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SENATE

S. No. 1344

RECEIVED BY: _____

Introduced by Senator Loren B. Legarda

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

EXPLANATORY NOTE

In the 2022 State of the Nation Address (SONA), President Ferdinand Marcos, Jr. emphasized the need to encourage the participation of the private sector in the development of infrastructure development and innovation.

To revive and promote Public-Private Partnerships (PPPs), it is crucial to revisit Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the "Built-Operate-Transfer" (BOT) law or "An Act Authorizing the Financing, Construction, Operation, and Maintenance of Infrastructure Projects by the Private Sector."

To encourage private sector participation, this bill seeks to reinforce the PPP Program by creating an enabling environment for PPPs where the ease of doing business is enhanced; the cost of doing business is reduced; financial incentives for private partners are augmented; the governing rules are set to be straightforward, fair, and systematic; transparent and competitive bidding and selection are increased; rules and guidelines on unsolicited proposals are established; investments are more secured; and parties are expanded to include joint ventures.

In protecting the interests of the consumers under the proposed measure, fair and reasonable pricing is emphasized to ensure the affordability of user fees; public consultation

or dialogues with potential stakeholders and a willingness-to-pay survey among the users of the infrastructure facility shall be conducted by implementing agencies; and mechanisms for the timely delivery of efficient and accessible public services and quality infrastructure are outlined.

To accelerate infrastructure development, the bill proposes that PPP projects shall not be subject to judicial reliefs such as Temporary Restraining Order (TRO), Preliminary Injunction, and Preliminary Mandatory Injunction, except those issued by the Supreme Court.

The bill also takes into account the full public disclosure of all PPP transactions; transparency in unsolicited proposals; conversion of the unsolicited proposal into a solicited proposal and thereafter use it as a basis for competitive bidding; prohibition on conflict of interest such that no Implementing Agency shall be allowed to implement a PPP Project that it regulates; mandatory inclusion of dispute avoidance and alternative dispute resolution mechanisms in PPP contracts; provision of protest mechanisms in all stages of procurement process of both national and local PPP projects.

Other salient features of the bill include the institutionalization of the Public-Private Partnership Center, which shall be primarily responsible for giving Congress and the public pertinent information on PPP projects; the empowerment of local government units (LGUs) by giving them the power to approve local PPP projects; the creation of a Risk Management Fund (RMF) to be used for the payment of contingent liabilities arising from PPPs.

In view of the foregoing, the passage of this bill is earnestly sought.



LOREN LEGARDA

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

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

1 Section 1. Title. - This Act shall be known as the "Public-Private Partnership
2 (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 for 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 the costs of doing
11 business.

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

17 The State shall pursue a policy of maintaining a reasonable balance on the

1 financing of infrastructure and other development projects through all means
2 available that will most effectively meet the objectives of the government. These may
3 include appropriations, official development assistance, and PPPs, as well as
4 combinations thereof. The government shall determine the appropriate financing by
5 considering budget availability, timelines, stakeholder commitments, and market
6 capacity.

7 Finally, it is declared that the State shall affirm open, fair, transparent, and
8 competitive selection as the central tenet for securing private investment in PPP
9 Projects. It shall implement a policy of full public disclosure of all its transactions
10 involving public interest, subject to terms and conditions as prescribed by pertinent
11 laws.

12 Sec. 3. *Scope and Application.* - This Act shall apply to all PPP Projects
13 undertaken by Implementing Agencies, through PPP contracts with a Private
14 Proponent, including Joint Ventures, as defined under this Act. It shall likewise apply
15 to and be enforceable among all parties to said PPP contracts.

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

18 Sec. 4. *Definition of Terms.* - As used in this Act:

- 19 a. *Approving Body* - refers to an entity authorized to approve PPP Projects
20 in accordance with Section 7 of this Act;
- 21 b. *Construction* - refers to new construction, rehabilitation, improvement,
22 expansion, alteration, and related works and activities including the
23 necessary supply and installation of equipment, materials, labor and
24 services, and related items;
- 25 c. *Contractor* - refers to any entity allowed under Philippine laws, which
26 may or may not be the Private Proponent, and which shall undertake the
27 actual construction or supply of equipment or services for PPP Projects;
- 28 d. *Contingent Liability* - refers to an obligation that may or may not arise
29 from events specified in a PPP contract, the occurrence, timing, and
30 amount of which is uncertain. These events include regulatory risks,

1 force majeure, breach of government warranties, and material adverse
2 government action, among others;

- 3 e. *Facility Operator* - refers to an entity with legal personality authorized
4 under existing laws, which may or may not be the Private Proponent,
5 that shall be responsible for operating and maintaining a facility,
6 including, but not limited to, the collection of tolls, fees, rentals or
7 charges from facility users;
- 8 f. *Government Undertakings* - refers to any form of contribution and
9 support, which the government may extend to a Private Proponent for
10 the implementation of PPP Projects, as defined under this Act. The
11 procedures on proposing and granting of Government Undertakings
12 shall be prescribed in the IRR of this Act;
- 13 g. *Greenfield Project* - refers to a project which entails the creation of an
14 entirely new facility or service, which does not depend on the
15 improvement of an existing facility;
- 16 h. *Green Financing* - refers to investments that create environmental benefits
17 in support of green growth, low-carbon, and sustainable development;
- 18 i. *Guarantee on Demand* - refers to an agreement whereby the Implementing
19 Agency guarantees to assume market risks in a PPP Project;
- 20 j. *Guarantee on Loan Repayment* - refers to an agreement whereby the
21 Implementing Agency guarantees to assume responsibility for
22 the repayment of debt directly incurred by the Privat Proponent
23 in implementing the project in case of a loan default;
- 24 k. *Guarantee Private Sector Return* - refers to an agreement whereby the
25 Implementing Agency guarantees to provide a pre-identified rate of
26 return on the investment of the Private Proponent;
- 27 l. *Implementing Agency* - refers to a department, bureau, office,
28 instrumentality, commission, authority of the national government,
29 state universities and colleges (SUCs), local government units (LGUs),
30 or government owned-or-controlled corporation (GOCC) as defined in

1 Republic Act No. 10149, including government instrumentalities with
2 corporate powers (GICP), government corporate entities (GCE),
3 government financial institutions (GFIs), which is authorized to
4 undertake PPP Projects;

5 m. - *Joint Venture (JV)* - refers to a contractual arrangement whereby both
6 the Implementing Agency and the Private Proponent contribute to pool
7 resources comprising of capital, services, or assets (including
8 equipment, land, or intellectual property) to jointly undertake a specific
9 investment activity. The investment activity shall be for the purpose of
10 accomplishing a specific goal with the end view of facilitating private
11 sector initiative in a particular industry or sector, and eventually transfer
12 the activity to either the private sector under competitive market
13 conditions or to the government. The JV involves a community or
14 pooling of interests in the performance of the investment activity, and
15 each party shall have the right to direct and govern the policies in
16 connection therewith with the intention to share both profits, and risks
17 and losses subject to agreement by the parties. A JV may be undertaken
18 through a contract or by creating a JV entity;

19 n. *Local PPP Project* - refers to a PPP Project that shall be undertaken by
20 LGUs, and local universities and colleges (LUCs) as defined in RA 10931;

21 o. *National PPP Project* - refers to a PPP Project that shall be undertaken by
22 the national government, GOCCs including water districts, GICPs,
23 GCEs, GFIs, and SUCs as defined in RA 10931;

24 p. *Operation and Maintenance* - refers to activities necessary and incidental
25 to preserve or restore the operational status of an asset or system based
26 on specified performance indicators;

27 q. *Original Proponent* - refers to the Private Proponent which submitted an
28 unsolicited proposal which has been accepted and pre-qualified by the
29 implementing agency, and has been conferred the "Original Proponent"
30 status, 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
3 undertaken by the public sector, but which shall now be wholly or partly
4 financed, designed, built, operated and maintained by the private sector;
- 5 s. *Private Proponent* - refers to the private sector entity which shall either
6 have submitted an unsolicited proposal, or a bid submission in relation
7 to a solicited PPP Project, and/or have a contractual responsibility for
8 the PPP Project. The Private Proponent may be Filipino or foreign-
9 owned, and may engage the services of a foreign contractor or foreign
10 facility operator, subject to requirements and limitations provided under
11 the Philippine Constitution;
- 12 t. *Project Cost* - refers to the estimated cost of the PPP Project. The
13 guidelines in determining the Project Cost shall be prescribed in the IRR
14 of this Act;
- 15 u. *Subsidy* - refers to an agreement whereby the Implementing Agency will:
16 (a) defray, pay for, or shoulder a portion of the Project Cost or the
17 expenses and costs in operating or maintaining the project;
18 (b) contribute any property or assets to the project;
19 (c) waive or grant special rates on real property taxes on the project
20 during the term of the contractual arrangement; and/or
21 (d) waive charges or fees relative to business permits or licenses that
22 are to be obtained for the construction of the project, all without
23 receiving payment or value from the Private Proponent and/or
24 Facility Operator for such payment, contribution, or support,
25 Provided, That under no circumstance shall the total subsidy exceed
26 fifty percent (50%) of the total Project Cost;
- 27 v. *Termination Payment* - refers to the amount payable by the government
28 or the Private Proponent on the occurrence of an event or series of
29 events provided for in the PPP contract that results in the termination
30 of said contract;

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

6 Sec. 5. *Public-Private Partnership*. - A PPP is a contractual arrangement between
7 the Implementing Agency and the Private Proponent for the financing, designing,
8 constructing, operating, and maintaining, or any combination thereof, of projects
9 which are normally provided by the public sector. PPP Projects may be undertaken
10 through contractual arrangements, including joint ventures, authorized under the
11 Implementing Rules and Regulations (IRR) of this Act, and such other variations
12 thereof as may be approved by the appropriate Approving Body.

13 Sec. 6. *Identification of PPP Projects*. - Implementing Agencies shall include in
14 their development plans, strategies, and investment programs those priority PPP
15 Projects that they want to undertake. In identifying those projects, the Implementing
16 Agencies shall be guided by the following principles:

- 17 i. Effectiveness in meeting government objectives;
- 18 ii. Appropriateness of the chosen procurement modality and source of
19 funding;
- 20 iii. Value for money;
- 21 iv. Accountability and transparency;
- 22 v. Consumer rights;
- 23 vi. Affordability;
- 24 vii. Public access;
- 25 viii. Safety; and
- 26 ix. Security.

27 Priority projects shall be consistent with the national and local development
28 and investment plans.

29 The Implementing Agencies shall submit their list of PPP Projects or any
30 update thereto to the PPP Center, referred to in Section 22 of this Act, for

1 information. Each proposed PPP Project shall be subject to the approval of the
2 appropriate Approving Body.

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

5 *Sec. 7. Approval of PPP Projects.* (a) The approval of PPP Projects under this Act
6 shall be in accordance with the following:

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

8 (i) Projects costing Five billion pesos (P5,000,000,000.00) and below, shall
9 be submitted to the Investment Coordination Committee of the National
10 Economic and Development Authority (ICC-NEDA) for approval;

11 (ii) Projects costing above Five billion pesos (P5,000,000,000.00) shall be
12 submitted to the NEDA Board for approval, upon favorable
13 recommendation by the ICC-NEDA.

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

16 (2) **Local PPP Projects.** Local PPP Projects shall be approved by the local
17 Sanggunians, regardless of the project cost, *Provided*, that Local PPP Projects involving
18 Government Undertakings using national government funds shall require the
19 approval of the ICC-NEDA.

20 National Government Undertakings shall include, among others, the following
21 items to be provided by the national government to a Local PPP Project:

22 (i) Guarantees on Demand;

23 (ii) Guarantees on Private Sector Return;

24 (iii) Guarantees on Loan Repayment;

25 (iv) Viability Gap Funding and other forms of Subsidy;

26 (v) payment of Contingent Liability, including Termination Payments.

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

1 (b) The Approving Body shall assess all PPP Projects based on its overall
2 feasibility analysis and accord paramount importance to the affordability of user fees
3 and efficiency in public service. To ensure that all risks associated with PPP Projects
4 are managed and mitigated accordingly, all PPP contracts to be entered into by the
5 Implementing Agency shall adhere to the principles stipulated under the Generic
6 Preferred Risk Allocation Matrix (GPRAM) issued by the ICC-NEDA.

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

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

27 (d) In order to facilitate a comprehensive and timely review of the PPP Project,
28 the PPP Center, in coordination with the ICC-NEDA, shall formulate forms and
29 templates that shall be used by the Implementing Agency and the Approving Body in
30 reviewing and approving the PPP Project, as well as the national government

1 undertaking involved in local PPP Projects.

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

7 *Sec. 8. PPP Pre-Qualification, Bids, and Awards Committee.* - The head of the
8 Implementing Agency, undertaking PPP Projects shall create a PPP Pre-qualification,
9 Bids and Awards Committee (PBAC), which shall be responsible for all aspects of pre-
10 bidding and bidding process in solicited proposals, or the comparative bidding
11 process in unsolicited proposals. The composition and specific functions of the PBAC
12 for National PPP Projects and Local PPP Projects shall be specified in the IRR of this
13 Act, which may include other relevant government entities.

14 *Sec. 9. Solicited Proposals.* -

15 (a) Solicited Proposals refer to submissions by the Private Proponent to bid for
16 PPP Projects through open, fair, transparent, and competitive public bidding initiated
17 by the Implementing Agency. Government Undertakings are allowed, subject to the
18 approval of the Approving Body.

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

22 The contract shall be awarded to the bidder who satisfied all pre-qualification
23 and eligibility requirements and has submitted the most favorable financial bid based
24 on the parameters defined in the bid documents. In all instances, affordable user fees
25 and efficient public services shall be of paramount importance in awarding a PPP
26 contract.

27 If the winning bidder fails to comply with any post-award requirement or fails
28 to enter into a contract with the Implementing Agency, the latter may proceed to
29 consider the next technically and financially qualified bidder. In case the contract is
30 awarded to the next technically and financially qualified bidder, it shall be without

1 prejudice to legal remedies available to the Implementing Agency like forfeiture of
2 bid security, withdrawal of award, and such other remedies allowed under existing
3 laws, rules, and regulations.

4 Any change in control of the Private Proponent or composition of the
5 Consortium after the submission of a solicited proposal shall be subject to the s
6 approval of the Implementing Agency.

7 (c) Failure of Bidding. The Implementing Agency shall declare a failure of
8 bidding in case of any of the following:

9 (1) If no bids are received; or

10 (2) If there are no complying bids.

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

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

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

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

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

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

25 or

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

28 In any of the four (4) instances described in sub-paragraphs (1) to (4) of the
29 preceding paragraph, the Implementing Agency shall not consider negotiating with
30 the single complying and responsive bid when there is a reasonable showing of

1 collusion between or among prospective bidders or collusion between the remaining
2 bidder with the officers of the Implementing Agency or any member or officer of the
3 PBAC.

4 Sec. 10. *Unsolicited Proposals.*

5 (a) General. Unsolicited Proposals refer to project proposals submitted by a
6 Private Proponent not in response to a formal solicitation or request issued by the
7 Implementing Agency.

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

11 (b) Limitations. Unsolicited proposals may be considered for projects that are
12 not in the priority list and projects that are in the priority list, Provided, That in case
13 the Implementing Agency has already incurred any development cost for the priority
14 project, such as the conduct of feasibility study, business case, and surveys, among
15 others, for the last five (5) years, the Private Proponent must undertake to reimburse
16 the Implementing Agency of such documented development costs. Reimbursable
17 development costs for a specific priority project shall be determined by the
18 Implementing Agency.

19 Provided, further, That any unsolicited proposal shall not contain any of the
20 following Government Undertakings:

- 21 i. Viability gap Funding and other forms of Subsidy;
- 22 ii. Payment of Right-of-Way related costs;
- 23 iii. Performance undertaking;
- 24 iv. Exemption from any taxes as required by laws, except local taxes imposed
25 by local government units;
- 26 v. Guarantee on Demand;
- 27 vi. Guarantee on Loan Repayment;
- 28 vii. Guarantee on Private Sector Return;
- 29 viii. Government equity except in JV arrangements; and
- 30 ix. Contribution of assets, properties, and rights except in JV arrangements.

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

4 (c) Special Requirements.

5 (1) Within ten (10) working days from receipt of the unsolicited
6 proposal, the Implementing Agency shall inform the PPP Center in writing of
7 such receipt and shall furnish it with a copy of the proposal.

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

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

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

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

28 (d) Rejection of an Unsolicited Proposal. The Implementing Agency shall have
29 the right to automatically reject the unsolicited proposal upon receipt thereof, or
30 formally reject it after evaluation. If the Implementing Agency fails to act on an

1 unsolicited proposal within sixty (60) working days from receipt thereof, the project
2 proposal shall be deemed rejected, without prejudice to any liability that the erring or
3 negligent officials or employees may incur under existing laws.

4 In cases of automatic rejection and rejection resulting from inaction, the paid
5 administrative fee shall be returned to the appropriate Private Proponent and shall be
6 without prejudice to the right of the Private Proponents to resubmit their proposals
7 until such time that the proposal has been formally rejected by the Implementing
8 Agency, in which case, the administrative fee shall not be returned. A formal rejection
9 is a written rejection notice to the Private Proponent stating the reason/s why the
10 submitted proposal was rejected.

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

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

30 (g) Comparative Challenge. The Implementing Agency shall publish an

1 invitation for the submission of comparative proposals.

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

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

12 Sec. 11. *Protest Mechanism.* - In all stages of the procurement process, the
13 following protest protocol shall be strictly followed:

14 (a) In the case of National PPP Projects:

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

19 (ii) The decision of the PBAC on the motion for reconsideration in
20 the immediately preceding paragraph may be further questioned by
21 filing an appeal to the head of the Implementing Agency concerned and
22 paying a non-refundable appeal in an amount equivalent to no less than
23 1/2 of 1% of the Project Cost within fifteen (15) working days from
24 receipt thereof. The head of the Implementing Agency shall act on the
25 appeal and render a decision within thirty (30) calendar days, otherwise,
26 it shall be deemed denied. The PPP Governing Board may adjust the
27 appeal fee as the need arises.

28 If the head of the Implementing Agency in the immediately
29 preceding paragraph is not a Department Secretary, the decision of the
30 head of the Implementing Agency may be further questioned by filing

1 an appeal to the Secretary of the Department to which the Implementing
2 Agency is attached within fifteen (15) working days from receipt thereof.
3 The Department Secretary shall act on the appeal and render a decision
4 within thirty (30) calendar days, otherwise, it shall be deemed denied.

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

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

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

15 (ii) The decision of the PBAC on the motion for reconsideration in
16 the immediately preceding paragraph may be further questioned by
17 filing an appeal to the local chief executive or his authorized
18 representative concerned within seven (7) calendar days from receipt
19 thereof and paying a non-refundable appeal fee in an amount equivalent
20 to no less than 1/2 of 1% of the Project Cost.

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

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

1 denied.

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

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

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

29 (b) *Monitoring.* The PPP Governing Board shall set the framework for
30 monitoring of the compliance of the parties to PPP contracts. The PPP Center shall be

1 responsible for the coordination and monitoring of projects implemented under this
2 Act. For this purpose, the Implementing Agency shall submit to the PPP Center all
3 executed PPP contracts, information on the status of projects implemented by, as well
4 as copies of all unsolicited proposals and related documents received by, the former.
5 At the end of every calendar year, the PPP Center shall submit a report to the President
6 of the Philippines and to the Congress of the Philippines, particularly to the Senate
7 President and the Speaker of the House of Representatives, and the Chairpersons of
8 the Committee on Public Works on the progress of all projects implemented under
9 this Act.

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

15 Sec. 14. *Investment Incentives.* - PPP Projects undertaken through this Act shall
16 be entitled to various incentives under applicable laws and existing policies of the
17 government.

18 Sec. 15. *Investment Recovery Scheme.* - In undertaking PPP Projects, the Private
19 Proponent shall be allowed to recover its investments and earn profit through any of
20 the following schemes or a combination thereof:

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

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

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

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

7 *Sec. 16. Regulation.* - All PPP Projects shall be subject to regulation by the
8 appropriate regulatory body or by contract in the absence of the former.

9 *Sec. 17. Variation, Expansion, or Extension of an Existing PPP Project.* - A contract
10 variation or extension, or an expansion or extension of an existing PPP Project may be
11 allowed by the Implementing Agency, subject to the rules and procedures as provided
12 in the IRR of this Act: *Provided*, That upon prior approval by the Approving Body,
13 the Private Proponent of an existing PPP Project may be allowed to expand or extend
14 the same even without further bidding: *Provided*, That the cost thereof shall not
15 exceed twenty-five percent (25%) of the price-adjusted original approved Project Cost:
16 *Provided*, further, That any subsequent expansion or extension shall no longer be
17 allowed, and such shall be considered a new project and shall be tendered
18 accordingly.

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

22 *Sec. 18. Divestiture/Divestment.* - Subject to the approval of the head of the
23 Implementing Agency, a Private Proponent may divest its ownership, rights, or
24 interest in a PPP Project: *Provided*, That the divestiture shall be after a holding or lock-
25 in period as indicated in the PPP contract: *Provided further*, That the new Private
26 Proponent has equal or better qualifications as with the previous Private Proponent.

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

1 regulations.

2 Sec. 19. *Contract Termination.* - If a PPP contract is revoked, canceled, or
3 terminated prior to its completion, either contracting party shall compensate the other
4 party pursuant to terms as defined in the PPP contract. Depending on the contractual
5 stipulations, the grounds for contract termination which would warrant the right of
6 compensation may include, but are not limited to, default, insolvency, unlawful
7 divestment or divestiture, or other unlawful acts, by the Private Proponent or by the
8 government.

9 Sec. 20. *Wind-up and Transfer Measures.* - All PPP contracts shall provide for
10 wind-up and transfer measures. Such provision shall include, among others, the
11 following:

12 (a) Mechanisms and procedures for the transfer of assets to the
13 Implementing Agency;

14 (b) The transfer of technology required for the operation of the PPP
15 Project, subject to limitations under existing laws, rules and regulations;

16 (c) The training of the personnel of the Implementing Agency or of
17 a successor in the operation and maintenance of the PPP Project;

18 (d) The provision, by the Private Proponent, of a warranty that the PPP
19 Project meets the project technical specifications, agreed system features, and
20 performance standards and services for a certain period as may be defined in
21 the IRR of this Act after the transfer of the PPP Project to the Implementing
22 Agency or to a successor; and

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

26 Sec. 21. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary*
27 *Injunctions, and Preliminary Mandatory Injunctions.* - No temporary restraining order,
28 preliminary injunction, or preliminary mandatory injunction shall be issued by any
29 court, except the Supreme Court, against any Implementing Agency or the PPP
30 Center, its officials or employees, or any person or entity, whether public or private

1 acting under the government direction, to restrain, prohibit, or compel the following
2 acts:

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

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

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

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

27 *Sec. 22. PPP Center* - To achieve the goals of this Act, the PPP Center created
28 under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136,
29 series of 2013, is hereby institutionalized. It is hereby authorized to adopt its current
30 organizational structure, absorb its existing employees, and upgrade its human

1 resource component, as may be necessary, subject to evaluation and
2 approval by the DBM.

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

5 (a) Assist Implementing Agencies in identifying, developing, prioritizing,
6 and maintaining a pipeline of PPP Projects;

7 (b) Provide advisory services, technical assistance, training, and capacity
8 development to Implementing Agencies, Approving Bodies, and other
9 oversight agencies in all PPP-related matters, and act as a procurement agent
10 upon the request of the Implementing Agency;

11 (c) Manage and administer the Project Development and Monitoring
12 Facility

13 (PDMF) as provided in Section 24 of this Act;

14 (d) Recommend plans, policies, and implementation guidelines related to
15 PPP, in consultation with appropriate oversight committees or agencies,
16 Implementing Agencies, private sector, and other relevant stakeholders;

17 (e) Ensure sustainability of the implemented PPP program and projects
18 through monitoring, documenting, and sharing the lessons learned and best
19 practices to Implementing Agencies and appropriate oversight committees or
20 agencies;

21 (f) Provide regular monitoring and status reports on the implementation of
22 all PPP programs and projects entered into by Implementing Agencies,
23 including potential public interest concerns and violations of the PPP Act, to
24 the Office of the President, the Congress of the Philippines, relevant oversight
25 committees and agencies, and publish the same in the official website of the
26 PPP Center;

27 (g) Promote and market the Implemented PPP programs and projects, in
28 collaboration with other government investment promotion agencies;

29 (h) Review PPP contracts and issue advisory opinions relating to PPPs,
30 including how the PPP Act and its IRR shall be implemented;

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

3 *Sec. 23. PPP Governing Board.* - The PPP Governing Board, created under
4 Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is
5 hereby institutionalized. It shall be the overall policy-making body for all PPP-related
6 matters, including the PDMF. It shall be responsible for setting the strategic direction
7 of PPP programs and projects and in creating an enabling policy and institutional
8 environment for PPP.

9 The Board shall be composed of the following:

- 10 (a) The secretary of Socio-Economic Planning as Chairperson;
- 11 (b) The Secretary of Finance as Vice-Chairperson;
- 12 (c) The Secretary of Budget and Management;
- 13 (d) The Secretary of Justice;
- 14 (e) The Secretary of Trade and Industry;
- 15 (f) The Executive Secretary;
- 16 (g) The Secretary of Interior and Local Government;
- 17 (h) The Executive Director of the PPP Center, as non-voting member; and
- 18 (i) Any one of the two (2) private sector representatives of the Ease of Doing
19 Business and Anti-Red Tape Advisory Council.

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

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

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

30 *Sec. 24. Project Development and Monitoring Facility.* -

1 (a) The PDMF is hereby established and shall be used for the procurement of
2 advisory and support services related to the preparation, structuring, probity
3 management, procurement, financial close, project evaluation, and monitoring of the
4 implementation of PPP Projects, in accordance with the relevant provisions of
5 Republic Act No. 9184 or the Government Procurement Reform Act and its
6 Implementing Rules and Regulations.

7 (b) The PDMF referred to under EO No. 8, series of 2010, as amended by EO
8 No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF
9 may be funded through and such amount as may be needed and included in the
10 General Appropriations Act, Official Development Assistance, or other sources.

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

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

18 The PDMF Committee shall be composed of: (1) the Secretary of Socio-
19 Economic Planning as chairperson; (2) the Secretary of Finance, (3) the Secretary of
20 Budget and Management, and (4) the Executive Director of the PPP Center, as
21 members. The PPP Center shall serve as the Secretariat for the PDMF Committee.

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

25 *Sec. 25. Creation of a Risk Management Fund* - To ensure fiscal sustainability and
26 negotiate better financing terms of PPP Projects, there is hereby created a PPP Risk
27 Management Fund to be used for the payment of contingent liabilities arising from
28 PPPs in accordance with its contract terms.

29 The target amount in the PPP Risk Management Fund is to be determined by
30 the Development Budget Coordination Committee (DBCC) using risk-adjusted

1 methods or such other means that estimate the exposure of the Government of the
2 Philippines to PPP contingent liabilities.

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

4 (a) Concession fees;

5 (b) Implementing Agency reimbursements;

6 (c) Interest earnings from the PPP Risk Management Fund; and

7 (d) National government contributions.

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

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

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

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

30 To monitor such government obligations on liabilities that have materialized

1 and other unforeseen risks that may arise from PPP Projects; and to develop the
2 guidelines to access the PPP Risk Management Fund, the inter-agency technical
3 working group created under DBCC Resolution No. 2015-2, is hereby
4 institutionalized.

5 The procedures and mechanisms for managing the PPP Risk Management
6 Fund shall be prescribed in the IRR of this Act.

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

11 *Sec. 26. Establishment of a PPP Unit.* - Each concerned Implementing Agency
12 shall organize a PPP unit headed by a senior official, who shall be responsible for
13 planning, overseeing, and monitoring PPP Projects of the Implementing Agency. In
14 the case of LGUs undertaking PPP Projects, the local chief executive shall organize
15 such PPP unit.

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

20 *Sec. 27. Safekeeping and Public Disclosure of Contracts.* - Copies of all PPP
21 contracts executed under this Act shall be considered and appropriately kept safe and
22 preserved as public documents. Except for those provisions in the contract which are
23 proprietary, or may pose threats to national security or public safety, the procedures
24 for the disclosure of such documents shall be consistent with existing policies, laws,
25 decrees, orders, rules, and regulations, including the IRR of this Act. The
26 Implementing Agency and the PPP Center shall publicly make available copies of PPP
27 contracts through their respective websites unless otherwise prohibited by
28 existing laws, rules, and regulations, including national security and public safety
29 concerns.

30 *Sec. 28. Miscellaneous Provisions.* -

- 1 (a) Mitigation of Interconnectivity and Interface Risks. All PPP Projects which
2 will interconnect or interface with a local or national facility shall be
3 required to submit a Memorandum of Agreement (MOA) containing an
4 interconnection/interface plan agreed upon by all relevant parties. For
5 National PPP Projects, said MOA shall be submitted to the ICC-NEDA;
6 while for Local PPP Projects, said MOA shall be submitted to the local
7 Sanggunian.
- 8 (b) Issuance of Franchise. Subject to the provisions of the Constitution and
9 other existing laws, rules, and regulations, once a PPP contract is executed
10 by the Private Proponent and the Implementing Agency, a presumption
11 arises that the public interest will be served by the implementation of the
12 PPP Project covered thereby, and immediately upon application by the
13 Private Proponent, the regulator shall automatically grant in favor of the
14 Private Proponent a franchise to operate the facility and collect the tolls,
15 fees, rentals, and other charges stipulated under the PPP contract.
- 16 (c) Standardization of Required Endorsements, Permits, and Licenses for PPP
17 Projects. All relevant government and regulatory agencies, bodies,
18 institutions, and LGUs, shall, in coordination with the PPP Center, adopt
19 standard timelines and requirements for the issuance of relevant
20 endorsements, approvals, and permits for PPP Projects.
- 21 (d) Real Property Tax for PPPs. The DOF shall issue the guidelines on real
22 property tax valuation of PPP Projects to ensure uniform and consistent
23 implementation among all LGUs. All real properties which are actually,
24 directly, and exclusively used for a Greenfield PPP Project shall be
25 exempted from the payment of real property taxes during the period of
26 construction and until such time the facility is used or operational, whether
27 partial or full. The details of the exemption shall be prescribed in the IRR
28 of this Act.
- 29 (e) Exemption from Payment of Transfer Taxes. For all PPP Projects, the
30 transfer of ownership of the PPP Project to the Implementing Agency shall

1 be exempt from the capital gains tax, documentary stamp tax, donor's tax,
2 and all taxes and fees, whether from national or local, related to the transfer
3 thereof.

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

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

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

25 (i) Private Legal and Medical Assistance. All the PPP PBAC members and
26 other public officials providing services to the PPP PBAC shall be
27 authorized to engage the services of private lawyers or shall be provided
28 with free legal assistance, where a civil, criminal, or administrative action
29 is filed against them by reason of the performance of their official functions
30 or duties unless they are finally adjudged in such action or proceeding to

1 be liable for gross negligence or misconduct or grave abuse of discretion.
2 The PPP PBAC members shall also be entitled to medical assistance for
3 injuries incurred in the performance of their functions.

4 (j) Preferential Hiring of Filipino Workers. For the construction stage of
5 infrastructure facilities where the Contractor is a foreigner, Filipino labor
6 shall be employed or hired in the different phases of construction where
7 Filipino skills are available.

8 (k) Safeguard Mechanisms to Protect Public Interest. In order to improve
9 transparency and to promote bankability and social acceptability of PPP
10 Projects, the following mechanisms shall be observed:

11 (1) Whenever applicable, the Implementing Agency shall assess the
12 affordability of fees or tariff, and conduct a willingness-to-pay
13 survey among the users of the infrastructure facility;

14 (2) The Implementing Agency shall conduct public consultation or
15 dialogue with all potential stakeholders, the details of which shall
16 be threshed out in the IRR; and

17 (3) The Implementing Agency and the PPP Center shall post on their
18 respective websites the approved starting fare or user fee in a PPP
19 Project as well as the approved parametric formula on fare increases
20 or adjustments, if applicable.

21 *Sec. 29. Implementing Rules and Regulations.* - The IRR Committee shall be
22 composed of representatives from the NEDA, DOF, DBM, DPWH, DOTr, DILG, DOJ,
23 DTI, DENR, Office of the President, PPP Center, and Private Sector Representatives
24 and other agencies, as may be identified by the PPP Governing Board. Within forty
25 (40) working days from the effectivity of this Act, the PPP Center shall formulate and
26 prescribe, in consultation with the IRR Committee, after a public hearing and
27 publication as required by law, the rules and regulations to implement the provisions
28 of this Act. The IRR shall be approved by the PPP Governing Board.

29 From time to time, the PPP Governing Board may instruct the PPP Center, in
30 consultation with the IRR Committee, to conduct, formulate and prescribe, after due

1 public hearing and publication, amendments to the IRR, consistent with the
2 provisions of this Act.

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

7 The following acts shall be prohibited:

8 (a) Downgrading the category of the Project Cost for purposes of evading
9 the required approvals under this Act;

10 (b) Representation that the Private Proponent has the necessary
11 capitalization to commence, complete, and implement the PPP Project when
12 the same is false in material respects;

13 (c) Falsification or insertion of certain provisions in the execution copy of the
14 contract which are materially and substantially different from the approved
15 final draft contract;

16 (d) Any violation of Sections 7, 9, 10, 11, 17, 18, 28(g) under this Act; and

17 (e) A public officer or employee, whether in connivance with others or acting
18 alone, negligently, or by fraud commits a failure to ensure compliance with the
19 project terms as approved by the Approving Body, and the signed PPP
20 contract, by approving, issuing, or confirming any certification, required
21 documents, or deliverables of the Private Proponent, which are non-compliant
22 with existing rules, erroneous, not authentic, or fraudulent.

23 In addition, such acts committed by the Private Proponent and its concerned
24 officers shall cause the rescission of its contract for the said PPP Project without
25 Compensation and shall be perpetually disqualified from participating in any bidding
26 or other contractual arrangement for any government project. This is without
27 prejudice to any other civil or administrative liability that erring officials or Private
28 Proponents may incur.

29 The liability of the public officer or employee or former public officer or
30 employee for any violation of the prohibitions under this Act shall survive the

1 retirement of the said public officer or employee, and shall include the prohibition for
2 the erring officer to hold public office, either as an elected, or an appointed
3 government official on any local or national position, and to act as a consultant for the
4 Philippine Government, the termination of the project contract, and the lapse of any
5 applicable warranty period/s.

6 Sec. 31. *Accountability in PPP Projects.* - The head of the concerned
7 Implementing Agency shall at all times be accountable to PPP Projects undertaken
8 through this Act. The Private Proponent shall likewise be held accountable for the
9 works it has delivered and services it has rendered for a PPP Project. All PPP contracts
10 are hereby required to clearly define the scope of each party's accountability under
11 the PPP contract.

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

22 Sec. 32. *Joint Congressional Oversight Committee.* - A Joint Congressional
23 Oversight Committee is hereby created to oversee the implementation of this Act. The
24 Committee shall be composed of five (5) members each from the Senate and House of
25 Representatives to be designated by the Senate President and the Speaker of the House
26 of Representatives, respectively. The Committee shall be jointly chaired by the
27 respective Chairpersons of the House Committee on Public Works and Highways, the
28 House Committee on Appropriations, the Senate Committee on Public Works, and
29 the Senate Committee on Finance.

30 Sec. 33. *Transitory Clause.* - The provisions of this Act shall apply to all PPP

1 Projects except:

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

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

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

17 *Sec. 34. Separability Clause.* - If any provision of this Act is declared
18 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
19 continue to be in full 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
22 Act Authorizing the Financing, Construction, Operation, and Maintenance of
23 Infrastructure Projects by the Private Sector, and for other purposes);

24 (b) Executive Order No. 8, s. 2010, as amended by Executive Order No.
25 136, s. 2013 (Reorganizing and Renaming the Build-Operate And Transfer
26 (BOT) Center to the Public-Private Partnership (PPP) Center of the Philippines
27 and Transferring its Attachment from the Department of Trade and Industry
28 to the National Economic and Development Authority and for other
29 purposes);

30 (c) Executive Order No. 78, s. 2012 (Mandating the Inclusion of

1 Provisions on the Use of Alternative Dispute Resolution Mechanisms in All
2 Contracts Involving Public-Private Partnership Projects, Build-Operate and
3 Transfer Projects, Joint Venture Agreements Between the Government and
4 Private Entities and those Entered into by Local Government Units);

5 (d) Section 8 of Executive Order No. 423, s. 2005 (Repealing Executive
6 Order No. 109-A Dated September 18, 2003, Prescribing the Rules and
7 Procedures on the Review and Approval of All Government Contracts to
8 Conform with Republic Act No. 9184, otherwise known as "The
9 Government Procurement Reform Act;

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

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

14 All other laws, decrees, orders, rules, and regulations, and all other related
15 national and local issuances or parts thereof inconsistent with this Act are hereby
16 repealed or amended accordingly.

17 Sec. 36. *Effectivity.* - This Act shall take effect fifteen (15) days after its
18 publication in the Official Gazette or in a newspaper of general circulation.

Approved,