

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 4895



Introduced by Hon. Ronald M. Cosalan

EXPLANATORY NOTE

In 1990, the Philippine Congress enacted Republic Act (RA) No. 6957 which created a legal and regulatory framework for Build-Operate-and-Transfer (BOT) Projects. The enactment of RA No. 6957 gave Philippines the distinction of being one of the first developing countries to enact a BOT Law. Consequently, RA No. 6957 became the first BOT Law in Asia. RA No. 6957 was further amended by RA No. 7718 in 1993 to provide for additional variants of BOT contractual arrangements.

The Philippine Government recognizes the indispensable role of the private sector as a partner in the pursuit of national growth and development, notably in financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. However, two decades after the enactment of RA No. 7718, there is a need to further introduce reforms and amend the law in order to further increase Private Sector Participation (PSP) and to keep the policy environment attuned to the current business landscape in order to accelerate infrastructure development and subsequently attain sustainable economic development.

The proposed amendments of the bill are the following:

- (a) Amend the title of the Act to expand the definition of Public-Private Partnership (PPP) to include other variants not technically considered under the RA No. 6957, as amended by RA No. 7718;
- (b) Enrichment of the Definition of Terms to improve/refine the definition of terms contained therein;
- (c) Inclusion of *Concession, Joint Venture (JV), and Management Contract* as variants of PPP contractual arrangements in the implementation of PPP projects;

- (d) Prescribing that projects that will be financed, constructed, operated and maintained by the private sector through the PPP contractual arrangements should be included in the list of priority projects and that the corresponding approving bodies depending on project costs as provided for in the IRR;
- (e) Providing for the process on how to deal with Unsolicited Proposals as well as payments to project proponents of accepted Unsolicited Proposals by implementing agencies (IAs) as basis for public bidding or on a negotiated basis and prohibition against government guarantees;
- (f) Deletion of Direct Negotiation of Contracts;
- (g) Allowing the Government to take over facilities or existing works in progress upon, revocation, cancellation or termination of the contract due to default of project proponent;
- (h) Prescribing that the appropriate IA shall initiate expropriation proceedings before the proper court in accordance with RA No. 8974 whenever PPP projects necessitates the same;
- (i) Prescribing that Congress shall automatically appropriate funds for PPP projects in the National Treasury not otherwise appropriated;
- (j) Provide for the incentives for PPP projects that have national significance, as determined by the Investment Coordination Committee (ICC); and
- (k) Allow the accession/divestiture of ownership, rights, or interest to a project provided that the accession/divestiture shall be after a lock-in period.

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


RONALD M. COSALAN

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**AN ACT AMENDING REPUBLIC ACT NO. 7718,
WHICH AMENDED REPUBLIC ACT NO. 6957 ENTITLED
“AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION,
OPERATION AND MAINTENANCE OF INFRASTRUCTURE
PROJECTS
BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES”**

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

SEC. 1. A new section to be numbered as 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 (RA) No. 7718 is hereby renumbered as Section 2 and shall 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 and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure or development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector.”

SEC. 3. Section 2 of RA No. 7718 is hereby renumbered as Section 3 and amended to read as follows:

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

- A. *Contractor* - Any entity accredited under the Philippine laws which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.
- B. *Construction* - Refers to new construction, rehabilitation, improvement, expansion, alteration and related works and activities including the necessary supply of equipment, materials, labor and services and related items.
- C. *Facility Operator* - A company registered with the Securities and Exchange Commission (SEC), which may or may not be the project proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development 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 Filipino.
- D. *Government Guarantee* - An agreement whereby the National Government or the implementing agency assume responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of a loan default.
- E. *Government Undertakings* - Refers to any form of contribution and/or support which the National Government or the implementing agency may extend to a project proponent.
- F. *Implementing Agency* - Refers to the Department, Bureau, Office, Instrumentality, Commission, or Authority of the National Government, including government-owned or controlled corporations (GOCCs) and other government corporate entities (GCEs), or local government units (LGUs) which undertakes an infrastructure or development project in accordance with this Act.

G. *Infrastructure or Development Projects* - Activities and/or facilities normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, 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 networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate implementing agency pursuant to this Act. Such projects shall be undertaken through PPP arrangements as defined hereunder and such other variations as may be defined in the implementing rules and regulations (IRR) of this Act or approved by the President of the Philippines.

For the construction stage of these infrastructure or development projects, the project proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: Provided, further, That in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available: Provided, finally, That projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions subject to applicable laws.

H. *Project Development and Monitoring Facility (PDMF)* - A revolving fund to be used for the preparation of Pre-Feasibility Study, Feasibility Study and transaction documents of PPP projects.

I. *Project Proponent* - The private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.

J. *Public-Private Partnership (PPP)* - A contractual agreement between the public sector and the private sector wherein the latter shall engage in the financing, designing, construction, operating, and/or maintaining infrastructure or development projects, among others, that

are usually provided by the public sector. The private sector earns a return on their investments through either user fees or payments from the Government, or both.

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

- i. *Build-Operate-and-Transfer (BOT)* - A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation maintenance thereof. The project proponent operates the facility over a cooperation period which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the concerned implementing agency at the end of the cooperation period which shall not exceed fifty (50) years.

The BOT shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

- ii. *Build-and-Transfer (BT)* - A contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the concerned implementing agency, which shall pay the 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 or development project, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.
- iii. *Build-Own-and-Operate (BOO)* - A contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the 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: Provided, That all such projects, upon recommendation of the Investment Coordination Committee (ICC), shall be approved by the President of the Philippines.

- iv. *Build-Lease-and-Transfer (BLT)* - A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the concerned implementing agency on a lease arrangement for a cooperation period after which ownership of the facility is automatically transferred to the concerned implementing agency.
- v. *Build-Transfer-and-Operate (BTO)* - A contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to the project proponent. The project proponent constructs the infrastructure facility on a turn-key basis, assuming cost overrun, delay and specified performance risks.

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

- vi. *Concession* - A contractual arrangement whereby the financing and construction of a new infrastructure or development facility and/or rehabilitation of an existing one is undertaken by the project proponent, and includes the operation, maintenance, management and improvement, if any, of the facility for a cooperation period during which the project proponent generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges. In this arrangement, the implementing agency receives a concession or franchise fee during the cooperation period.
- vii. *Contract-Add-and-Operate (CAO)* - A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded project over an agreed cooperation period. There

may, or may not be, a transfer arrangement in regard to the facility.

- viii. *Develop-Operate-and-Transfer (DOT)* - A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private 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 (JV)* - an arrangement whereby a private sector entity or a group of private sector entities on one hand, and a GOCC, GCE, Government Instrumentality with Corporate Powers (GICP), Government Financial Institution (GFI), State University and College (SUC) or groups of GOCCs, GCEs, GICPs, GFIs or SUCs on the other hand, contribute money / capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing to undertake an investment activity. The investment activity shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the private sector under competitive market conditions or to the Government. The JV involves a community or pooling of interests in the performance of the investment activity, and each party shall have the right to direct and govern the policies in connection therewith with the intention to share both profits and, risks and losses subject to agreement by the parties.
- x. *Management Contract* - A contractual arrangement involving the provision by the project proponent of operation and maintenance, and related services to an existing infrastructure or development facility owned by the implementing agency. The proponent shall undertake the acquisition or provision and upgrading of equipment, systems and other items related to operation and maintenance. The project proponent may collect tolls/fees/rentals and charges which shall be turned over to the implementing agency and shall be compensated in the form of a performance-based management or service fee during the cooperation period.

- xi. *Rehabilitate-Operate-and-Transfer (ROT)* - A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, improve, operate and maintain for a cooperation period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.
- xii. *Rehabilitate-Own-and-Operate (ROO)* - A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, improve, and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

K. *Public Utility* - A business or service engaged in regularly supplying the public with some commodity or service of public consequence as defined under Commonwealth Act (CA) No. 146 (Public Service Act), as amended.

L. *Rate of Return of the Project* - The rate of return that reflects the prevailing cost of capital of the project in the domestic and international markets: Provided, That in case of negotiated contracts, such rate of return shall be determined by the ICC prior to the negotiation and/or call for proposals: Provided, further, That for projects which are natural monopolies, the rate of return shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).”

SEC. 4. Section 3 of RA No. 7718 is hereby renumbered as Section 4 and amended to read as follows:

“SEC. 4. *Private Initiative in Infrastructure*. – Any Department, Bureau, Office, Instrumentality, Commission or Authority of the National Government, including GOCCs, or LGUs authorized by law or their respective charters to contract for or undertake infrastructure or development projects, may enter into PPPs with a duly pre-qualified project proponent in accordance with this Act. When entering into PPPs, the public sector is enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in undertaking infrastructure or development projects.”

SEC. 5. Section 4 of RA No. 7718 is hereby renumbered as Section 5 and amended to read as follows:

“SEC. 5. **Priority Projects and Approving Bodies.** - All concerned government agencies or LGUs are tasked to prepare their infrastructure or development programs that may be financed, constructed, operated and maintained by the private sector through the PPP arrangements authorized under this Act.

The list of priority projects shall be consistent with the Philippine Development Plan (PDP), and Provincial Development and Physical Framework Plan (PDPFP), and shall be submitted to the appropriate approving body as provided in the IRR of this Act.

The Public Investment Program (PIP) and the Comprehensive and Integrated Infrastructure Program (CIIP) shall be deemed as the list of national priority projects, and the Provincial Development Investment Programs (PDIPs)/Local Development Investment Programs (LDIPs) shall be deemed as the list of local priority projects. The PIP, CIIP and PDIP/LDIP shall be updated periodically.

The updated list of priority projects, local and national, shall be submitted to National Economic and Development Authority (NEDA) for information.

The list of all such projects must be part of the development programs of the implementing agencies concerned. Project proposals under this list shall be submitted to the appropriate approving authority, depending on project costs as provided in the IRR of this Act.

In recognition of the limited funding for the conduct of a feasibility study (F/S) for these priority projects, a private sector may undertake the F/S of priority PPP projects, the cost of which may later on be reimbursed once such project is approved and has a winning bidder.”

SEC. 6. Section 5 of RA No. 7718 is hereby renumbered as Section 6 and amended to read as follows:

“SEC. 6. **Unsolicited Proposals.** - Unsolicited proposals for projects may be submitted. The implementing agency may either:

- A. Use the unsolicited proposal as the basis for public bidding as provided in Section 8 of this Act. If a final award to a winning bidder is made on the basis of the unsolicited proposal within one (1) year

from the submission thereof, as determined by NEDA, the original proponent of the unsolicited proposal may be reimbursed for costs incurred in its preparation, including, but not limited to, the cost of any Feasibility Studies undertaken: Provided, That such reimbursement: (1) shall be in the amount to be determined by NEDA, but not exceeding three per centum (3%) of the total project cost, excluding any project costs which will be borne by the Government such as, but not limited to, the cost of right-of-way acquisitions; and (2) shall be paid in full by the winning bidder as a requirement for the award of the project;

- B. Accept the unsolicited proposal on a negotiated basis: provided, that, the following conditions are met: (1) such projects involve a new concept in technology and/or are not part of the list of priority projects; (2) no direct government or security from the Government is required; and (3) the implementing agency has invited by publication for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other, proposal is received for a period to be determined by NEDA, but not to exceed one (1) year: Provided, That in the submission of financial proposals, the original proponent of the unsolicited proposal may opt to submit a revised/modified financial proposal to the implementing agency on or before the date of opening of financial proposals such that if the financial proposal of the challenger is superior or most advantageous to the government than the financial proposal of the original proponent, the contract shall be awarded to the challenger offering the most advantageous financial proposal: Provided, further, that in case the challenger failed to outbid or have only tied / matched the financial proposal of the original proponent, the contract shall be awarded to the original proponent; or

- C. Reject the proposal.

Notwithstanding any agreement to the contrary, the project proponent of an unsolicited proposal accepted by the Government on a negotiated basis in accordance with section 6 (B) shall not, at anytime, be entitled to any form of payment or security from the Government, including, but not limited to, cost sharing, credit enhancement, direct or indirect government guarantee, subsidy or equity.

SEC. 7. A new Section 7 is being introduced to read as follows:

“SEC. 7. **Projects of National Significance.** – Upon certification and recommendation of NEDA, the President may classify certain projects in the priority list pursuant to Section 5 of this Act 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 exempted from any and all real property taxes levied under RA No. 7160;
- B. All local taxes imposed by a province, city or municipality in Metro Manila pursuant to RA No. 7160 on the project proponent shall not exceed fifty per centum (50%) of one per centum (1%) of gross sales or receipts of the preceding calendar year; and
- C. The necessary business permits, including any renewals thereof, shall be deemed to have been automatically granted or issued to the winning project proponent upon tender of the required taxes and fees to the appropriate LGU.

For purposes of this Section, in order for a project to qualify as a project of national significance, the following conditions must be satisfied:

- 1. The total cost of the project is at least *Five Billion Pesos (PhP 5,000,000,000.00)*; and
- 2. The project will directly benefit the province it is located at and at least two (2) more provinces.”

SEC. 8. Section 6 of RA No. 7718 is hereby renumbered as Section 8 and amended to read as follows:

“SEC. 8. **Public Bidding of Projects.** - Upon approval of the projects mentioned in Section 5 of this Act, the Head of the concerned implementing agency shall forthwith cause to be published, 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 in which the project is to be constructed, a notice inviting all prospective infrastructure or development project proponents to participate in a competitive public bidding for the projects so approved.

The contract shall be awarded to the bidder who, having satisfied the minimum financial, technical, organizational and legal standards required by this Act, has submitted the most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges, among others, over a cooperation period for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. For this purpose, the winning project proponent shall be automatically granted by the appropriate agency the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges as indicated in the contract. The winning bidder shall likewise be issued, upon compliance with the appropriate requirements, such as permits, license, certificates, or other similar authorizations necessary for the conduct of its business by the concerned issuing governmental entity.

In the case of BT or BLT arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans, and specifications: Provided, however, That a Filipino contractor who submits an equally advantageous bid with exactly the same price and technical specifications as those of a foreign contractor shall be given preference.

In all cases, a consortium that participates in a bid must present proof that the members of the consortium have bound themselves jointly and severally to assume responsibility for any project. The withdrawal of any member of the consortium prior to the implementation of the project could be a ground for the cancellation of the contract.

The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second envelope to contain the financial proposal. The procedures for this system shall be outlined in the IRR of this Act.

A copy of each contract involving a project entered into under this Act shall forthwith be submitted to Congress for its information.”

SEC. 9. Section 8 of RA No. 7718 is hereby renumbered as Section 9 and amended to read as follows:

“SEC. 9. ***Repayment Scheme.*** - For the financing, construction, operation and maintenance of any infrastructure or development project undertaken through the PPP arrangements pursuant to the provisions of this Act, the project

proponent shall be repaid by authorizing it to charge and collect reasonable tolls, fees, and rentals for the use of the project facility not exceeding those incorporated in the contract and, where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project or other non-monetary payments, such as, but not limited to, the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements with respect to the ownership of land: Provided, That for projects which have been granted a natural monopoly, the appropriate government regulatory bodies, shall approve the tolls, fees, rentals, and charges based on a rate of return which in no case shall exceed twelve per centum (12%): Provided, further, That the imposition and collection of tolls, fees, rentals, and charges shall be for a cooperation period as proposed in the bid and incorporated in the contract but in no case shall this term exceed fifty (50) years: Provided, furthermore, That the tolls, fees, rentals, and charges may be subject to adjustment during the cooperation period, based on a predetermined formula using official price indices and included in the instructions to bidders and in the contract: Provided, also, That all tolls, fees, rentals, and charges and adjustments thereof shall take into account the reasonableness of said rates to the end-users of private sector-built infrastructure: Provided, finally, That during the cooperation period, the project proponent shall undertake the necessary maintenance and repair of the facility in accordance with standards prescribed in the bidding documents and in the contract. In the case of a BT arrangement, the repayment scheme is to be effected through amortization payments by the concerned implementing agency to the project proponent according to the scheme proposed in the bid and incorporated in the contract."

SEC. 10. Section 9 of RA No. 7718 is hereby renumbered as Section 10 and amended to read as follows:

"SEC. 10. **Contract Termination.** - The contract shall provide a compensation mechanism in the event that a project is revoked, cancelled or terminated by the Government through no fault of the project proponent or by mutual agreement. In the absence of such provision, the compensation shall be based on the actual expenses incurred in the project plus a rate of return thereon.

In the event the Government defaults on certain major obligations in the contract and such failure is not remediable or if remediable shall remain unremedied within a reasonable length of time as defined in the contract, the project proponent may, by prior notice to the concerned implementing agency specifying the turn-over date, terminate the contract. The project proponent shall be entitled to reasonable compensation from the Government as defined in the contract.

For contracts which involve transfer of ownership of a facility to the implementing agency which are terminated prior to their transfer to the Government, the Government shall have the right to take over the facility or existing works in progress upon revocation, cancellation or termination of the contract due to default of project proponent. In the event of take-over, the Government may pay the project proponent reasonable compensation for the value of the facility as may be provided in the contract.

The Government's right to take-over shall not impair the rights of third persons having interest in the financing of the project, such as lenders and creditors."

SEC. 11. Section 10 of RA No. 7718 is hereby renumbered as Section 11 and amended to read as follows:

"SEC. 11. **Regulatory Boards.**—The appropriate government regulatory bodies shall approve the tolls, fees, rentals, and charges.

In the absence of an appropriate regulatory body, the ICC approved parameters and terms shall be adopted."

SEC. 12. A new Section 12 is being introduced to read as follows:

"SEC. 12. **Accession / Divestiture.** - Subject to the approval of the approving body upon due diligence and recommendation by the Head of the implementing agency, a project proponent may divest or accede its ownership, rights, or interest to a project provided that, the divestiture or accession shall be after a holding or lock-in period which shall be determined by the implementing agency or as indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.

A divestment/accession made in violation of this section shall be a ground for disqualification of the proponent or cancellation of the contract, as the case may be, and forfeiture of the proponent's bid or performance security.

The implementing agency shall inform in writing the NEDA of the change in ownership for monitoring purposes."

SEC. 13. Section 12 of RA No. 7718 is hereby renumbered as Section 13 and amended to read as follows:

“SEC. 13. ***Investment Incentives.*** - Among other incentives, PPP projects shall be entitled to incentives as provided by the Omnibus Investment Code, upon registration with the Board of Investments.”

SEC. 14. A new Section 14 is being introduced to read as follows:

“SEC. 14. ***Public-Private Partnership (PPP) Guarantee Fund.*** - A PPP Guaranty Fund is hereby created to defray the cost of compensation to project proponents which enter into PPP contracts. The Congress shall automatically appropriate the necessary amount out of any funds in the National Treasury not otherwise appropriated, to cover:

- A. Payment of costs relating to the implementation of multi-year projects which are issued multi-year obligational authorities by the Department of Budget Management (DBM) in accordance with applicable guidelines and procedures; and
- B. In the event that the implementing agency, through no fault of its own, fails to comply, or is prevented from complying, with its contractual obligations created pursuant to RA No. 7718, the cost of compensation to the project proponent, as prescribed in the contract, shall be automatically appropriated: Provided, That there are no existing appropriations to cover said liabilities: Provided further, That the cost of paying project proponent's financial obligations, which Government has guaranteed, may not be automatically appropriated.

The initial funding in the amount of *Five Billion Pesos (PhP 5,000,000,000.00)* for the creation of the Fund shall be charged against the overall savings of the National Government. Thereafter, the PPP Guaranty Fund may be replenished or increased by such amount as may be deemed necessary in subsequent General Appropriations Act (GAA).”

SEC. 15. A new Section 15 is being introduced to read as follows:

“SEC. 15. ***Acquisition of Right-of-Way, Site or Location.*** - Whenever it is necessary for PPP projects to acquire real property for the right-of-way, site or location through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court in accordance with

RA No. 8974; Provided, That for issuance of a Writ of Possession, the implementing agency shall pay the property owner the amount equivalent to at least the sum of: (1) two hundred per centum (200%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures.

Upon compliance with the applicable guidelines for expropriation proceedings, the Court shall issue within ten (10) working days the order to take possession of the property and start the implementation of the project.”

SEC. 16. A new Section 16 is being introduced to read as follows:

“SEC. 16. *Prohibition on the Issuance of Temporary Restraining Orders (TROs), Preliminary Injunctions and Preliminary Mandatory Injunctions.* - No Court, except the Supreme Court, shall issue any TRO, Preliminary Injunction, or Preliminary Mandatory Injunction against the Government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the Government’s direction, to restrain, prohibit or compel the following acts under the immediately preceding section:

- A. Acquisition, clearance and development of the right-of-way, site or location;
- B. Bidding or Awarding;
- C. Commencement, prosecution, execution, implementation and operation;
- D. Termination or rescission of the contract; and
- E. The undertaking or authorization of any other lawful activity necessary or in connection with the execution or implementation of the project.

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

Any TRO, Preliminary Injunction, or Preliminary Mandatory Injunction issued in violation of this section is void and of no force and effect.”

SEC. 17. Section 13 of RA No. 7718 is hereby renumbered as Section 17 and amended to read as follows:

“SEC. 17. ***Implementing Rules and Regulations (IRR)***. - A committee called the IRR Committee composed of one (1) representative from the Department of Justice (DOJ), the Department of Finance (DOF), the Department of Budget and Management (DBM), the Office of the Executive Secretary (OES) and the National Economic and Development Authority (NEDA) shall, within sixty (60) days from the effectivity of this Act, formulate and prescribe, after public hearing and publication as required by law, the IRR in order to carry out the provisions of this Act in the most expeditious manner.

The IRR shall cover, among others, the project approval process, the bidding procedure, list of financial incentives and arrangements that the Government may provide for the project.

The Chairman of the IRR Committee shall be the Secretary of Socio-Economic Planning.

From time to time, the IRR Committee, in consultation with the NEDA Board Committee on Infrastructure (INFRACOM), may conduct, formulate and prescribe, after due public hearing and publication, amendments to the IRR, consistent with the provisions of this Act.”

SEC. 18. A new Section 18 is being introduced to read as follows:

“SEC. 18. ***Project Development and Monitoring Facility (PDMF)***. – Upon the effectivity of this Act, the PDMF, created through EO No. 8, shall be administered and managed by the NEDA Board INFRACOM.

The PDMF shall be used for the procurement of consultancy contracts for PPP-related activities including the conduct of Feasibility Studies for solicited infrastructure projects funded by the National Government.

The PDMF shall be funded through GAA, ODA, grants or other financing resources; Provided that the procurement of consultancy contracts for PPP projects will be governed by RA No. 9184 and its IRR.”

SEC. 19. Section 16 of RA No. 7718 is hereby renumbered as Section 19 and amended to read as follows:

“SEC. 19. *Repealing Clause*. - All laws or parts of any law, including RA No. 7718, rules and regulations, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.”

SEC. 20. Section 17 of RA No. 7718 is hereby renumbered as Section 20 and shall read as follows:

“SEC. 20. *Separability Clause*. - If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.”

SEC. 21. Section 18 of RA No. 7718 is hereby renumbered as Section 21 and amended to read as follows:

“SEC. 21. *Effectivity Clause*. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.”

Approved.