administrative, Civil, and Penal Sanction.*** – Any person, whether
21 private individual or public officer or employee, who commits any of the prohibited
22 acts hereunder proscribed, shall be punished by imprisonment from a minimum of
23 three (3) years to a maximum of six (6) years.

24 The following acts shall be prohibited:

- 25 (a) Downgrading the category of the Project Cost for purposes of evading the
26 required approvals under this Act;
- 27 (b) Representation that the Private Proponent has the necessary capitalization to
28 commence, complete, and implement the PPP Project when the same is false in
29 material respects;
- 30 (c) Falsification or insertion of certain provisions in the execution copy of the
31 contract which are materially and substantially different from the approved final
32 draft contract;
- 33 (d) Any violation of Sections 7, 9,10,11,17,18, 28(g) under this Act; and
- 34 (e) A public officer or employee, whether in connivance with others or acting alone,
35 negligently or by fraud commits a failure to ensure compliance with the project
36 terms as approved by the Approving Body, and the signed PPP contract, by
37 approving, issuing, or confirming any certification, required documents, or

1 deliverables of the Private Proponent, which are non-compliant with existing
2 rules, erroneous, not authentic, or fraudulent.

3 In addition, such acts committed by the Private Proponent and its concerned
4 officers shall cause the rescission of its contract for the said PPP Project without
5 compensation and shall be perpetually disqualified from participating in any bidding
6 or other contractual arrangement for any government project. This is without
7 prejudice to any other civil or administrative liability that erring officials or Private
8 Proponents may incur.

9 The liability of the public officer or employee or former public officer or employee
10 for any violation of the prohibitions under this Act shall survive the retirement of said
11 public officer or employee, and shall include the prohibition for the erring officer to
12 hold public office, either as an elected, or an appointed government official on any
13 local or national position, and to act as a consultant for the Philippine Government,
14 the termination of the project contract, and the lapse of any applicable warranty
15 period/s.

16 **SEC. 31. *Accountability in PPP Projects.*** – The head of the concerned
17 Implementing Agency shall at all times be accountable to PPP Projects undertaken
18 through this Act. The Private Proponent shall likewise be held accountable for the
19 works it has delivered and services it has rendered for a PPP Project. All PPP contracts
20 are hereby required to clearly define the scope of each party's accountability under
21 the PPP contract.

22 To further promote accountability in PPP Projects, the Commission on Audit
23 (COA) shall have visitorial power, as defined in the 2009 Revised Rules of Procedure
24 of the COA and any amendments thereto, over PPP Projects. This power shall include
25 determining whether the contribution or share of the Implementing Agency in the PPP
26 Project is being allocated and utilized according to its intended purpose, and if the
27 Implementing Agency is getting its rightful share from the revenues generated, as
28 may be applicable. The COA shall also have visitorial jurisdiction over compliance to
29 conditions, requirements, and processes set forth under this Act. To this end, the COA,
30 in consultation and coordination with the PPP Center, shall promulgate the necessary
31 framework and guidelines on auditing PPP Projects.

32 **SEC. 32. *Joint Congressional Oversight Committee.*** – A Joint Congressional
33 Oversight Committee is hereby created to oversee the implementation of this Act. The
34 Committee shall be composed of five (5) members each from the Senate and House
35 of Representatives to be designated by the Senate President and the Speaker of the
36 House of Representatives, respectively. The Committee shall be jointly chaired by the
37 respective Chairpersons of the House Committee on Public Works and Highways, the
38 House Committee on Appropriations, the Senate Committee on Public Works, and the
39 Senate Committee on Finance.

1 **SEC. 33. *Transitory Clause.*** – The provisions of this Act shall apply to all PPP
2 Projects except: (a) all projects wherein a PPP contract between the winning Private
3 Proponent and the Implementing Agency concerned has been executed prior to
4 effectivity of this Act; and (b) all projects undertaken through competitive selection
5 wherein the bid/s have already been opened prior to the effectivity of this Act. For
6 PPP Projects not covered under items (a) and (b) above, this Act shall govern, provided
7 that this Act shall not, in any manner, operate to impair vested rights already accruing
8 to a party.

9 All unexpended funds for the calendar year, properties, equipment, contracts
10 and records of the PPP Center are hereby retained. The amount necessary to carry
11 out the organizational changes of the PPP Center provided in this Act shall be
12 determined by the PPP Governing Board. Appropriations for succeeding years shall be
13 incorporated in its budget proposals, subject to the existing budgeting rules and
14 regulations.

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

17 **SEC. 34. *Separability Clause.*** – If any portion or provision of this Act is declared
18 unconstitutional, the remainder of this Act or any provision not affected thereby shall
19 remain in force and effect.

20 **SEC. 35. *Repealing Clause.*** – The following are hereby repealed:

- 21 (a) Republic Act No. 6957, as amended by Republic Act No. 7718 (An Act Authorizing
22 the Financing, Construction, Operation and Maintenance of Infrastructure
23 Projects by the Private Sector, and for other purposes);
- 24 (b) Executive Order No. 8, s. 2010, as amended by Executive Order No. 136, s. 2013
25 (Reorganizing and Renaming the Build-Operate And Transfer (BOT) Center to
26 the Public-Private Partnership (PPP) Center of the Philippines and Transferring
27 its Attachment from the Department of Trade and Industry to the National
28 Economic and Development Authority and for other purposes);
- 29 (c) Executive Order No. 78, s. 2012 (Mandating the Inclusion of Provisions on the
30 Use of Alternative Dispute Resolution Mechanisms in All Contracts Involving
31 Public-Private Partnership Projects, Build-Operate and Transfer Projects, Joint
32 Venture Agreements Between the Government and Private Entities and those
33 Entered into by Local Government Units);
- 34 (d) Section 8 of Executive Order No. 423, s. 2005 (Repealing Executive Order No.
35 109-A Dated September 18, 2003 Prescribing the Rules and Procedures on the
36 Review and Approval of All Government Contracts to Conform with Republic Act
37 No. 9184, Otherwise Known as "*The Government Procurement Reform Act*");

1 (e) 2013 Revised Guidelines and Procedures for Entering Into Joint Venture
2 Agreements Between Government and Private Entities; and

3 (f) PPP Codes and Joint Venture Guidelines issued by LGUs and GOCCs.

4 All other laws, decrees, orders, rules and regulations, and all other related
5 national and local issuances or parts thereof inconsistent with this Act are hereby
6 repealed or amended accordingly

7 **SEC. 36. Effectivity.** – This Act shall take effect after fifteen (15) days following
8 the completion of its publication either in the Official Gazette or in a newspaper of
9 general circulation in the Philippines.

Approved,