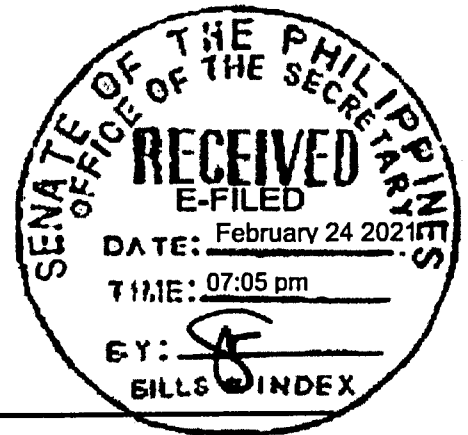


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE

COMMITTEE REPORT NO. 187

Submitted by the Committees on Public Works; Economic Affairs; Ways and Means; and Finance on February 24 2021

Re : Senate Bill No. 2074 Prepared by the Committees

Recommending its approval in substitution of Senate Nos. 15, 190, 1080, 1159 and 1231.

Sponsor: Senator Emmanuel D. Pacquiao

MR. PRESIDENT:

The Committees on Public Works; Economic Affairs; Ways and Means; and Finance, to which were referred **Senate Bill No. 15**, introduced by Senator Drilon, entitled:

**"AN ACT
INSTITUTIONALIZING AND STRENGTHENING PUBLIC-PRIVATE
PARTNERSHIPS"**

Senate Bill No. 190, introduced by Senator Pacquiao, entitled:

**"AN ACT
AUTHORIZING PUBLIC-PRIVATE PARTNERSHIP FOR THE PEOPLE (P4),
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES"**

Senate Bill No. 1080, introduced by Senator Recto, entitled:

**"AN ACT
INSTITUTIONALIZING PUBLIC-PRIVATE PARTNERSHIPS (PPP),
CREATING THE PPP CENTER, APPROPRIATING FUNDS THEREFOR, AND FOR
OTHER PURPOSES"**

Senate Bill No. 1159, introduced by Senator Angara, entitled:

**"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"**

and

Senate Bill No. 1231, introduced by Senator Marcos, entitled:

**"AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS"**

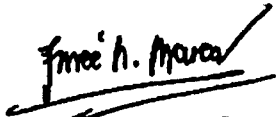
have considered the same and have the honor to report it back to the Senate with the recommendation that the attached **Senate No. 2074**, prepared by the Committees, entitled:


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


be approved in substitution of Senate Nos., 15, 190, 1080, 1159 and 1231 with Senators Drilon, Pacquiao, Recto, Angara, Marcos, and Cayetano as authors thereof.

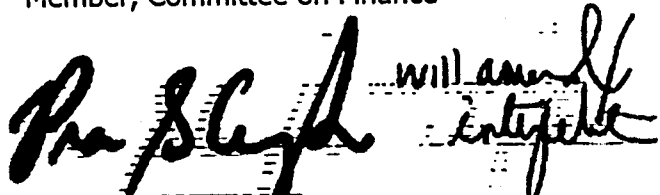
Respectfully submitted:

Chairpersons



IMEE R. MARCOS
Committee on Economic Affairs
Vice-Chairperson, Committee on Finance
Sub-Committee I
Member, Committee on Ways and Means



EMMANUEL D. PACQUIAO
Committee on Public Works
Member, Committee on Ways and Means
Member, Committee on Finance


SONNY ANGARA
Committee on Finance
Vice-Chairperson, Committee on Public
Works
Vice-Chairperson, Committee on
Economic Affairs
Vice-Chairperson, Committee on Ways
and Means


PIA S. CAYETANO
Committee on Ways and Means
Vice Chairperson, Committee on Finance
Sub-Committee D
Member, Committee on Economic
Affairs

Vice Chairpersons



WIN GATCHALIAN
Committee on Economic Affairs; and
Committee on Finance Sub-Committee E
Member, Committee on Ways and Means


RAMON BONG REVILLA, JR.
Committee on Public Works
Member, Committee on Ways and Means
Member, Committee on Economic
Affairs
Member, Committee on Finance


PANFILO M. LACSON
Committee on Finance Sub-Committee C
Member, Committee on Public Works
Member, Committee on Ways and Means

CYNTHIA A. VILLAR
Committee on Finance Sub-Committee B


RICHARD J. GORDON
Committee on Finance Sub-Committee G
Member, Committee on Public Works
Member, Committee on Ways and Means


JOEL VILLANUEVA
Committee on Finance Sub-Committee J
Member, Committee on Public Works

Manuel - Manuel
RISA HONTIVEROS
Committee on Finance Sub-Committee H
Member, Committee on Economic Affairs
Member, Ways and Means

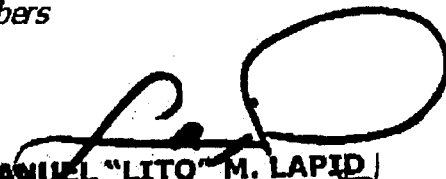

CHRISTOPHER "BONG" GO
Committee on Finance Sub-Committee F
Member, Committee on Public Works
Member, Committee on Ways and Means

*May interpellate
or propose amendments.*



GRACE POE
Committee on Finance Sub-Committee K
Member, Committee on Public Works
Member, Committee on Ways and Means

Members

MARIA LOURDES NANCY S. BINAY
Committee on Finance


MANUEL "LITO" M. LAPID
Committee on Public Works
Committee on Economic Affairs
Committee on Ways and Means
Committee on Finance

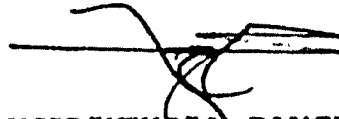

AQUILINO "KOKO" PIMENTEL III
Committee on Finance


RONALD "Bato" DELA ROSA
Committee on Public Works
Committee on Ways and Means
Committee on Finance



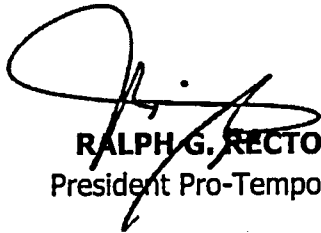
FRANCIS "TOI" N. TOLENTINO
Committee on Public Works
Committee on Economic Affairs
Committee on Finance

LEILA M. DE LIMA - (signed in a separate page)
Committee on Public Works
Committee on Ways and Means
Committee on Finance

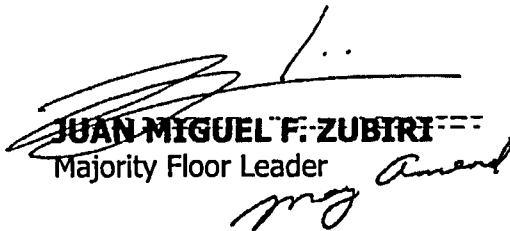


FRANCIS "KIKO" M. PANGILINAN
Committee on Public Works
Committee on Economic Affairs
Committee on Ways and Means
Committee on Finance

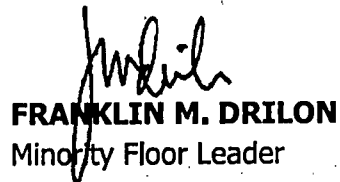
Ex-Officio Members:



RALPH G. RECTO
President Pro-Tempore



JUAN MIGUEL F. ZUBIRI
Majority Floor Leader



FRANKLIN M. DRILON
Minority Floor Leader

HON. VICENTE C. SOTTO III
Senate President

For the substitute bill strengthening Public-Private Partnerships, appropriating funds therefor, and for other purposes

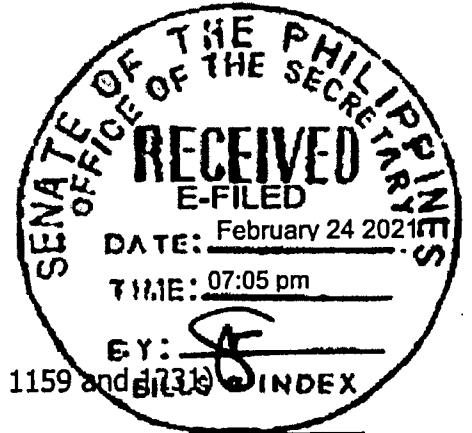
Leilade Lima
LEILA M. DE LIMA

*subject to
interpellation
and
proposed
amendments
at the
proper time*

EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE NO. 2074

(In substitution of Senate Nos., 15, 190, 1080, 1159 and ~~1131~~ **BILLS INDEX**)



Prepared jointly by the Committees on Public Works; Economic Affairs; Ways and Means; and Finance with Senators Franklin M. Drilon, Emmanuel D. Pacquiao, Ralph G. Recto, Sonny Angara, Imee R. Marcos and Pia S. Cayetano as authors thereof

**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 Philippines in Congress assembled:

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

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

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

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

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

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

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

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

- 1 (a) **Approving Body** - refers to an entity authorized to approve PPP Projects,
2 in accordance with Section 7 of this Act;
- 3 (b) **Construction** - refers to new construction, rehabilitation, improvement,
4 expansion, alteration, and related works and activities including the
5 necessary supply and installation of equipment, materials, labor and
6 services, and related items;
- 7 (c) **Contractor** - refers to any entity allowed under Philippine laws, which
8 may or may not be the Private Proponent, and which shall undertake the
9 actual construction or supply of equipment or services for PPP Projects;
- 10 (d) **Contingent Liability** - refers to an obligation that may or may not arise
11 from events specified in a PPP contract, the occurrence, timing, and
12 amount of which is uncertain. These events include regulatory risks, force
13 majeure, breach of government warranties, and material adverse
14 government action, among others;
- 15 (e) **Facility Operator** - refers to an entity with legal personality authorized
16 under existing laws, which may or may not be the Private Proponent, that
17 shall be responsible for operating and maintaining a facility, including, but
18 not limited to, the collection of tolls, fees, rentals or charges from facility
19 users;
- 20 (f) **Government Undertakings** - refers to any form of contribution and
21 support, which the government may extend to a Private Proponent for the
22 implementation of PPP Projects, as defined under this Act. The procedures
23 on proposing and granting of Government Undertakings shall be prescribed
24 in the IRR of this Act;

- 1 (g) **Greenfield Project** - refers to a project which entails the creation of an
2 entirely new facility or service, which does not depend on the improvement
3 of an existing facility;
- 4 (h) **Green Financing** - refers to investments that create environmental
5 benefits in support of green growth, low-carbon, and sustainable
6 development;
- 7 (i) **Guarantee on Demand** - refers to an agreement whereby the
8 Implementing Agency guarantees to assume market risks in a PPP Project;
- 9 (j) **Guarantee on Loan Repayment** - refers to an agreement whereby the
10 Implementing Agency guarantees to assume responsibility for the
11 repayment of debt directly incurred by the Private Proponent in
12 implementing the project in case of a loan default;
- 13 (k) **Guarantee on Private Sector Return** – refers to an agreement whereby
14 the Implementing Agency guarantees to provide a pre-identified rate of
15 return on the investment of the Private Proponent;
- 16 (l) **Implementing Agency** - refers to a department, bureau, office,
17 instrumentality, commission, authority of the national government, state
18 universities and colleges (SUCs), local government units (LGUs), or
19 government owned-or-controlled corporation (GOCC) as defined in
20 Republic Act No. 10149, including government instrumentalities with
21 corporate powers (GICP), government corporate entities
22 (GCE), government financial institutions (GFIs), which is authorized to
23 undertake PPP Projects;

- 1 (m) **Joint Venture (JV)** - refers to a contractual arrangement whereby both
2 the Implementing Agency and the Private Proponent contribute to pool
3 resources comprising of capital, services, or assets (including equipment,
4 land or intellectual property) to jointly undertake a specific investment
5 activity. The investment activity shall be for the purpose of accomplishing
6 a specific goal with the end view of facilitating private sector initiative in a
7 particular industry or sector, and eventually transfer the activity to either
8 the private sector under competitive market conditions or to the
9 government. The JV involves a community or pooling of interests in the
10 performance of the investment activity, and each party shall have the right
11 to direct and govern the policies in connection therewith with the intention
12 to share both profits, and risks and losses subject to agreement by the
13 parties. A JV may be undertaken through a contract or by creating a JV
14 entity;
- 15 (n) **Local PPP Project** - refers to a PPP Project that shall be undertaken by
16 LGUs, and local universities and colleges (LUCs) as defined in RA 10931;
- 17 (o) **National PPP Project** - refers to a PPP Project that shall be undertaken
18 by the national government, GOCCs including water districts, GICPs, GCEs,
19 GFIs, and SUCs as defined in RA 10931;
- 20 (p) **Operation and Maintenance** - refers to activities necessary and
21 incidental to preserve or restore the operational status of an asset or
22 system based on specified performance indicators;
- 23 (q) **Original Proponent** – refers to the Private Proponent which submitted an
24 unsolicited proposal which has been accepted and pre-qualified by the

1 Implementing Agency, and has been conferred the "Original Proponent"
2 status, as mentioned in Section 10 of this Act;

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

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

14 (t) **Project Cost** - refers to the estimated cost of the PPP Project. The
15 guidelines in determining the Project Cost shall be prescribed in the IRR of
16 this Act;

17 (u) **Subsidy** - refers to an agreement whereby the Implementing Agency will:
18 (a) defray, pay for, or shoulder a portion of the Project Cost or the
19 expenses and costs in operating or maintaining the project; (b) contribute
20 any property or assets to the project; (c) waive or grant special rates on
21 real property taxes on the project during the term of the contractual
22 arrangement; and/or (d) waive charges or fees relative to business permits
23 or licenses that are to be obtained for the construction of the project, all
24 without receiving payment or value from the Private Proponent and/or

1 Facility Operator for such payment, contribution, or support, *Provided*, That
2 under no circumstance shall the total subsidy exceed fifty percent (50%) of
3 the total Project Cost;

4 (v) **Termination Payment** - refers to the amount payable by the government
5 or the Private Proponent on the occurrence of an event or series of events
6 provided for in the PPP contract that results in the termination of said
7 contract;

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

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

20 **SEC. 6. Identification of PPP Projects.** – Implementing Agencies shall
21 include in their development plans, strategies, and investment programs those
22 priority PPP Projects that they want to undertake. In identifying those projects, the
23 Implementing Agencies shall be guided by the following principles: effectiveness in
24 meeting government objectives, appropriateness of the chosen procurement modality

1 and source of funding, value for money, accountability and transparency, consumer
2 rights, affordability, public access, safety, and security. Priority projects shall be
3 consistent with the national and local development and investment plans.

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

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

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

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

14 (i) Projects costing five billion pesos (P5,000,000,000.00) and below,
15 shall be submitted to the Investment Coordination Committee of the
16 National Economic and Development Authority (ICC-NEDA) for
17 approval;

18 (ii) Projects costing above five billion pesos (P5,000,000,000.00) shall be
19 submitted to the NEDA Board for approval, upon favorable
20 recommendation by the ICC-NEDA.

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

23 (2) **Local PPP Projects.** Local PPP Projects shall be approved by the local
24 Sanggunians, regardless of the Project Cost, *Provided*, that Local PPP Projects

1 involving Government Undertakings using national government funds shall require
2 the approval of the ICC-NEDA. National Government Undertakings shall include,
3 among others, the following items to be provided by the national government to a
4 Local PPP Project: (i) Guarantees on Demand, (ii) Guarantees on Private Sector
5 Return, (iii) Guarantees on Loan Repayment; (iv) Viability Gap Funding and other
6 forms of Subsidy; (v) payment of Contingent Liability, including Termination
7 Payments.

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

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

18 (c) The appropriate Approving Body shall notify and advise, in writing, the
19 Implementing Agency of its receipt and assessment of the completeness, in form and
20 in substance, of the PPP Project proposal. Upon complete submission of the
21 requirements by the Implementing Agency, the appropriate Approving Body shall
22 render its decision on the project within forty (40) working days therefrom. The
23 Implementing Agency shall be duly notified in writing of the decision of the
24 Approving Body on or before the end of the 40-day period. The failure of the

1 appropriate Approving Body to render its decision on the project within the specified
2 period shall be deemed an approval thereof and the concerned Implementing Agency
3 may proceed with the procurement of the PPP Project, without prejudice to any
4 liability that the erring or negligent officials or employees may incur under existing
5 laws.

6 In cases of Local PPP Projects requiring national government undertakings,
7 the ICC-NEDA shall be given twenty (20) working days from the receipt of the
8 proposal for the Local PPP Project to render its decision on the requested
9 government undertaking. In the event of disapproval of the requested government
10 undertaking, the Implementing Agency has the right to resubmit the request for
11 approval of the national government undertaking in accordance with the provisions of
12 the IRR of this Act. The disapproval of the requested government undertaking shall
13 not be construed as a disapproval of the Local PPP Project.

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

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

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

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

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

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

20 If the winning bidder fails to comply with any post-award requirement or fails
21 to enter into a contract with the Implementing Agency, the latter may proceed to
22 consider the next technically and financially qualified bidder. In case the contract is
23 awarded to the next technically and financially qualified bidder, it shall be without
24 prejudice to legal remedies available to the Implementing Agency like forfeiture of

1 bid security, withdrawal of award, and such other remedies allowed under existing
2 laws, rules, and regulations.

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

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

8 (1) If no bids are received; or

9 (2) If there are no complying bids.

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

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

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

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

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

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

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

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

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

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

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

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

- 3 (i) Viability Gap Funding and other forms of Subsidy;
- 4 (ii) Payment of Right-of-Way related costs;
- 5 (iii) Performance undertaking;
- 6 (iv) Exemption from any taxes as required by laws, except local taxes
7 imposed by local government units;
- 8 (v) Guarantee on Demand;
- 9 (vi) Guarantee on Loan Repayment;
- 10 (vii) Guarantee on Private Sector Return;
- 11 (viii) Government equity except in JV arrangements; and
- 12 (ix) Contribution of assets, properties, and rights except in JV
13 arrangements.

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

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

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

23 (3) An unsolicited proposal involving Right-of-Way acquisition of a property,
24 whether owned or not owned by the Original Proponent, may only be considered if

1 the submission includes proof that the Original Proponent can acquire the entire
2 property it identified in the unsolicited proposal, and/or a detailed Right-of-Way and
3 resettlement plan indicating the specific assistance it needs from the government in
4 acquiring the Right-of-Way for the entire property it identified in the unsolicited
5 proposal, as may be applicable.

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

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

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

21 In cases of automatic rejection and rejection resulting from inaction, the paid
22 administrative fee shall be returned to the appropriate Private Proponent, and shall
23 be without prejudice to the right of the Private Proponents to resubmit their
24 proposals until such time that the proposal has been formally rejected by the

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

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

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

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

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

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

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

15 (a) In case of National PPP Projects:

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

20 (ii) The decision of the PBAC on the motion for reconsideration in the
21 immediately preceding paragraph may be further questioned by filing an appeal to
22 the head of the Implementing Agency concerned, and paying a non-refundable
23 appeal fee in an amount equivalent to no less than ½ of 1% of the Project Cost
24 within fifteen (15) working days from receipt thereof. The head of the Implementing

1 Agency shall act on the appeal and render a decision within thirty (30) calendar days,
2 otherwise it shall be deemed denied. The PPP Governing Board may adjust the
3 appeal fee as the need arises.

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

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

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

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

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

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

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

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

22 ***SEC. 13. Project Supervision, Monitoring, and Impact Evaluation.*** –
23 Every PPP Project shall be implemented in accordance with the project terms as
24 approved by the appropriate Approving Body, as well as the signed PPP contract. The

1 coverage of the project terms and the minimum required provisions in a PPP contract
2 shall be set forth in the IRR of this Act. The Implementing Agency shall be entitled to
3 exercise sufficient powers of supervision, monitoring, and control over the
4 implementation of each PPP contract it has entered into.

5 (a) **Supervision.** The Implementing Agency shall be responsible for the
6 overall supervision of the PPP Project and for submission of periodic monitoring
7 reports, executed under oath, to the appropriate oversight agencies. The approval by
8 any public officer of any certificate of compliance or certificate of completion that is
9 submitted by the Private Proponent shall also be made under oath. The liability of the
10 public officer or former public officer for any criminal act under existing pertinent
11 laws related to the actions made on such reports and such approvals shall survive the
12 retirement of the public officer, the termination of the project contract, and the lapse
13 of the applicable warranty period/s.

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

16 The PPP Center shall be responsible for the coordination and monitoring of
17 projects implemented under this Act. For this purpose, the Implementing Agency
18 shall submit to the PPP Center all executed PPP contracts, information on the status
19 of projects implemented by, as well as copies of all unsolicited proposals and related
20 documents received by, the former. At the end of every calendar year, the PPP
21 Center shall submit a report to the President of the Philippines and to the Congress
22 of the Philippines— particularly to the Senate President and the Speaker of the House
23 of Representatives, and the Chairpersons of the Committee on Public Works – on the
24 progress of all projects implemented under this Act.

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

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

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

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

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

23 Other non-monetary payments, such as commercial development rights, or
24 the grant of a portion or percentage of the reclaimed land, subject to the

1 constitutional requirements on land ownership, may also be allowed to supplement
2 the foregoing schemes.

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

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

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

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

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

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

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

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

- 16 (a) Mechanisms and procedures for the transfer of assets to the Implementing
17 Agency;
- 18 (b) The transfer of technology required for the operation of the PPP Project,
19 subject to limitations under existing laws, rules and regulations;
- 20 (c) The training of the personnel of the Implementing Agency or of a
21 successor in the operation and maintenance of the PPP Project;
- 22 (d) The provision, by the Private Proponent, of a warranty that the PPP
23 Project meets the project technical specifications, agreed system features,
24 and performance standards and services for a certain period as may be

1 defined in the IRR of this Act after the transfer of the PPP Project to the
2 Implementing Agency or to a successor; and

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

6 **SEC. 21. Prohibition on the issuance of Temporary Restraining**
7 **Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. –**

8 No temporary restraining order, preliminary injunction, or preliminary mandatory
9 injunction shall be issued by any court, except the Supreme Court, against any
10 Implementing Agency or the PPP Center, its officials or employees, or any person or
11 entity, whether public or private acting under the government direction, to restrain,
12 prohibit, or compel the following acts:

13 (a) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;

14 (b) Qualification or disqualification of bidders;

15 (c) Awarding of any PPP contract;

16 (d) Acceptance of any unsolicited PPP project proposal, even if not acted upon
17 by the Implementing Agency concerned under Section 10 of this Act;

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

20 (f) Construction, operation and maintenance of any PPP Project;

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

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

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

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

10 Any temporary restraining order, preliminary injunction, or preliminary
11 mandatory injunction issued in violation of this section is void and of no force and
12 effect.

13 **SEC. 22. PPP Center.** – To achieve the goals of this Act, the PPP Center
14 created under Executive Order No. 8, series of 2010, as amended by Executive Order
15 No. 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt
16 its current organizational structure, absorb its existing employees, and upgrade its
17 human resource component, as may be necessary, subject to evaluation and
18 approval by the DBM.

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

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

23 (b) Provide advisory services, technical assistance, trainings, and capacity
24 development to Implementing Agencies, Approving Bodies, and other

- 1 oversight agencies in all PPP-related matters, and act as a procurement
2 agent upon the request of the Implementing Agency;
- 3 (c) Manage and administer the Project Development and Monitoring Facility
4 (PDMF) as provided in Section 24 of this Act;
- 5 (d) Recommend plans, policies, and implementation guidelines related to PPP,
6 in consultation with appropriate oversight committees or agencies,
7 Implementing Agencies, private sector and other relevant stakeholders;
- 8 (e) Ensure sustainability of the implemented PPP program and projects
9 through monitoring, documenting, and sharing the lessons learned and
10 best practices to Implementing Agencies and appropriate oversight
11 committees or agencies;
- 12 (f) Provide regular monitoring and status reports on the implementation of all
13 PPP programs and projects entered into by Implementing Agencies,
14 including potential public interest concerns and violations of the PPP Act, to
15 the Office of the President, the Congress of the Philippines, relevant
16 oversight committees and agencies, and publish the same in the official
17 website of the PPP Center;
- 18 (g) Promote and market the implemented PPP programs and projects, in
19 collaboration with other government investment promotion agencies;
- 20 (h) Review PPP contracts and issue advisory opinions relating to PPPs,
21 including how the PPP Act and its IRR shall be implemented;

- 1 (i) Serve as the central repository of all PPP Project documents, including all
2 executed PPP contracts and any subsequent amendment or supplement
3 thereto, including settlement agreements, entered into by Implementing
4 Agencies;
- 5 (j) Act as Secretariat to the PDMF Committee and the PPP Governing Board;
- 6 (k) Perform such other functions as may be necessary to achieve the
7 objectives and purposes of this Act.

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

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

- 15 (a) Undertake the day-to-day management and supervise the operations of the
16 PPP Center;
- 17 (b) Recommend to the PPP Governing Board such policies and measures which
18 are deemed necessary for the effective exercise and discharge of the
19 powers and functions of the PPP Center;
- 20 (c) Sit as a non-voting member of the PPP Governing Board, INFRACOM, and
21 ICC-NEDA; resource person/observer in the NEDA Board on PPP matters;
22 and as a member of other inter-agency bodies in cases where PPPs are
23 concerned; and

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

1 for the adoption of any issuance, order, resolution, decision or other act of the Board
2 in the exercise of its functions. The Board shall act as a collegial body. In the conduct
3 of meetings, the Chairperson shall not vote except to break a tie.

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

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

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

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

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

23 The PDMF Committee shall be composed of: (1) the Secretary of Socio-
24 Economic Planning as chairperson; (2) the Secretary of Finance, (3) the Secretary of

1 Budget and Management, and (4) the Executive Director of the PPP Center, as
2 members. The PPP Center shall serve as the Secretariat for the PDMF Committee.

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

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

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

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

- 15 (a) Concession fees;
- 16 (b) Implementing Agency reimbursements;
- 17 (c) Interest earnings from the PPP Risk Management Fund; and
- 18 (d) National government contributions.

19 National government contributions shall cover only the difference between the
20 target amount of the PPP Risk Management Fund, as mentioned above, and the
21 current value of the fund. The DOF shall regularly monitor and review the viability of
22 the PPP Risk Management Fund in relation to the magnitude of PPP Projects
23 undertaken by Government, and if necessary, recommend the increase in the target
24 amount of the PPP Risk Management Fund and the reason therefor. All national

1 government contributions to the PPP Risk Management Fund shall be included in the
2 proposed DOF budget.

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

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

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

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

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

23 In the case of Local PPP Projects, a similar PPP Risk Management Fund may
24 be established by the LGU. The details pertaining to maintaining and administering

1 such fund shall be provided in the IRR of this Act. Sources of the fund may include
2 the budget of the LGU and the income of the LGU from PPP Projects.

3 **SEC. 26. *Establishment of a PPP Unit.*** – Each concerned Implementing
4 Agency shall organize a PPP unit headed by a senior official, who shall be responsible
5 for planning, overseeing, and monitoring PPP Projects of the Implementing Agency.
6 In the case of LGUs undertaking PPP Projects, the local chief executive shall organize
7 such PPP unit.

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

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

22 **SEC. 28. *Miscellaneous Provisions.*** – (a) ***Mitigation of***
23 ***Interconnectivity and Interface Risks.*** All PPP Projects which will interconnect or
24 interface with a local or national facility, shall be required to submit a Memorandum

1 of Agreement (MOA) containing an interconnection/interface plan agreed upon by all
2 relevant parties. For National PPP Projects, said MOA shall be submitted to the ICC-
3 NEDA; while for Local PPP Projects, said MOA shall be submitted to the local
4 Sanggunian.

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

13 (c) **Standardization of Required Endorsements, Permits, and**
14 **Licenses for PPP Projects.** All relevant government and regulatory agencies,
15 bodies, institutions and LGUs, shall, in coordination with the PPP Center, adopt
16 standard timelines and requirements for the issuance of relevant endorsements,
17 approvals, and permits for PPP Projects.

18 (d) **Real Property Tax for PPPs.** The DOF shall issue the guidelines on
19 real property tax valuation of PPP Projects to ensure uniform and consistent
20 implementation among all LGUs. All real properties which are actually, directly, and
21 exclusively used for a Greenfield PPP Project shall be exempted from the payment of
22 real property taxes during the period of construction and until such time the facility is
23 used or operational, whether partial or full. The details of the exemption shall be
24 prescribed in the IRR of this Act.

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

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

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

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

23 (i) **Private Legal and Medical Assistance.** All the PPP PBAC members
24 and other public officials providing services to the PPP PBAC shall be authorized to

1 engage the services of private lawyers, or shall be provided with free legal assistance,
2 where a civil, criminal, or administrative action is filed against them by reason of the
3 performance of their official functions or duties, unless they are finally adjudged in
4 such action or proceeding to be liable for gross negligence or misconduct or grave
5 abuse of discretion. The PPP PBAC members shall also be entitled to medical
6 assistance for injuries incurred in the performance of their functions.

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

11 (k) **Safeguard Mechanisms to Protect Public Interest.** In order to
12 improve transparency and to promote bankability and social acceptability of PPP
13 Projects, the following mechanisms shall be observed: (1) Whenever applicable, the
14 Implementing Agency shall assess the affordability of fee or tariff, and conduct a
15 willingness-to-pay survey among the users of the infrastructure facility; (2) The
16 Implementing Agency shall conduct public consultation or dialogue with all potential
17 stakeholders, the details of which shall be threshed out in the IRR; and (3) The
18 Implementing Agency and the PPP Center shall post in their respective websites the
19 approved starting fare or user fee in a PPP Project as well as the approved parametric
20 formula on fare increases or adjustments, if applicable.

21 **SEC. 29. Implementing Rules and Regulations.** – The IRR Committee
22 shall be composed of representatives from the NEDA, DOF, DBM, DPWH, DOTr,
23 DILG, DOJ, DTI, DENR, Office of the President, PPP Center, and Private Sector
24 Representatives and other agencies, as may be identified by the PPP Governing

1 Board. Within forty (40) working days from the effectivity of this Act, the PPP Center
2 shall formulate and prescribe, in consultation with the IRR Committee, after public
3 hearing and publication as required by law, the rules and regulations to implement
4 the provisions of this Act. The IRR shall be approved by the PPP Governing Board.

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

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

13 The following acts shall be prohibited:

- 14 (a) Downgrading the category of the Project Cost for purposes of evading the
15 required approvals under this Act;
- 16 (b) Representation that the Private Proponent has the necessary capitalization
17 to commence, complete, and implement the PPP Project when the same is
18 false in material respects;
- 19 (c) Falsification or insertion of certain provisions in the execution copy of the
20 contract which are materially and substantially different from the approved
21 final draft contract;
- 22 (d) Any violation of Sections 7, 9, 10, 11, 17, 18, 28(g) under this Act; and
- 23 (e) A public officer or employee, whether in connivance with others or acting
24 alone, negligently or by fraud commits a failure to ensure compliance with

1 the project terms as approved by the Approving Body, and the signed PPP
2 contract, by approving, issuing, or confirming any certification, required
3 documents, or deliverables of the Private Proponent, which are non-
4 compliant with existing rules, erroneous, not authentic, or fraudulent.

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

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

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

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

11 **SEC. 32. *Joint Congressional Oversight Committee.*** – A Joint
12 Congressional Oversight Committee is hereby created to oversee the implementation
13 of this Act. The Committee shall be composed of five (5) members each from the
14 Senate and House of Representatives to be designated by the Senate President and
15 the Speaker of the House of Representatives, respectively. The Committee shall be
16 jointly chaired by the respective Chairpersons of the House Committee on Public
17 Works and Highways, the House Committee on Appropriations, the Senate
18 Committee on Public Works, and the Senate Committee on Finance.

19 **SEC. 33. *Transitory Clause.*** – The provisions of this Act shall apply to all
20 PPP Projects except: (a) all projects wherein a PPP contract between the winning
21 Private Proponent and the Implementing Agency concerned has been executed prior
22 to effectivity of this Act; and (b) all projects undertaken through competitive
23 selection wherein the bid/s have already been opened prior to the effectivity of this
24 Act. For PPP Projects not covered under items (a) and (b) above, this Act shall

1 govern, provided that this Act shall not, in any manner, operate to impair vested
2 rights already accruing to a party.

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

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

11 **SEC. 34. Separability Clause.** – If any provision of this Act is declared
12 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
13 continue to be in full force and effect.

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

15 (a) Republic Act No. 6957, as amended by Republic Act No. 7718 (An Act
16 Authorizing the Financing, Construction, Operation and Maintenance of
17 Infrastructure Projects by the Private Sector, and for other purposes);

18 (b) Executive Order No. 8, s. 2010, as amended by Executive Order No. 136, s.
19 2013 (Reorganizing and Renaming the Build-Operate And Transfer (BOT)
20 Center to the Public-Private Partnership (PPP) Center of the Philippines and
21 Transferring its Attachment from the Department of Trade and Industry to
22 the National Economic and Development Authority and for other
23 purposes);

1 (c) Executive Order No. 78, s. 2012 (Mandating the Inclusion of Provisions on
2 the Use of Alternative Dispute Resolution Mechanisms in All Contracts
3 Involving Public-Private Partnership Projects, Build-Operate and Transfer
4 Projects, Joint Venture Agreements Between the Government and Private
5 Entities and those Entered into by Local Government Units);

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

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

13 (f) PPP Codes and Joint Venture Guidelines issued by LGUs and 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,