

SEVENTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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SENATE

S.B. No. 951

RECEIVED

BY:

Introduced by Senator **SONNY ANGARA**

AN ACT
PROMOTING AND AUTHORIZING PUBLIC – PRIVATE PARTNERSHIPS FOR THE
FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE
FACILITIES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

With the incoming administration's thrust of accelerating spending on infrastructure, it is appropriate to refile this bill to institutionalize the PPP Center and support the implementation of various infrastructure projects throughout the country via public-private partnerships.

The government has traditionally been in charge of providing and financing infrastructure in the country. However, investment requirements have exceeded the capacities of the government, prompting the public sector to enable private participation in infrastructure development. In the past two decades, a number of services in utilities, transportation, property development, and information technology are provided through contractual arrangements such as the build-operate-transfer (BOT).

Reforms to the BOT processes, however, are necessary to better address the needs and qualms of the public-private partnerships (PPP) investors. For the country to build on its recent economic gains and to ensure the proper investment environment in our country forecasted as the 2nd fastest growing economy in the world in 2015,¹ the private sector must be further encouraged to make investments through a modernized and enhanced PPP law.

Thus, this bill seeks to create an enabling environment for PPPs wherein the rules are fair, clear, and equally applied to all, by providing liberalized government regulations and procedures incorporating the valuable lessons learned from successful and failed projects in the past as well as global test practices in PPP, and by expanding the coverage of PPP to include joint ventures, and operation and maintenance contracts.

It also aims to protect public interest by ensuring fair and reasonable pricing and timely delivery of quality infrastructure, goods and services, and by requiring full public disclosure of all PPP transactions.

Under the bill, temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against any PPP project cannot be issued by any other court except the Supreme Court but with a validity period of only six months.

With the additional incentives provided under this bill, we can attract more PPPs to help the government hasten and improve the construction of public infrastructure and services to boost the growth of the Philippine economy.

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


SONNY ANGARA

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**AN ACT PROMOTING AND AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS
FOR THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF
INFRASTRUCTURE FACILITIES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER
PURPOSES.**

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

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

SEC 2. Declaration of Policy. The State recognizes the role of the private sector in national development. It is thus the policy of the State to attract the private sector to undertake the financing, design, construction, operation and maintenance of infrastructure facilities necessary for public use or public service under the following principles: (i) timely delivery of quality infrastructure facilities, (ii) fair pricing of user fees for such facilities, (iii) transparent and competitive process for selecting the private sector partner, and (iv) full public disclosure of transactions under this Act.

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

(a) Approving Body – refers to an entity authorized to approve PPP projects proposed under this Act and its IRR, in accordance with Section 6 of this Act.

(b) Construction – refers to new construction, rehabilitation, improvement, expansion, alteration, installation, and related works and activities in connection with an infrastructure facility, including the necessary supply of equipment, materials, labor and services and related items.

(c) Contractor – refers to any person, who may or may not be the project proponent, and who shall undertake the actual construction of an infrastructure facility.

(d) Cooperation Period – refers to the period of operation of an infrastructure facility: *Provided, That in the case of public utilities requiring a franchise, such period shall not exceed the maximum period prescribed by existing laws.*

(e) GOCC – refers to a government-owned or -controlled corporation, a government instrumentality with corporate powers, or a government corporate entity.

(f) ICC – refers to the Investment Coordination Committee of the NEDA Board.

(g) Implementing Agency – refers to a department, bureau, office, instrumentality, commission, authority, GOCC, state university or college, or government financial institution of the National Government, or an LGU.

(h) Infrastructure Facility – refers to a facility that has been determined by the Government to be necessary for public use or public service or for the discharge of governmental or proprietary functions, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology systems and infrastructure, education and health facilities, sewerage, drainage, dredging, climate change mitigation and adaptation measures, and other similar facility.

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

(j) LGU – refers to a local government unit.

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

(l) National PPP Project – refers to a PPP Project that will be undertaken by an Implementing Agency of the National Government.

(m) NEDA – refers to the National Economic and Development Authority.

(n) PBAC – refers to the Prequalification Bids and Awards Committee of the Implementing Agency.

(o) PDMF – refers to the Project Development and Monitoring Facility created under Section 7 of this Act.

(p) PPP – refers to a public-private partnership governed by a contractual arrangement between the implementing agency and the project proponent for the financing, design, construction, operation, and maintenance, or any combination thereof, of an infrastructure facility under this Act.

(q) PPP Center – refers to the Coordinating Council of the Philippine Assistance Program that was created under Republic Act No. 7718 and reorganized and renamed the Public-Private Partnership Center of the Philippines under Executive Order No. 8, series of 2010, as amended.

(r) PPP Contract – refers to the contract between the Implementing Agency and the Project Proponent for the financing, Construction, operation, or maintenance of an Infrastructure Facility under a PPP Project.

(s) PPP Project – refers to a project undertaken under this Act.

(t) Person – refers to an individual, sole proprietorship, partnership, corporation or any other form of organization, whether domestic or foreign.

(u) Project Cost – refers to total capital cost, financing and other expenses for the design, construction, operation, and maintenance of an infrastructure facility.

(v) Project Proponent – refers to any private person who shall undertake a PPP project.

(w) Rate of Return – refers to the rate of return on the investment of a project proponent as approved by the Approving Body taking into account, among others, the prevailing cost of capital in the domestic and international markets, and risks being assumed by the project proponent: *Provided*, That in case of an unsolicited proposal, such rate of return shall be determined by the appropriate Approving Body prior to the call for proposals.

(x) Unsolicited Proposal – refers to proposals for a PPP Project that was submitted by a Project Proponent without the implementing agency soliciting such proposal.

SEC. 4. Authority of Implementing Agencies. Any implementing agency that is authorized by existing laws or its charter, to engage in the financing, construction, operation, and maintenance of an Infrastructure Facility is hereby authorized to undertake PPP Projects in accordance with this Act.

SEC. 5. Variations of Contractual Arrangements. – PPP Projects may be undertaken through any of the following contractual arrangements and such other variations as may be described in the IRR and approved by the President of the Philippines:

(i) Build-and-Transfer – refers to a contractual arrangement whereby the Project Proponent undertakes the financing and Construction of an Infrastructure Facility and transfers ownership to the Implementing Agency upon its completion. The Implementing Agency shall pay the Project Proponent, on an agreed schedule, its total investments expended on the project, plus a return not exceeding the Approved Rate of Return. This arrangement may be employed in the Construction of any Infrastructure Facility, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.

(ii) Build-Lease-and-Transfer – refers to a contractual arrangement whereby the Project Proponent undertakes the financing and Construction of an Infrastructure Facility, upon its completion leases it to the Implementing Agency for the duration of the Cooperation Period, and after the Cooperation Period automatically transfers ownership to the Implementing Agency.

(iii) Build-Own-and-Operate – refers to a contractual arrangement whereby the Project Proponent undertakes the financing, Construction, ownership, operation, and maintenance of an Infrastructure Facility. The Project Proponent is allowed to collect tolls, fees, rentals or other charges from users of the Infrastructure Facility to recover its total investment and operating and maintenance costs plus a return not exceeding the Approved Rate of Return.

(iv) Build-Operate-and-Transfer – refers to a contractual arrangement whereby the Project Proponent undertakes the financing and Construction of an Infrastructure Facility, operates and maintains it during the Cooperation Period, and transfers ownership to the Implementing Agency at the end of the Cooperation Period.

1
2 (v) Build-Transfer-and-Operate – refers to a contractual arrangement whereby the Project
3 Proponent undertakes the financing and Construction of an Infrastructure Facility, transfers
4 ownership to the Implementing Agency once it is commissioned satisfactorily, and operates the
5 Infrastructure Facility for the duration of the Cooperation Period.
6

7 (vi) Contract-Add-and-Operate – refers to a contractual arrangement whereby the Project
8 Proponent undertakes the financing and Construction of an addition to an Infrastructure Facility
9 that it is leasing from the Implementing Agency and operates and maintains the expanded
10 Infrastructure Facility for the duration of the Cooperation Period. There may, or may not be, a
11 transfer arrangement in regard to the Infrastructure Facility.
12

13 (vii) Develop-Operate-and-Transfer – refers to a contractual arrangement whereby the
14 Project Proponent undertakes the financing, Construction, operation, and maintenance of an
15 Infrastructure Facility as well as its adjoining property in order to enjoy some of the benefits the
16 investment creates such as higher property or rent values.
17

18 (viii) Joint Venture – refers to a contractual arrangement whereby the Project Proponent
19 and the Implementing Agency, contribute money, services, assets, or a combination of any or all
20 of the foregoing, to undertake a PPP Project, with the intention to share profits, risks and losses.
21 Assets may include equipment, land, intellectual property or anything of value.
22

23 (ix) Operations and Maintenance Contract – refers to a contractual arrangement whereby
24 the Project Proponent undertakes the operation and maintenance of an Infrastructure Facility
25 owned by the Implementing Agency, including the acquisition or provision and upgrading of
26 equipment, systems and other items related to operation and maintenance. The Project
27 Proponent shall be compensated in the form of a performance-based management or service
28 fee during the Cooperation Period.
29

30 (x) Rehabilitate-Operate-and-Transfer – refers to a contractual arrangement whereby the
31 Project Proponent undertakes the financing, refurbishment, improvement, operation, and
32 maintenance of an existing Infrastructure Facility for the duration of the Cooperation Period, and
33 transfers ownership of the Infrastructure Facility to the Implementing Agency at the end of the
34 Cooperation Period.
35

36 **SEC. 6. Identification of PPP Projects.** Implementing agencies that are required under
37 existing laws to identify priority development projects shall ensure that such projects are
38 consistent with the Philippine Development Plan or its equivalent at the local level and that such
39 projects include PPP Projects. The implementing agencies shall submit their list of PPP Projects
40 or any update thereto to the PPP Center for information.
41

1 **SEC. 7. Approval of PPP Projects.** The approval of PPP projects under this Act and its IRR
2 shall be in accordance with the following:

3
4 A. National PPP Projects – The Approving Body for a National PPP Project shall be the
5 ICC, the NEDA Board, or both, depending on the project cost as prescribed in the IRR:
6 *Provided*, That (i) if the implementing agency is a GOCC, the GOCC shall obtain the approval of
7 the head of the Department to which the GOCC is attached; and (ii) if the Implementing Agency
8 is a Department, the consent of the GOCC attached to such Department and affected by the
9 PPP Project is not required. If a National PPP Project will have an impact on a region, the
10 implementing agency shall provide the concerned Regional Development Council with a copy of
11 the project proposal prior to submitting such project proposal to the Approving Body for
12 approval. The Regional Development Council may, if it so desires, endorse the project to the
13 Approving Body: *Provided*, That the endorsement of the Regional Development Council shall
14 not be necessary for approval of the project unless required by the Approving Body.

15
16 B. Local PPP Projects – The Approving Body for a Local PPP Project shall be the local
17 development councils, the ICC, the NEDA Board, or some or all of them, depending on the
18 project cost as may be prescribed in the IRR.

19
20 **SEC. 8. Project Development and Monitoring Facility (PDMF).** A special fund is hereby
21 created to be known as the PDMF, which shall be used for the procurement of advisory and
22 support services related to the preparation, structuring, probity management, procurement,
23 financial close, and monitoring of implementation of PPP projects. The PDMF Fund referred to
24 under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of
25 2013, shall be transferred to the PDMF under this Act. The PDMF may be funded through and
26 such amount as may be needed and included in the General Appropriations Act, Official
27 Development Assistance or other sources. The management and use of the PDMF shall be in
28 accordance with the following:

29
30 A. Management. – The PDMF shall be managed and administered by the PPP Center as
31 a revolving fund; thus, in addition to the amounts appropriated herein, and in order to sustain
32 the PDMF, the PPP Center may collect and receive fees and recover costs expended through
33 PDMF in accordance with the guidelines that shall be approved by the PPP Governing Board.
34 Such amount shall be retained and authorized to be used by the PPP Center for the purposes
35 indicated herein.

36
37 B. Approval of Applications. – A PDMF Committee is hereby created to (i) recommend
38 guidelines on the use of PDMF and recovery of costs, for the approval of the PPP Governing
39 Board, and (ii) approve applications for PDMF support submitted by implementing agencies. It
40 shall be composed of representatives from the National Economic and Development Authority
41 (NEDA), Department of Finance (DOF), Department of Budget and Management (DBM) and the
42 PPP Center. The PPP Center shall serve as Secretariat for the PDMF Committee.

1 C. Procurement. – To ensure fast procurement of advisory support, the consultants
2 financed through PDMF shall be engaged based on indefinite delivery contracts. Individual
3 advisory contracts shall be drawn from a panel of consultants under indefinite delivery contracts
4 using a fixed budget selection mode or any mode as may be prescribed in the IRR. In order to
5 facilitate access to global best practices in PPP and enhance value for money, the selection of
6 consultants financed through PDMF shall also be open to international firms.

7
8 **SEC. 9. Public Bidding of Projects.** The public bidding of projects shall be in accordance with
9 the following:

10
11 A. Publication. – Upon approval of PPP projects as mentioned in Section 6 of this Act, the
12 head of the implementing agency concerned shall immediately cause the publication of a notice
13 inviting all prospective project proponents to participate in a transparent and competitive public
14 bidding, once every week for three (3) consecutive weeks, in at least two (2) newspapers of
15 general circulation and in at least one (1) local newspaper which is circulated in the region,
16 province, city or municipality where the project will be implemented. Said notice shall also be
17 posted continuously in the websites of the implementing agency and the PPP Center.

18
19 B. Public Bidding. – The public bidding shall be conducted under a single or two-stage
20 system. The pre-qualification documents, technical, and financial proposals shall be submitted
21 in at least three (3) separate envelopes or containers. The procedures for public bidding, which
22 shall be transparent and competitive, including the conduct of one-on-one meetings with
23 prequalified bidders, shall be outlined in the IRR.

24
25 C. Award. – The contract shall be awarded to the bidder who has passed the pre-
26 qualification stage for having satisfied the minimum financial, organizational and legal standards
27 required by this Act and its IRR, has passed the technical proposal evaluation, and has
28 submitted the most favorable financial bid based on the parameters defined in the bid
29 documents.

30
31 D. Single Complying And Responsive Bid. – In case of a single complying and responsive
32 bid, the implementing agency may award the PPP contract to that bidder that submitted such
33 bid upon its compliance with the post-award requirements under the bidding rules of the PPP
34 project. A bid shall be considered a single complying and responsive bid if it falls under any of
35 the following circumstances:

36
37 (a) If, after advertisement, only one bidder applied for prequalification and it meets the
38 prequalification requirements, after which it is required to submit a bid or proposal which is
39 subsequently found by the implementing agency to be complying;

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

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

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

5
6 E. Protest. – The following protest protocol shall be strictly followed in all stages of the
7 selection process: *Provided*, That no appeal shall stay the selection process; *Provided, further*,
8 That a PPP Contract may not be awarded until all appeals have been resolved in accordance
9 with this sub-section:

10
11 (a) Decisions of the PBAC may be questioned by filing a motion for reconsideration within
12 a period prescribed in the IRR.

13 (b) The decision of the PBAC on the motion for reconsideration may be further questioned
14 by filing an appeal to the head of the implementing agency concerned and paying a non-
15 refundable appeal fee in an amount equivalent to no less than ½ of 1% of the project cost within
16 a period prescribed in the IRR.

17 (c) If the head of the implementing agency in the immediately preceding paragraph is not a
18 Department Secretary, the decision of the head of the implementing agency may be further
19 questioned by filing an appeal to the Secretary of the Department to which the implementing
20 agency is attached within a period prescribed in the IRR.

21 (d) The decision of the Department Secretary may be questioned by filing an appeal to the
22 Office of the President.

23
24 F. Failure to Comply or Execute the Contract. – If the winning bidder fails to comply with
25 any post-award requirement or fails to execute the PPP Contract with the implementing agency,
26 the latter may proceed to negotiation with the next technically and financially qualified bidder.
27 This is without prejudice to other legal remedies available to the implementing agency such as,
28 but not limited to, the forfeiture of bid security, the withdrawal of Notice of Award, or both.

29
30 **SEC. 10. Unsolicited Proposals.** Projects that are not in the list of priority projects may be
31 considered for unsolicited proposals. Priority projects shall not be considered for unsolicited
32 proposals, except when they involve a new concept or technology.

33
34 When a project proponent submits an unsolicited proposal, the implementing agency may
35 either:

36
37 (a) Reject the proposal;

38
39 (b) Use the unsolicited proposal as the basis for public bidding as provided in Section 9 of
40 this Act. Upon approval by the appropriate Approving Body, the original proponent thereof shall
41 be reimbursed of the cost incurred in the preparation of the proposal, such as the cost of any
42 feasibility study undertaken: *Provided*, such reimbursement:

1 (i) shall be in an amount specified in the IRR of this Act, but not exceeding three percent
2 (3%) of the project cost excluding those which will be borne by the implementing agency, such
3 as, but not limited to, the cost of right-of-way acquisitions; and

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

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

11 (c) Accept the unsolicited proposal on a negotiated basis: *Provided*, That the following
12 conditions are met:
13

14 (i) The project does not receive any viability gap funding or direct payments from any
15 government agency: *Provided*, That costs of right-of-way, resettlement and real estate taxes
16 shall not be considered as part of the viability gap funding; and

17 (ii) Guided by the principles of transparency and competitiveness, the implementing
18 agency has invited by publication for three (3) consecutive weeks in a newspaper of general
19 circulation, as well as websites of the PPP Center and of the implementing agency, the
20 submission of comparative proposals and no other proposal is received for a period stated in
21 the IRR of this Act, which period should not be less than three (3) months nor more than six (6)
22 months from the date of last publication in a newspaper of general circulation. In the event
23 another proponent submits a superior counter-proposal within the period referred to above and
24 it is accepted by the appropriate Approving Body, the original proponent shall have the right to
25 outbid.
26

27 **SEC. 11. Private Legal Assistance.** All the PBAC members and other public officials providing
28 services to the PBAC shall be authorized to engage the services of private lawyers, or shall be
29 provided with free legal assistance, where a civil, criminal, or administrative action is filed
30 against them by reason of the performance of their official functions or duties, unless they are
31 finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or
32 grave abuse of discretion.
33

34 **SEC. 12. Contract Termination.** In the event that a contract is revoked, cancelled or
35 terminated, either contracting party shall compensate the other pursuant to terms as defined in
36 the contract.
37

38 **SEC. 13. Automatic Grant of Administrative Franchise, License or Permit.** Upon receipt of
39 notice that that an Implementing Agency and a Project Proponent have entered into a PPP
40 contract, the regulator, licensing authority or LGUs shall automatically grant in favor of the said
41 project proponent an administrative franchise, license permit, or any other form of authorization
42 required for the implementation of a PPP project subject to submission by the project proponent

1 of the requirements by the regulator, licensing authority or LGU and proof of payment of the
2 appropriate taxes and fees.

3
4 Any provision of law to the contrary notwithstanding, it shall be mandatory on the part of
5 the regulator, licensing authority or LGUs to accept and approve the application for
6 administrative franchise, license or permit. Failure to act on a proper and complete application
7 thereof within thirty (30) working days from receipt of the same shall be deemed as approval
8 thereof.

9
10 **SEC. 14. Expansion or Extension of an Existing Infrastructure Facility.** Subject to
11 conditions specified in the IRR of this Act and upon prior approval by the appropriate Approving
12 Body, the project proponent of an existing PPP infrastructure facility may be allowed to expand
13 or extend the same even without further bidding: *Provided*, That the cost thereof shall not
14 exceed twenty-five percent (25%) of the price-adjusted original project cost: *Provided, further*,
15 That any subsequent expansion or extension shall no longer be allowed.

16
17 **SEC. 15. Contracts and Public Disclosure.** PPP Contracts entered into under this Act shall be
18 considered public documents. However, any proprietary information contained in the PPP
19 contract and its annexes may be kept confidential for a limited period, as may be determined by
20 the implementing agency but not to exceed five (5) years.

21
22 The determination of whether or not such contracts shall be kept confidential, as well as
23 the terms and duration of confidentiality, shall be the responsibility of the implementing agency
24 concerned. The implementing agency shall transmit to the PPP Center for records and
25 monitoring purposes, a copy of the duly executed contract, within thirty (30) working days from
26 its complete execution.

27
28 **SEC. 16. A. Prohibition on the Issuance of Temporary Restraining Orders or Injunctions.**
29 No temporary restraining order, preliminary injunction or preliminary mandatory injunction shall
30 be issued by any court, except the Supreme Court, against any implementing agency, its
31 officials or employees, or any person or entity, whether public or private acting under the
32 government direction, to restrain, prohibit or compel the following acts:

33
34 (a) Bidding, rebidding or declaration of failure of bidding of PPP projects, either national or
35 local;

36 (b) Qualification or disqualification of bidders;

37 (c) Awarding of PPP contract;

38 (d) Acceptance of any unsolicited PPP project proposal, even if not acted upon by the
39 implementing agency concerned under Section 8 of this Act;

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

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

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

3 (h) Undertaking or authorization of any other lawful activity necessary for such PPP project
4 or contract.
5

6 *Provided, That effectiveness of the temporary restraining order, preliminary injunction or*
7 *preliminary mandatory injunction issued by the Supreme Court shall not exceed six (6) months.*
8

9 **B. Bond.** The applicant for such temporary restraining order, preliminary injunction or
10 preliminary mandatory injunction shall file a bond, in an amount to be fixed by the court. The
11 bond shall accrue in favor of the government if the court should finally decide that the applicant
12 was not entitled to the relief sought.
13

14 **C. Void.** Any temporary restraining order, preliminary injunction or preliminary mandatory
15 injunction issued in violation of this section is void and of no force and effect.
16

17 **D. Application.** The foregoing prohibition shall apply in all disputes, cases, or
18 controversies instituted by any and all parties, including but not limited to cases filed by bidders,
19 implementing agencies or those claiming to have rights through such bidders or implementing
20 agencies involving PPP project or contract.
21

22 **E. Liability.** In addition to civil and criminal liabilities as may be incurred under existing
23 laws, any judge who shall issue a temporary restraining order, preliminary injunction or
24 preliminary mandatory injunction in violation of this section, shall be disciplined by the Supreme
25 Court and suffer the penalty of removal from office.
26

27 **SEC. 17. Regulatory Boards.** No regulatory body shall be allowed to enter into any PPP
28 contract for an Infrastructure Facility whose operation will be regulated by such regulatory body.
29

30 **SEC. 18. Project Supervision.** Every PPP project undertaken under the provisions of this Act
31 and its IRR shall be in accordance with the designs, plans, specifications, standards, and costs
32 approved by the implementing agency and appropriate Approving Body, and shall be under the
33 supervision of the implementing agency concerned.
34

35 **SEC. 19. Investment Incentives.** Among other incentives, PPP projects in excess of One
36 Billion Pesos (PhP1,000,000,000) shall be entitled to incentives as provided by the Omnibus
37 Investment Code, upon prior endorsement of the PPP Center and registration by the project
38 proponent with the Board of Investments.
39
40
41
42

1 **SEC. 20. Projects of National Significance.**

2
3 **A. Incentives.** Upon certification and recommendation by the ICC, and prior consultation
4 with the Department of Interior and Local Government (DILG), the President may classify
5 certain projects, such as energy, toll road, mass transit, water, sewerage and such other
6 projects undertaken under this Act and its IRR as projects of national significance, which shall
7 be entitled to the following incentives:

8
9 (a) All real properties which are actually and directly used for the project shall be exempt
10 from any and all real property taxes levied under Republic Act No. 7160;

11 (b) All local taxes, fees and charges imposed by a province, city or municipality on the
12 project proponent shall not exceed fifty percent (50%) of one percent (1%) of gross sales or
13 receipts of the preceding calendar year.

14 (c) The necessary business permits, including any renewals thereof, shall be deemed to
15 have been automatically granted or issued to the winning project proponent upon payment of
16 the required taxes and fees to the appropriate LGU.

17
18 **B. Criteria.** For a project to qualify as a project of national significance, it shall meet the
19 following criteria:

20
21 (a) The total project cost falls within the threshold set by the ICC;

22 (b) The project has a direct economic impact which should not be less than the
23 threshold set by the ICC;

24 (c) The project has a direct positive impact on at least two (2) cities or municipalities;
25 and

26 (d) The project can create new jobs.
27

28 **SEC. 21. Exemption from Payment of Transfer Taxes.** For all PPP projects, the transfer of
29 ownership of infrastructure facility to the implementing agency shall be exempt from capital
30 gains tax, documentary stamp tax and all taxes and fees, whether from national or local, related
31 to the transfer thereof.

32
33 **SEC. 22. PPP Center.**

34 **A. Functions.** To achieve the goals of this Act, the PPP Center is hereby institutionalized. It is
35 hereby authorized to adopt its current organizational structure, absorb its existing employees,
36 and upgrade its human resource component, as may be necessary, towards a more efficient
37 and effective performance of the following functions:

38
39 (a) Assist implementing agencies in identifying, developing, prioritizing and
40 maintaining a pipeline of PPP projects;

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

- 1 (c) Manage and administer the PDMF as provided in Section 7 of this Act;
- 2 (d) Work with implementing agencies in setting procurement and implementation
- 3 timelines for approved PPP projects;
- 4 (e) Recommend plans, policies and implementation guidelines related to PPP, in
- 5 consultation with appropriate oversight committees or agencies, implementing agencies, private
- 6 sector and other relevant stakeholders;
- 7 (f) Facilitate, monitor, and evaluate the implementation of PPP programs and
- 8 projects developed by the implementing agencies;
- 9 (g) Report to the Office of the President and Congress on the implementation of the
- 10 PPP programs and projects of the government at the end of each year;
- 11 (h) Serve as a link between the government and the private sector;
- 12 (i) Promote and market PPP programs and projects, in collaboration with other
- 13 government promotion agencies;
- 14 (j) Sit as member of NEDA-Infrastructure Committee (INFRACOM), ICC, and other
- 15 inter-agency bodies where a PPP project is a major concern;
- 16 (k) Issue advisory opinions and interpret the provisions of this Act and its IRR,
- 17 relating solely to technical aspects of PPP;
- 18 (l) Serve as the central repository of all executed PPP contracts and any
- 19 subsequent amendment or supplement thereto, including settlement agreements, entered into
- 20 by implementing agencies;
- 21 (m) Provide and transmit copies of duly executed PPP contracts to Congress;
- 22 (n) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC
- 23 insofar as PPP projects are concerned;
- 24 (o) Maintain an integrated projects' bank to serve as an interactive database of all
- 25 current and past projects;
- 26 (p) Such other functions as may be necessary to achieve the objectives and
- 27 purposes of this Act.
- 28

29 **B. Positions and Compensation.** All positions of the PPP Center shall be governed by a

30 compensation and position classification system and qualification standards consistent with the

31 industry and duly approved by the Governance Commission for Government-Owned or –

32 Controlled Corporations (GCG) based on comprehensive job analysis and audit of actual

33 institutional duties and personal responsibilities. The compensation plan shall be comparable

34 with the prevailing compensation plan of Bangko Sentral ng Pilipinas, GFIs and other GOCCs,

35 and shall be subject to periodic review by the GCG no more than once every two (2) years,

36 without prejudice to yearly merit review or increases based on productivity and efficiency.

37

38 **C. Attachment.** The PPP Center shall report directly to the PPP Governing Board. It shall

39 remain an attached agency under the administrative supervision of the NEDA.

40

41 **D. Head.** The PPP Center shall be headed by an Executive Director with the rank

42 equivalent to an Undersecretary, who shall be appointed by the President of the Philippines,

1 upon recommendation of the PPP Governing Board. The Executive Director shall perform the
2 following functions:

3
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 he or she
7 deems necessary for the effective exercise and discharge of the powers and functions of the
8 PPP Center;

9 (c) Sit as an ex-officio member of the PPP Governing Board, INFRACOM, ICC and other
10 inter-agency bodies where a PPP project is a major concern; and

11 (d) Perform such other functions as may be assigned by the PPP Governing Board.
12

13 **SEC. 23. A. PPP Governing Board.** The PPP Governing Board is hereby created, referred to
14 as the Board, which shall be the overall policy-making body for all PPP-related matters,
15 including the PDMF. It shall be responsible for setting the strategic direction of PPP programs
16 and projects and in creating an enabling policy and institutional environment for PPP.
17

18 The Board shall be composed of the following:

19 (a) Secretary of Socio-economic Planning as Chairperson;

20 (b) Secretary of Finance as Vice-Chairperson;

21 (c) Secretary of Budget and Management;

22 (d) Secretary of Justice;

23 (e) Secretary of Trade and Industry;

24 (f) Executive Secretary;

25 (g) Executive Director of PPP Center; and

26 (h) Private sector Co-chairman of the National Competitiveness Council (NCC).
27

28 **B. Alternates.** The principal members of the Board may designate their respective
29 alternates, who shall be the officials next-in-rank to them, and whose acts shall be considered
30 the acts of their principals.
31

32 **C. Quorum.** The presence of the Chairperson with four (4) other members of the Board
33 shall constitute a quorum and a majority vote of the members present shall be necessary for the
34 adoption of any issuance, order, resolution, decision or other act of the Board in the exercise of
35 its functions. The Board shall act as a collegial body. In the conduct of meetings, the
36 Chairperson shall not vote except to break a tie.
37

38 **D. Action.** The Board shall act on any matter for its consideration not later than thirty (30)
39 days from the date of submission thereof.
40

41 **E. Honoraria.** The members of the Board shall be entitled to honoraria based on existing
42 government accounting and auditing rules and regulations.

1 **SEC. 24. Mandatory Inclusion of Alternative Dispute Resolution Mechanisms in PPP**
2 **Contracts.** All PPP contracts shall include provisions on the use of alternative dispute
3 resolution mechanisms. Subject to existing laws, the contracting parties shall be given complete
4 freedom to choose which venue and forum shall govern their dispute, as well as the rules or
5 procedures to be followed in resolving the same.

6
7 **SEC. 25. Funding of Contingent Liabilities Arising from PPP Projects.** To ensure fiscal
8 sustainability, enhance ability of the implementing agency to discharge its obligations under
9 risks allocated to it, and improve terms of financing of PPP projects, there is hereby created a
10 Contingent Liabilities Fund which shall be financed through dedicated budgetary appropriations
11 and contributions from the budgets of implementing agencies. It may also be sourced from bid
12 premiums. The fund will provide a reliable pool from which disbursements on government
13 obligations on liabilities that have materialized can be drawn. As such any appropriations and
14 contributions to the fund are permanently appropriated and will not revert to the general fund if
15 not disbursed during the life of the project. The fund shall be administered by the Department of
16 Finance following fiduciary standards for fund management. The operations of the fund can be
17 enhanced through Official Development Assistance.

18
19 As part of the budget submission, the Department of Finance shall submit an annual report
20 on the status of this fund to Congress. Proceeds of the fund shall be invested in risk-free highly
21 liquid assets. The governance structure, specific functions and responsibilities related to the
22 operations of the said fund will be specified in the IRR of this Act.

23
24 **SEC. 26. Miscellaneous Provisions.**

25
26 (a) Joint Venture Agreements. – For joint venture arrangements, the ownership of the
27 infrastructure facility may be transferred to either the implementing agency or to the project
28 proponent: *Provided*, That in the latter case, the transfer shall be made under competitive
29 market conditions; *Provided, further*, That the equity contribution of the implementing agency in
30 a joint venture corporation shall in no case exceed fifty percent (50%) of the outstanding capital
31 stock of the said corporation; and *Provided, finally*, That the return on investment of either party
32 shall be in proportion to their respective contribution.

33
34 (b) Recovery of Investment. – As may be agreed in the PPP contract, the project
35 proponent may be allowed to collect tolls, fees, rentals, or charges, engage in commercial
36 development, receive viability gap funding, and receive direct government payments, among
37 others, to recover investment.

38
39 (c) Wind-up and Transfer Measures. – The PPP contract shall provide, as may be
40 appropriate, for:

41
42 (i) Mechanisms and procedures for the transfer of assets to the implementing agency;

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

4
5 (iii) The transfer of technology required for the operation of the infrastructure facility;

6
7 (iv) The training of the implementing agency's personnel or of a successor in the operation
8 and maintenance of the infrastructure facility; and

9
10 (v) The provision, by the project proponent, of a warranty that the infrastructure facility
11 meets the project technical specifications, agreed system features, and performance standards
12 and services for a certain period as may be defined in the IRR of this Act after the transfer of the
13 infrastructure facility to the implementing agency or to a successor.

14
15 (d) Prescription. – No one shall in any proceedings before any court or tribunal allege the
16 invalidity of any PPP contract on the ground of non-compliance with the provisions of this Act or
17 its IRR after a period of one (1) year has elapsed from the signing of the PPP contract.

18
19 (e) Construction. – If the Person, whether or not the Project Proponent, that shall actually
20 perform the Construction of the Infrastructure Facility is a foreigner, such Person shall hire
21 Filipino employees, if available, throughout the period of Construction.

22
23 (f) Operation. – The Person, whether or not the Project Proponent, that shall actually
24 operate and maintain the Infrastructure Facility, including but not limited to the collection of tolls,
25 fees, rentals or charges from users of the Infrastructure Facility, must be registered with the
26 Securities and Exchange Commission

27
28 **SEC. 27. Implementing Rules and Regulations.** The NEDA, DOF, DBM, DPWH, DILG,
29 Department of Justice, Department of Trade and Industry, Office of the President, Department
30 of Transportation and Communications, Department of Environment and Natural Resources,
31 PPP Center and private sector Co-chairman of the NCC shall constitute the IRR Committee.
32 Within sixty (60) days from the effectivity of this Act, the PPP Center shall formulate and
33 prescribe, in consultation with the IRR Committee, after public hearing and publication as
34 required by law, the rules and regulations to implement the provisions of this Act. The IRR shall
35 be approved by the PPP Governing Board.

36
37 From time to time the PPP Governing Board may instruct the PPP Center, in consultation
38 with the IRR Committee, to conduct, formulate and prescribe, after due public hearing and
39 publication, amendments to the IRR, consistent with the provisions of this Act.

40
41 **SEC. 28. Transitory Provisions.** All unexpended funds for the calendar year, properties,
42 equipment, contracts and records of the PPP Center are hereby retained. The amount

1 necessary to carry out the organizational changes of PPP Center provided in this Act shall be
2 determined by the PPP Governing Board. Appropriations for succeeding years shall be
3 incorporated in its budget proposals for Congressional action.

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

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

15
16 **SEC. 30. Separability Clause.** If any provision of this Act is held invalid, the other provisions
17 not affected thereby shall continue in operation.

18
19 **SEC. 31. Effectivity Clause.** This Act shall take effect fifteen (15) days after its publication in at
20 least two (2) newspapers of general circulation.

21
22 Approved,