

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **3951**



**Introduced by Hon. Feliciano Belmonte, Jr.,
Hon. Neptali M. Gonzales II, Hon. Ronald M. Cosalan
and Hon. Romero "Miro" S. Quimbo**

EXPLANATORY NOTE

The Philippines holds the distinction as one of the first developing countries to have created a legal and regulatory framework for Build-Operate-and-Transfer (BOT) Projects. In 1990, the Philippine Congress enacted Republic Act No. 6957, the first BOT law in Asia, which was further amended by Republic No. Act 7718 to provide for an increased number of variants of BOT contractual arrangements.

The BOT law has significantly increased private investment in infrastructure in the Philippines by promoting private sector participation. Two decades after the passage of Republic Act No. 7718, however, there is a need to further amend the law in order to keep the policy environment attuned to the present business landscape.

In identifying the needed reforms, this bill seeks to build from the experiences of the government in areas involving BOT projects. The proposed amendments aims to further strengthen the basic legal framework in undertaking Public-Private Partnership (PPP) projects. It also intends to sustain the achievements of the Aquino administration's PPP Program as it continues to move forward with its infrastructure projects.

The proposed amendments of the bill include the following:

- (a) Expansion of the coverage of PPP by including Joint Venture and Operation and Maintenance contracts;
- (b) Removal of the fifty percent (50%) cap on government participation, except for Joint Venture projects;
- (c) Increase in the threshold amount of PPP projects to be approved by the Approving Bodies;
- (d) Providing different treatment options of the implementing agencies when dealing with unsolicited proposals: (i) reject the proposal; (ii) use the proposal as basis for public bidding, subject to full reimbursement by the winning bidder of the project development cost incurred but not to exceed three percent (3%) of the project cost; or (iii) accept the proposal;
- (e) Extension of the challenge period for unsolicited proposals to a maximum period of six (6) months;
- (f) Prescribing the automatic grant of license or permit in favor of the winning bidder, subject to compliance with the requirements of the regulator;

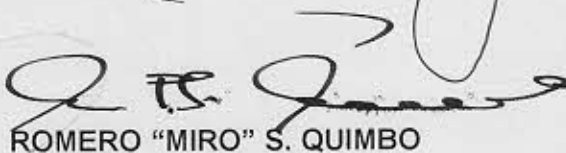
- (g) Providing flexibility in the expansion or extension of an existing infrastructure facility without need for further bidding, subject to certain limitations;
- (h) Requiring public disclosure of PPP contracts;
- (i) Prohibiting the issuance by courts of temporary restraining orders, preliminary injunction or preliminary mandatory injunction against all PPP projects, except the Supreme Court but with a validity period of only six months;
- (j) Inclusion of a penalty of removal from office for acts committed in violation of item (i), without prejudice to any civil and criminal liabilities incurred;
- (k) Prohibiting regulatory bodies from entering into any PPP contract that they regulate;
- (l) Exemption of projects of national significance from all local and real property taxes;
- (m) Inclusion of the valuation of right-of-way by using the average appraisal value of the property by the Bureau of Internal Revenue, Assessor's Office of the Municipal Government and a government bank;
- (n) Prescribing a thirty-day validity period for the issuance of writ of possession by the courts;
- (o) Institutionalizing Contingent Liability Fund as a reliable pool from which disbursements on government obligations on liabilities that have materialized could be drawn;
- (p) Institutionalizing Project Development and Monitoring Facility (PDMF), PDMF Committee, PPP Governing Board, and PPP Center; and
- (q) Repeal of Section 2 of Presidential Decree No. 1894 entitled "*Amending the Franchise of the Philippine National Construction Corporation to Construct, Maintain and Operate Toll Facilities in the North Luzon and South Luzon Expressways to Include the Metro Manila Expressway to Serve as an Additional Artery in the Transportation of Trade and Commerce in the Metro Manila Area*".

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


FELICIANO BELMONTE, JR.


NEPTALI M. GONZALES II


RONALD M. COSALAN


ROMERO "MIRO" S. QUIMBO

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**AN ACT FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC
ACT NO. 6957, AS AMENDED BY REPUBLIC ACT NO. 7718, ENTITLED
"AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION,
OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS
BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES",
APPROPRIATING FUNDS FOR THE SAID PURPOSE, AND FOR
OTHER PURPOSES**

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

SEC. 1. A new section to be numbered Section 1 is hereby added to read as follows:

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

SEC 2. Section 1 of Republic Act No. 7718 is hereby renumbered as Section 2 and amended to read as follows:

"SEC. 2. Declaration of Policy. – It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development, create an enabling environment for PPP, and provide the most appropriate incentives to mobilize private resources for the purpose of financing, design, construction, operation and maintenance of infrastructure projects and services normally financed and undertaken by the government. Such incentives, aside from financial incentives as provided by law, shall include provision of liberalized government regulations and procedures in support of the private proponent.

"The State recognizes the long-term nature of private investment in infrastructure projects and the need to mitigate the associated risks by ensuring that the validity and enforceability of contracts are respected through the due process of law.

"The State shall protect the public interest by ensuring fair and reasonable pricing and timely delivery of quality infrastructure, goods and services through equitable risk allocation inherent in projects implemented under this Act and its implementing rules and regulations (IRR), and subject to reasonable rules, under the guiding principle of full public disclosure of all transactions.

"The State affirms open, transparent and competitive selection as the central tenet of government procurement in securing private investment in public infrastructure projects."

SEC. 3. Section 2 of the same Act is hereby renumbered as Section 3, arranged in alphabetical order and further amended to read as follows:

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

- "(a) Approving Body – The entities authorized to approve PPP projects proposed under this Act and its IRR, in accordance with Section 6 of this Act.
- "(b) Availability-based PPP – Refers to a PPP where the implementing agency grants the project proponent the right to finance, design, build, operate and maintain an infrastructure facility, and commits to make predetermined payments for contractually-defined performance delivery.
- "(c) Concession-based PPP – Refers to a PPP where the implementing agency grants the project proponent the right to finance, design, build, operate and maintain an infrastructure facility, and recover its investment, operating and financing costs by charging the public a user fee or tariff.
- "(d) 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.
- "(e) Contingent Liability – refers to payment obligations arising from a valid PPP contract whose occurrence, timing and amount depend on some uncertain future event or circumstance. Under an optimal allocation of risks between the implementing agency and the project proponent, each risk in a PPP project shall be assigned to the party that is best able to control the likelihood of its occurrence, manage its impact on the project, and absorb the risk at the lowest cost.
- "(f) 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.

- “(g) Cooperation Period – Refers to the period of operation of an infrastructure facility, which period shall not exceed fifty (50) years in the case of any such facility requiring a public utility franchise.
- “(h) Facility operator – Refers to a person registered with the Securities and Exchange Commission, who may or may not be the project proponent, and who is responsible for all aspects of operation and/or maintenance of an infrastructure facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users: Provided, that in case the facility requires a public utility franchise, the facility operator shall be Filipino or at least sixty per centum (60%) owned by Filipinos.
- “(i) Government Undertakings – Refer to any form of support, contribution, assistance, subsidy, among others, which the government may provide to a solicited PPP project.
- “(j) Implementing agency – Refers to the department, bureau, office, instrumentality, commission, or authority of the national government, including government-owned or -controlled corporations (GOCCs), state universities and colleges (SUCs), government financial institutions (GFIs), government instrumentalities with corporate powers (GICPs), government corporate entities (GCEs), and other government corporate entities (OGCEs) as defined in Republic Act No. 10149 or local government units (LGUs), which undertake PPP projects in accordance with this Act.
- “(k) Indefinite Delivery Contract – Refers to a contract in which individual consultants, firms, or consortia of firms are prequalified and retained to provide advice on the preparation, structuring, procurement, award, financial close, implementation and monitoring of PPP Projects.
- “(l) Infrastructure facility – Refers to such facility as are established by the government in relation to or as may be necessary for the discharge of its functions, whether governmental or proprietary, 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 and/or provision of related services as may be defined in the IRR of this Act or as may be authorized by the implementing agency pursuant to this Act.

“For the construction stage of these infrastructure facilities where the contractor is a foreigner, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available.”

- "(m) PPP – Refers to a contractual arrangement between a project proponent and an implementing agency for providing an infrastructure facility or service, in which the project proponent bears significant risk and/or management responsibility. In order to recover its investment plus a rate of return, the project proponent may be allowed to collect tolls, fees, rentals, and/or charges; engage in commercial development; or receive subsidy, viability gap funding, and direct government payments, among others. It may be in the form of concession fees or availability payments.
- "(n) PPP Project – Refers to the financing, design, construction, and/or operation and maintenance of an infrastructure facility.
- "(o) Person – Refers to an individual, sole proprietorship, partnership, corporation or any other form of organization, whether domestic or foreign.
- "(p) Project Cost – Refers to total capital cost, financing and other expenses for the design, construction, operation and maintenance of an infrastructure facility.
- "(q) Project Proponent – Refers to any private person who shall have contractual responsibility for undertaking a PPP project.

"Without limiting the variations as may be defined in the IRR of this Act, PPP projects may be implemented through any of the following PPP contractual arrangements:

- "(i) Build-Operate-and-Transfer – Refers to a contractual arrangement whereby the project proponent undertakes a PPP project and transfers ownership of the infrastructure facility to the implementing agency at the end of the cooperation period.
- "(ii) Build-and-Transfer – Refers to a contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure facility and after the completion thereof, turns it over to the implementing agency concerned, which shall pay the project proponent on an agreed schedule its total investments expended on the project, plus a rate of return thereon. 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.
- "(iii) Build-Own-and-Operate – Refers to a contractual arrangement whereby a project proponent is authorized to undertake PPP project, specifically to finance, construct, own, operate and maintain an infrastructure facility from which the project proponent is allowed to recover its total investment, operating and maintenance costs plus a return thereon by collecting tolls, fees, rentals or other charges from facility users.

"(iv) Build-Lease-and-Transfer – Refers to a contractual arrangement whereby a project proponent undertakes to finance and construct an infrastructure facility and upon its completion turns it over to the implementing agency concerned on a lease arrangement for a cooperation period, after which ownership thereof is automatically transferred to the implementing agency concerned.

"(v) Build-Transfer-and-Operate – Refers to a contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to the project proponent.

Once the facility is commissioned satisfactorily, ownership is transferred to the implementing agency. The project proponent, however, operates the infrastructure facility on behalf of the implementing agency.

"(vi) Supply-and-Operate – Refers to a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the government so requires, operates such facility. Foreign firms who are allowed to operate the facility shall provide technology transfer and training to Filipino nationals.

"(vii) Contract-Add-and-Operate – Refers to a contractual arrangement whereby, the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded infrastructure facility over an agreed cooperation period. There may, or may not be, a transfer arrangement in regard to said facility.

"(viii) Develop-Operate-and-Transfer – Refers to a contractual arrangement whereby favorable conditions external to a new PPP project which is to be built by a project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.

"(ix) Joint Venture – Refers to a contractual arrangement whereby a private person or a group of private persons, and an implementing agency, contribute money or capital, services, assets, or a combination of any or all of the foregoing, to undertake a PPP project, with the intention to share profits, risks and losses. The ownership of the infrastructure facility may be transferred to either the implementing agency or to the private person: *Provided*, that in the latter case, the transfer shall be made under competitive market conditions.

The assets referred to above may include equipment, land, intellectual property or anything of value.

In the case of Joint Venture Company, the equity contribution of the implementing agency shall in no case exceed fifty percent (50%) of the outstanding capital stock of the said Company: *Provided*, that the said equity contribution shall be entitled to the same rate of profit or return on investment as that of the private equity.

- "(x) Operations and Maintenance Contract – Refers to a contractual arrangement whereby the project proponent undertakes the day-to-day operation and maintenance of an infrastructure facility owned by the implementing agency. The project proponent shall undertake the acquisition or provision and upgrading of equipment, systems and other items related to operation and/or maintenance. The project proponent shall be compensated in the form of a performance-based management or service fee during the cooperation period.
- "(xi) Rehabilitate-Operate-and-Transfer – Refers to a contractual arrangement whereby an existing infrastructure facility is turned over to the project proponent to refurbish, improve, operate and maintain for a cooperation period, at the expiry of which the ownership of the facility is transferred to the implementing agency.
- "(r) Public Utility – Refers to "public service" as defined in Commonwealth Act No. 146, or the Public Service Act.
- "(s) Rate of Return – Refers to the rate of return that a project proponent shall be entitled to, as determined 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: *Provided*, further, That for projects which are natural monopolies, the rate of return on rate base shall be determined by existing laws.
- "(t) Services – For the purposes of this Act, shall mean services for or related to infrastructure facilities such as, but not limited to, construction supervision, management, operation and maintenance and related services, and other technical services, which may be included as part of a PPP project.
- "(u) Solicited PPP Project – Refers to priority projects identified by the implementing agency.
- "(v) Unsolicited PPP Project – Refers to project proposals submitted by a private person which are not in response to a formal solicitation or request issued by the implementing agency and subject to the conditions and requirements prescribed under Section 8 of this Act.

- "(w) Viability Gap Funding (VGF) – Refers to such financial support the government may provide to a concession-based PPP project with the objective of making user fees affordable while improving the commercial attractiveness of the project, excluding costs of right-of-way, resettlement and real estate taxes."

SEC. 4. Section 3 of the same Act is hereby renumbered as Section 4 and amended to read as follows:

"SEC. 4. Authority of Implementing Agencies. – Implementing agencies authorized by law or their respective charters to contract out or undertake PPP projects are hereby authorized to enter into, sign and execute PPP contracts with any project proponent in accordance with the provisions of this Act and its IRR.

"In undertaking a PPP project under this Act and its IRR, every GOCC and its subsidiaries shall secure the approval of the head of department or agency to which the GOCC is attached. If the procurement thereof will be undertaken by the said department or agency, the governing board of the GOCC cannot withhold its approval to bid the project or award the contract in accordance with the approval of the appropriate Approving Body."

SEC. 5. Section 4 of the same Act is hereby renumbered as Section 5 and amended to read as follows:

"SEC. 5. Priority Projects. – Implementing agencies shall include in their development plans, strategies and investment programs those priority projects that may be financed, constructed, operated and maintained by the project proponent under the provisions of this Act and its IRR. The list of priority projects, as referred to in the IRR of this Act, shall be consistent with the Philippine Development Plan or its equivalent at the local level.

"The implementing agencies shall submit their list of PPP projects or any update thereto to the PPP Center for information. Each proposed PPP project to be implemented under this Act and its IRR shall be subject to the approval of the appropriate Approving Body."

SEC 6. A new section is hereby added and numbered as Section 6, to read as follows:

"SEC. 6. Approval of PPP Projects. The approval of PPP projects under this Act and its IRR shall be in accordance with the following:

"A. National Projects – The PPP projects shall be approved as follows:

- "(i) Projects costing up to Five Billion Pesos (PhP5,000,000,000) shall be approved by the Investment Coordination Committee (ICC); and

"(ii) Projects costing more than Five Billion Pesos (PhP5,000,000,000) shall be approved by the NEDA Board, upon prior recommendation by the ICC; and

"(iii) All unsolicited PPP projects shall be approved by the NEDA Board, upon prior recommendation by the ICC.

"The approval of the ICC and/or the NEDA Board shall be carried by the GOCCs concerned.

"The endorsement by the Regional Development Council (RDC) for national projects that have impact on the region shall be secured after the approval of the ICC and/or the NEDA Board but prior to the implementation of PPP projects. Provided, however, that such endorsement shall not be a condition precedent to the awarding of PPP contracts.

"B. Local Projects – All PPP projects to be implemented by the LGUs shall be submitted for confirmation by the following:

"(i) To the Municipal Development Council for projects costing up to Twenty Million Pesos (PhP20,000,000);

"(ii) To the Provincial Development Council for projects costing above Twenty Million Pesos (PhP20,000,000) up to Fifty Million Pesos (PhP50,000,000);

"(iii) To the City Development Council for projects costing up to Fifty Million Pesos (PhP50,000,000);

"(iv) To the RDC or, in the case of Metro Manila projects, the RDC for Metropolitan Manila, for projects costing above Fifty Million Pesos (PhP50,000,000) up to Five Hundred Million Pesos (PhP500,000,000);

"(v) To the ICC for projects costing above Five Hundred Million Pesos (PhP500,000,000) up to Five Billion Pesos (PhP5,000,000,000); or

"(vi) To the NEDA Board for projects costing above Five Billion Pesos (PhP5,000,000,000), upon prior recommendation by the ICC.

SEC. 7. A new section is hereby added and numbered as Section 7, to read as follows:

"SEC. 7. Project Development and Monitoring Facility (PDMF). – A special fund is hereby created to be known as the PDMF, which shall be used for the procurement of advisory and support services related to the preparation, structuring, procurement, financial close, and monitoring of implementation of PPP projects. The PDMF Fund referred to under Executive Order no. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, shall be transferred to the PDMF under this Act. The

PDMF may be funded through and such amount as may be needed and included in the General Appropriations Act, Official Development Assistance or other sources.

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

"A PDMF Committee is hereby created which shall approve applications for PDMF support submitted by implementing agencies. It shall be composed of representatives from the National Economic and Development Authority (NEDA), Department of Finance (DOF), Department of Budget and Management (DBM) and the PPP Center.

"To ensure fast procurement of advisory support, the consultants financed through PDMF shall be engaged based on indefinite delivery contracts. Individual advisory contracts shall be drawn from a panel of consultants under indefinite delivery contracts using a fixed budget selection mode or any mode as may be prescribed in the IRR of this Act.

"In order to facilitate access to global best practices in PPP and enhance value for money, the selection of consultants financed through PDMF shall also be open to international firms.

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

"The PPP Center shall serve as Secretariat for the PDMF Committee."

SEC. 8. Section 4-A of the same Act is hereby renumbered as Section 8, to read as follows:

"SEC. 8. Unsolicited Proposals. – Unsolicited proposals may be considered for projects that are not part of the list of priority projects as provided in Section 5 of this Act, or those in the said list but without any feasibility study yet. When a project proponent submits unsolicited project proposals, the implementing agency may either:

"(1) Reject the proposal;

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

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

"(b) shall be paid in full by the winning project proponent as a requirement for the award of the contract.

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

"(3) Accept the unsolicited proposal on a negotiated basis: Provided, that, the following conditions are met:

"(a) The project does not receive VGF or direct payments from any government agency; and

"(b) The implementing agency has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative proposals and no other proposal is received for a period stated in the IRR of this Act, which period should not exceed six (6) months: Provided, further, that in the event another proponent submits a superior counter-proposal within the period referred to above and accepted by the appropriate Approving Body, the original proponent shall have the right to outbid.

SEC. 9. Section 6 of the same Act is hereby renumbered as Section 9 and amended to read as follows:

"SEC. 9. Public Bidding of Projects. – Upon approval of PPP projects as mentioned in Section 6 of this Act, the head of the implementing agency concerned shall immediately cause the publication of a notice inviting all prospective project proponents to participate in a competitive public bidding, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper which is circulated in the region, province, city or municipality where the project will be implemented. Said notice shall also be posted continuously in the websites of the implementing agency and the PPP Center.

"The public bidding shall be conducted under a single or two-stage system. The pre-qualification documents, technical, and financial proposals shall be submitted in at least three (3) separate envelopes. The procedures for public bidding, including the conduct of one-on-one meetings with prequalified bidders, shall be outlined in the IRR of this Act.

"The contract shall be awarded to the bidder who passed the pre-qualification stage for having satisfied the minimum financial, organizational and legal standards

required by this Act and its IRR, has passed the technical proposal evaluation, and has submitted the most favorable or responsive financial bid based on the parameters defined in the bid documents.

"In case of a single complying and responsive bidder, the implementing agency may award the PPP contract to that bidder upon its compliance with the post-award requirements under the bidding rules of the PPP project.

"A bid shall be considered a single complying and responsive bid submission if it falls under any of the following circumstances:

- "(a) If, after advertisement, only one bidder applied for prequalification and it meets the prequalification requirements, after which it is required to submit a bid or proposal which is subsequently found by the implementing agency to be complying;
- "(b) If, after advertisement, more than one bidder applied for prequalification but only one meets the prequalification requirements, after which it submits a bid or proposal which is found by the implementing agency to be complying;
- "(c) If, after prequalification of more than one bidder, only one submits a bid which is found by the implementing agency to be complying; or
- "(d) If, after prequalification, more than one bidder submits bids but only one is found by the implementing agency to be complying.

"In all stages of the procurement process, decisions of the Prequalification Bids and Awards Committee may be questioned by filing an appeal to the head of the implementing agency concerned within fifteen (15) working days upon receipt of written notice of such decision; Provided, further, that the head of the implementing agency concerned shall act on the appeal within thirty (30) calendar days from receipt thereof and upon filing of a non-refundable appeal fee in an amount specified in the IRR of this Act.

"In no case shall any appeal taken from any decision treated in this Act and its IRR stay or delay the bidding process; Provided, however, that appeals must first be resolved by the head of the implementing agency before any award is made.

"If the winning bidder fails to comply with any post-award requirement or fails to enter into a contract with the implementing agency, the latter may proceed to negotiation with the next technically and financially qualified bidder. This is without prejudice to other legal remedies available to the implementing agency such as, but not limited to, the forfeiture of bid security and/or withdrawal of Notice of Award.

SEC. 10. Section 5-A of the same Act is hereby deleted in its entirety.

SEC. 11. Section 6 of the same Act is hereby deleted in its entirety.

SEC. 12. Section 7 of the same Act is hereby renumbered as Section 12 and amended to read as follows:

"SECTION 12. Contract Termination. – In the event that a contract is revoked, cancelled or terminated by the Government through no fault of the project proponent or by mutual agreement, the Government shall compensate the said project proponent pursuant to terms as defined in each contract."

SEC. 13. A new section is hereby added and numbered as Section 13:

"SEC. 13. Automatic Grant of License or Permit. – Once a PPP contract is duly executed and immediately upon application by the winning project proponent, the regulator, licensing authority or LGUs shall automatically grant in favor of the said project proponent a license or permit required for the implementation of a PPP project.

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

SEC. 14. A new section is hereby added and numbered as Section 14:

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

SEC. 15. A new section is hereby added and numbered as Section 15, to read as follows:

"SEC. 15. Contracts and Public Disclosure. – Copies of all PPP contracts concluded under this Act and its IRR shall be considered public documents. However, any proprietary information contained in the PPP contract and its annexes may be kept confidential for a limited period, as may be determined by the implementing agency, but not to exceed five (5) years.

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

SEC. 16. A new section is hereby added and numbered as Section 16, to read as follows:

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

- "(a) Bidding, rebidding or declaration of failure of bidding of PPP projects, either national or local;
- "(b) Qualification or disqualification of bidders;
- "(c) Awarding of PPP contract;
- "(d) Acceptance of any unsolicited PPP project proposal, even if not acted upon by the implementing agency concerned under Section 8 of this Act;
- "(e) Acquisition, clearance and/or development of the right-of-way, site or location of any PPP project;
- "(f) Construction and/or operation and maintenance of any PPP project;
- "(g) Commencement, execution, implementation, termination or rescission of any PPP contract; and
- "(h) Undertaking or authorization of any other lawful activity necessary for such PPP project or contract.

"Provided, further, that the temporary restraining order, preliminary injunction or preliminary mandatory injunction issued by the Supreme Court shall be effective for no longer than six (6) months.

"Except in cases of extreme urgency involving a constitutional issue and resulting to grave injustice and irreparable injury, the foregoing prohibition shall apply in all disputes, cases, or controversies instituted by any and all parties, including but not limited to cases filed by bidders, implementing agencies or those claiming to have rights through such bidders or implementing agencies involving PPP project or contract."

"In addition to civil and criminal liabilities as may be incurred under existing laws, any judge who shall issue a temporary restraining order, preliminary injunction or preliminary mandatory injunction in violation of this Act, shall suffer the penalty of removal from office."

SEC. 17. Section 8 of the same Act is hereby renumbered as Section 17 and amended to read as follows:

"Sec. 17. Regulatory Boards. – The appropriate government regulatory bodies shall approve the tolls, fees, tariffs, rentals, and charges involved in a PPP project. In the absence thereof, the parameters as approved by the Approving Body shall be adopted. For this purpose, no regulatory body shall be allowed to enter into any PPP contract that they regulate."

SEC. 18. Section 9 of the same Act is hereby renumbered as Section 18 and amended to read as follows:

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

SEC. 19. Section 10 of the same Act is hereby renumbered as Section 19 and amended to read as follows:

"SEC. 19. Investment Incentives. – Among other incentives, PPP projects in excess of One Billion Pesos (PhP1,000,000,000) shall be entitled to incentives as provided by the Omnibus Investment Code, upon prior endorsement of the PPP Center and registration by the project proponent with the Board of Investments.

SEC. 20. A new section is hereby added and numbered as Section 20, to read as follows:

"SEC. 20. Projects of National Significance. – Upon certification and recommendation by the ICC, and prior consultation with the Department of Interior and Local Government (DILG), the President may classify certain projects, such as energy, toll road, mass transit, water, sewerage and such other projects undertaken under this Act and its IRR as projects of national significance, which shall be entitled to the following incentives:

- "(a) All real properties which are actually and directly used for the project shall be exempt from any and all real property taxes levied under Republic Act No. 7160;
- "(b) All projects of national significance shall likewise be exempt from any and all local taxes, fees and charges; and
- "(c) Automatic grant or issuance of the necessary business permits, including renewals thereof, in favor of the winning project proponent.

"For a project to qualify as a project of national significance, it shall meet the following criteria: (i) the total project cost falls within the threshold set by the ICC; (ii) the project has a direct economic impact which should not be less than the threshold set by the ICC; (iii) the project has a direct positive impact on at least two (2) cities and/or municipalities; and (iv) the project can create new jobs."

SEC. 21. A new section is hereby added and numbered as Section 21, to read as follows:

"SEC. 21. Exemption from Payment of Transfer Taxes. – For all PPP projects, the transfer of ownership of infrastructure facility to the implementing agency shall be exempt from capital gains tax, documentary stamp tax and all taxes related thereto."

SEC. 22. A new section is hereby added and numbered as Section 22, to read as follows:

"SEC. 22. Valuation of Right-of-Way. – The compensation offered to the private property owner in a negotiated sale or expropriation proceeding shall be the average appraisal value of the property by the Bureau of Internal Revenue, Assessor's Office of the Municipal Government and a government bank.

"Upon compliance with the applicable guidelines for expropriation proceedings, the court shall issue within thirty (30) working days the order to take possession of the property and start the implementation of the project."

SEC. 23. Section 12 of the same Act is hereby renumbered as Section 23 and amended to replace the CCPAP with the PPP Center, with the accompanying powers and functions, and shall read as follows:

"SEC. 23. Institutionalization of PPP Center. – To achieve the goals of this Act, the PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt its current organizational structure, absorb its existing employees, and upgrade its human resource component, as may be necessary, towards a more efficient and effective performance of the following functions:

- "(1) Assist implementing agencies in identifying, developing, prioritizing and maintaining a pipeline of PPP projects;
- "(2) Provide advisory services, technical assistance, trainings, and capacity development to implementing agencies in all PPP-related matters;
- "(3) Manage and administer the PDMF as provided in Section 7 of this Act;
- "(4) Work with implementing agencies in setting procurement and implementation timelines for approved PPP projects;
- "(5) Recommend plans, policies and implementation guidelines related to PPP, in consultation with appropriate oversight committees or agencies, implementing agencies, private sector and other relevant stakeholders;
- "(6) Facilitate, monitor, and evaluate the implementation of PPP programs and projects developed by the implementing agencies;

- "(7) Report to the Office of the President and Congress on the implementation of the PPP programs and projects of the government at the end of each year;
- "(8) Serve as a link between the government and the private sector;
- "(9) Promote and market PPP programs and projects, in collaboration with other government promotion agencies;
- "(10) Sit as member of NEDA-Infrastructure Committee (INFRACOM), ICC, and other inter-agency bodies where a PPP project is a major concern;
- "(11) Issue advisory opinions and interpret the provisions of this Act and its IRR, relating solely to technical aspects of PPP;
- "(12) Serve as the central repository of all executed PPP contracts and any subsequent amendment and/or supplement thereto, including settlement agreements, entered into by implementing agencies;
- "(13) Provide and transmit copies of duly executed PPP contracts to Congress;
- "(14) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP projects are concerned;
- "(15) Maintain an integrated projects' bank to serve as an interactive database of all current and past projects;
- "(17) Such other functions as may be necessary to achieve the objectives and purposes of this Act.

"All positions of the PPP Center shall be governed by a compensation and position classification system and qualification standards consistent with the industry and duly approved by the PPP Governing Board based on comprehensive job analysis and audit of actual institutional duties and personal responsibilities. The compensation plan shall be comparable with the prevailing compensation plan of Bangko Sentral ng Pilipinas, GFIs and other GOCCs, and shall be subject to periodic review by the PPP Governing Board no more than once every two (2) years, without prejudice to yearly merit review or increases based on productivity and efficiency. The PPP Center shall, therefore, be exempt from laws, rules and regulations on compensation, position classification and qualification standards.

"The PPP Center shall report directly to the PPP Governing Board. It shall remain an attached agency under the administrative supervision of the NEDA.

"The PPP Center shall be headed by an Executive Director with the rank equivalent to an Undersecretary, who shall be appointed by the President of the Philippines, upon recommendation of the PPP Governing Board. The Executive Director shall perform the following functions:

- "(a) Undertake the day-to-day management and supervise the operations of the PPP Center;
- "(b) Recommend to the PPP Governing Board such policies and measures which he or she deems necessary for the effective exercise and discharge of the powers and functions of the PPP Center;
- "(c) Sit as an ex-officio member of the PPP Governing Board, INFRACOM, ICC and other inter-agency bodies where a PPP project is a major concern ; and
- "(d) Perform such other functions as may be assigned by the PPP Governing Board.

SEC. 24. A new section is hereby added and numbered as Section 24, to read as follows:

"SEC. 24. PPP Governing Board. – The PPP Governing Board is hereby created, referred to as the Board, which shall be the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of PPP programs and projects and in creating an enabling policy and institutional environment for PPP.

"The Board shall be composed of the following:

- "(1) Secretary of Socio-economic Planning as Chairperson;
- "(2) Secretary of Finance as Vice-Chairperson;
- "(3) Secretary of Budget and Management;
- "(4) Secretary of Justice;
- "(5) Secretary of Trade and Industry;
- "(6) Executive Secretary;
- "(7) Executive Director of PPP Center; and
- "(8) Private sector Co-chairman of the National Competitiveness Council (NCC).

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

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

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

"The members of the Board shall be entitled to honoraria based on existing government accounting and auditing rules and regulations."

SEC. 25. A new section is hereby added and numbered as Section 25 to read as follows:

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

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

SEC. 26. Section 11 of the same Act is hereby renumbered as Section 26, and amended to read as follows:

"SEC. 26. Implementing Rules and Regulations. – The NEDA, DOF, DBM, DPWH, DILG, Department of Justice, Department of Trade and Industry, Office of the President, Department of Transportation and Communications, PPP Center and private sector Co-chairman of the NCC shall constitute the IRR Committee. Within sixty (60) days from the effectivity of this Act, the PPP Center shall formulate and prescribe, in consultation with the IRR Committee, after public hearing and publication as required by law, the rules and regulations to implement the provisions of this Act. The IRR shall be approved by the PPP Governing Board.

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

SEC. 27. A new section is hereby added and numbered as Section 27 to read as follows:

"SEC. 27. Transitory Provisions. – All unexpended funds for the calendar year, properties, equipment, contracts and records of the PPP Center are hereby retained. The amount necessary to carry out the organizational changes of PPP Center provided in this Act shall be determined by the PPP Governing Board. Appropriations

for succeeding years shall be incorporated in its budget proposals for Congressional action.

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

SEC. 28. The succeeding sections are hereby renumbered accordingly.

SEC. 29. Section 16 of the same Act is hereby renumbered as Section 29, and amended to read as follows:

"SEC. 29. Repealing Clause. – All laws or parts of any law, including Republic Act No. 7718, Sections 234 (a) and 135 of Republic Act No. 7160, Sections 24, 173 and 199 of Republic Act No. 8424, Presidential Decree (PD) Nos. 1112 and 1113, Section 2 of PD No. 1894, and Executive Order (EO) Nos. 226 (s.1987), 109 (s. 2002), 109-a (s. 2003), 645 (s. 2007), 08 (s. 2010) as amended by 136 (s. 2013), Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures for Entering Into Joint Venture Agreements Between Government and Private Entities, Joint Venture Guidelines issued by LGUs, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly."

SEC. 30. Section 17 of the same Act is hereby renumbered as Section 30 to read as follows:

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

SEC. 31. Section 18 of the same Act is hereby renumbered as Section 31 to read as follows:

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

Approved,