

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 348



Introduced by **REP. 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 Act No. 7718 to provide for an increased number of variants of BOT contractual arrangements.

The BOT law has significantly increased private investment in infrastructures in the Philippines by promoting private sector participation. More than 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 experience 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.

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 favour of the winning bidder, subject to compliance with the requirement 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) Require 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 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 of 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 Franchise of the Philippine National Construction Corporation to Construct, Maintain and Operate Toll Facilities in the North Luzon and South Luzon Expressways 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 the bill is earnestly sought.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke and a small upward tick.

ROMERO "MIRO" S. QUIMBO

Representative

Second District, Marikina City

Republic of the Philippines
HOUSE OF REPRESENTATIVES
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HOUSE BILL NO. 348

Introduced by **Rep. Romero Federico "Miro" S. Quimbo**

**AN ACT INSTITUTIONALIZING AND STRENGTHENING PUBLIC-PRIVATE
PARTNERSHIPS, AND APPROPRIATING FUNDS THEREFOR**

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

SECTION 1. This Act shall be known as the "Public-Private Partnership Act"

SECTION 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 Public-Private Partnerships
(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 mitigation of risks by ensuring that the validity and
enforceability of contracts are respected through the due process of law.

The State protects 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.

1 The State affirms open, transparent and competitive selection as the central
2 tenet of government procurement in securing private investment in public
3 infrastructure projects. It shall secure private investments through transparent and
4 competitive selection process and bidding procedures.

5
6 **SECTION 3. Definition of Terms.** – As used in this Act:
7

8 (a) *Approving Body* refers to an entity authorized to approve PPP projects
9 in accordance with Section 7 of this Act;

10
11 (b) *Availability-based PPP* refers to a PPP where the implementing agency
12 commits to make predetermined payments for contractually-defined
13 performance delivery;

14
15 (c) *Concession-based PPP* refers to a PPP where the implementing agency
16 grants the project proponent the right to recover its investment, operating and
17 financing costs by charging the public a user fee or tariff;

18
19 (d) *Construction* refers to rehabilitation, improvement, expansion, alteration,
20 installation, building of a new infrastructure facility, and related works and
21 activities, including the necessary supply of equipment, materials, labor and
22 services and related items;

23
24 (e) *Contingent liability* refers to obligations of the government arising from a
25 valid PPP contract whose occurrence, timing, and amount depend on some
26 uncertain future event or circumstance;

27
28 (f) *Contractor* refers to any person, who may or may not be the project
29 proponent, and who shall undertake the actual construction of an infrastructure
30 facility of a PPP project;

31
32 (g) *Cooperation period* refers to the period of operation of an infrastructure
33 facility;

34
35 (h) *Facility operator* refers to a person registered with the Securities and
36 Exchange Commission (SEC) or the Department of Trade and Industry (DTI),
37 who may or may not be the project proponent, who is responsible for all
38 aspects of operation and maintenance of an infrastructure facility, including the
39 collection of tolls, fees, rentals or charges from facility users;

40
41 (i) *Government undertakings* refer to any form of support,
42 contribution, assistance, Viability Gap Funding (VGF), among others, which the
43 government may provide to a solicited PPP project;

1
2 (j) *Grantors* refer to an implementing agency and another government agency
3 that own the project assets or franchise;
4

5 (k) *Implementing agency* refers to any of the various units of the Government
6 of the Republic of the Philippines, including a department, bureau, office,
7 instrumentality, government-owned or -controlled corporation (GOCC) as
8 defined under Republic Act No. 10149, otherwise known as the "GOCC
9 Governance Act of 2011", state universities and colleges (SUCs), or a local
10 government or a distinct unit therein;
11

12 (l) *Infrastructure facility and related service* refers to any facility and
13 infrastructure-related service identified by the government in relation to or as
14 necessary for the discharge of its functions, whether governmental or
15 proprietary:

16 (1) *Infrastructure facility* – includes power plants, highways, ports,
17 airports, canals, dams, hydropower projects, water supply, irrigation,
18 telecommunications facilities, railroads and railways, transport
19 systems, reclaimed land, industrial estates or townships, housing,
20 government buildings tourism projects, markets, slaughterhouses,
21 warehouses, information technology systems and infrastructure;
22 education and health facilities, sewerage, and drainage; and
23

24 (2) *Infrastructure-related service* – includes dredging, climate change
25 mitigation and adaptation measures and other related services;
26

27 (m) *Public-Private Partnership (PPP)* refers to a contractual
28 arrangement between the implementing agency and the project proponent for
29 the financing, design, construction, operation, and maintenance, or any
30 combination thereof, of an infrastructure facility, in which the project
31 proponent bears significant risk, management responsibility, or both;
32

33 (n) *Person* refers to an individual, sole proprietorship, partnership,
34 corporation or any other form of organization, whether domestic or foreign;
35

36 (o) *Project cost* refers to total capital cost, financing and other expenses
37 for the design, construction, operation, and maintenance of an infrastructure
38 facility of a PPP project;
39

40 (p) *Project proponent* refers to the private person who shall have
41 contractual responsibility to undertake a PPP project;
42

(q) *Rate of return* refers to the project proponent's expected return from the project: *Provided*, That in case of an unsolicited proposal, the appropriate rate of return shall be determined by the appropriate Approving Body prior to the call for proposals based on the prevailing cost of capital in the domestic and international markets, the risk profile and the gearing ratio;

(r) *Services* refer to services for or related to infrastructure facilities such as construction supervision, management, operation and maintenance and related services, and other technical services, which may be included as part of a PPP project;

(s) *Solicited PPP project* refers to priority projects identified by the implementing agency.

(t) *Unsolicited PPP project* refers to a project proposal submitted by a private person, which is not in response to a formal solicitation or request issued by the implementing agency; and

(u) *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.

SECTION 4. Contractual Arrangements. – PPP projects may be undertaken through any of the following contractual arrangements:

(a) *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;

(b) *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;

(c) *Build-Own-and-Operate* refers to a contractual arrangement whereby a project proponent is authorized to undertake a PPP project, specifically to

1 finance, construct, own, operate and maintain an infrastructure facility from
2 which the project proponent is allowed to recover its total investment,
3 operating and maintenance costs plus a return thereon by collecting
4 tolls, fees, rentals or other charges from facility users;

5
6 (d) *Build-Operate-and-Transfer* refers to a contractual arrangement whereby
7 the project proponent undertakes a PPP project and transfers ownership of the
8 infrastructure facility to the implementing agency at the end of the cooperation
9 period;

10
11 (e) *Build-Transfer-and-Operate* refers to a contractual arrangement whereby
12 the implementing agency contracts out the construction of an infrastructure
13 facility to the project proponent. Once the facility is commissioned
14 satisfactorily, ownership is transferred to the implementing agency. The
15 project proponent, however, operates the infrastructure facility on behalf of
16 the implementing agency;

17
18 (f) *Contract-Add-and-Operate* refers to a contractual arrangement whereby the
19 project proponent adds to an existing infrastructure facility which it is renting
20 from the government. It operates the expanded infrastructure facility over
21 an agreed cooperation period. There may, or may not be, a transfer
22 arrangement in regard to said facility;

23
24 (g) *Develop-Operate-and-Transfer* refers to a contractual arrangement whereby
25 favorable conditions external to a new PPP project which is to be built by a
26 project proponent are integrated into the arrangement by giving that entity the
27 right to develop adjoining property and, thus, enjoy some of the benefits the
28 investment creates such as higher property or rent values;

29
30 (h) *Joint Venture* refers to a contractual arrangement whereby a private person
31 or a group of private persons and an implementing agency contribute money,
32 services, assets, or a combination of any or all of the foregoing, to undertake
33 a PPP project, with the intention to share profits, risks and losses. Assets may
34 include equipment, land, intellectual property or anything of value;

35
36 (i) *Operations and Maintenance Contract* refers to a contractual
37 arrangement whereby the project proponent undertakes the day-to-day
38 operation and maintenance of an infrastructure facility owned by the
39 implementing agency. The project proponent shall undertake the acquisition or
40 provision and upgrading of equipment, systems and other items related to
41 operation and maintenance. The project proponent shall be compensated in the
42 form of a performance-based management or service fee during the
43 cooperation period;

1
2 (j) *Rehabilitate-Operate-and-Transfer* refers to a contractual arrangement
3 whereby an existing infrastructure facility is turned over to the project
4 proponent to refurbish, improve, operate and maintain for a
5 cooperation period, at the expiry of which the ownership of the facility is
6 transferred to the implementing agency; and
7

8 (k) *Supply-and-Operate* refers to a contractual arrangement whereby the
9 supplier of equipment and machinery for a given infrastructure facility, if the
10 interest of the government so requires, operates such facility. Foreign firms
11 which are allowed to operate the facility shall provide technology transfer
12 and training to Filipino nationals.
13

14 Other variations may be allowed upon prior approval by the Investment
15 Coordinating Committee (ICC).
16

17 **SECTION 5. Authority of Implementing Agencies.** – Implementing agencies, in
18 accordance with their respective charters, are hereby authorized to undertake PPP
19 projects with any project proponent in accordance with the provisions of this Act.
20

21 In undertaking a PPP project under this Act, a GOCC or any of its subsidiaries
22 shall secure the approval of the head of department or agency to which the GOCC
23 is attached. If the procurement thereof is undertaken by the department or agency,
24 the governing board of the GOCC shall adhere to the approval of the Approving
25 Body and shall give its full cooperation in bidding the project
26

27 **SECTION 6. Priority Projects.** – Priority projects that will be implemented under
28 this Act shall be consistent with the Philippine Development Plan or its equivalent
29 at the local level.

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

33 The PPP Center shall ensure that Congress and the general public are provided
34 with adequate, timely and relevant information pertaining to these priority projects:
35 *Provided*, that the release of proprietary information, which shall be defined in the
36 implementing rules and regulations (IRR) of this Act, is not contrary to existing laws.

37 **SECTION 7. Approval of PPP Projects.** – The approval of PPP projects under
38 this Act shall be in accordance with the following:

39 (a) National Projects – National PPP projects shall be approved by the ICC
40 or by the National Economic and Development Authority (NEDA) Board, or
41 both, depending on the project cost as prescribed in the IRR of this Act. Such
42 approval shall be followed by the implementing agency or grantor concerned.
43

1 For national projects that have impact on a particular region, the implementing
2 agency shall secure the endorsement of the concerned Regional Development
3 Council (RDC) prior to submitting the project for approval to the Approving
4 Body. The RDC shall have thirty (30) days from receipt of the request of the
5 implementing agency within which to issue its endorsement; otherwise, the
6 same shall be deemed automatically endorsed by the RDC.

7
8 (b) Local Projects – Local PPP projects shall be approved by the local
9 sanggunians and, depending on the project cost as may be prescribed in the
10 IRR, confirmed by the local development councils, ICC and the NEDA Board.

11
12 The confirmation of the project by the local development council concerned
13 shall be based on a review of the project documents submitted to it by the local
14 government unit (LGU) concerned, which includes the feasibility study and the draft
15 contract on the project, and shall ensure that said project documents are in full
16 compliance with the requirements set forth under this Act: *Provided*, That any
17 concerned reviewing officer/s found in violation of this provision shall be
18 administratively liable with grave neglect of duty and shall be dealt with in
19 accordance with existing laws.

20
21 Any act on the part of the LGU concerned and its responsible officials, or
22 concerned officers of the private project proponent, which results to or is aimed at
23 downgrading the category of the project cost based on its total cost under the IRR of
24 this Act for the purpose of evading the required approval under the appropriate
25 category shall be dealt with administratively and criminally under this Act and its
26 IRR, and other existing applicable laws. Such act committed by the private project
27 proponent and its concerned officers shall cause the rescission of its contract for the
28 said project without compensation and shall be perpetually disqualified from
29 participating in any bidding, or other contractual arrangement, for any government
30 project.

31
32 **SECTION 8. *Project Development and Monitoring Facility (PDMF).*** - The
33 PDMF is hereby established and shall be used for the procurement of advisory and
34 support services related to the preparation, structuring, probity management,
35 procurement, financial close, and monitoring of implementation of PPP projects.

36
37 (a) Funding Source – The PDMF Fund referred to under Executive Order No.
38 8, series of 2010, as amended by Executive Order No. 136, series of 2013, shall
39 be transferred to the PDMF under this Act. The PDMF may be funded through
40 and such amount as may be needed and included in the General
41 Appropriations Act, Official Development Assistance or other sources.

1 (b) Institutional Arrangement – The PDMF shall be managed and
2 administered by the PPP Center as a revolving fund. In order to sustain the
3 PDMF, the PPP Center may collect and receive fees and recover costs expended
4 through PDMF in accordance with the guidelines to be approved by the PPP
5 Governing Board. Such amount shall be retained and authorized to be used by
6 the PPP Center for the purposes indicated herein.
7

8 A PDMF Committee is hereby created which shall approve applications for
9 PDMF support submitted by implementing agencies. It shall be composed of
10 representatives from the NEDA, Department of Finance (DOF), Department of
11 Budget and Management (DBM) and the PPP Center.
12

13 The PPP Center shall serve as the Secretariat for the PDMF Committee.
14

15 (c) Procedure – The procurement of consulting services for the PDMF
16 shall be conducted through Republic Act No. 9184, otherwise known as the
17 “Government Procurement Reform Act,” and its associated IRR, subject to
18 existing laws on the practice of professions reserved to Filipino nationals. An
19 open registry of consultants may be established for ready availability of
20 consulting expertise. Registration is not tantamount to a finding of eligibility,
21 and nonregistered consultants shall be allowed to bid. The procedures for such
22 procurement shall be prescribed in the IRR of this Act, consistent with
23 Republic Act No. 9184 and its associated IRR.
24

25 The PPP Center is not precluded from adopting a set of rules for the
26 engagement and consulting services funded by an international financing institution
27 or through Official Development Assistance.
28

29 Subject to approval of the PPP Governing Board, the PDMF Committee shall
30 also formulate, prescribe and recommend policies, procedures and guidelines for the
31 use of PDMF and recovery of costs charged to the fund.
32

33 **SECTION 9. Unsolicited Proposals.** – Unsolicited proposals may be
34 considered for projects that are not part of the list of priority projects or which
35 involve a new concept or technology.
36

37 When a project proponent submits an unsolicited proposal, the implementing
38 agency may either:

39 (a) Accept the unsolicited proposal on a negotiated basis, subject to the
40 following conditions:

41 (1) No direct government guarantee, VGF, government subsidy or equity,
42 or right-of-way is required: *Provided*, that the implementing agency shall
43 facilitate the acquisition of the right-of-way; and

1 (2) Guided by the principles of transparency and competitiveness, the
2 implementing agency has invited the submission of comparative
3 proposals by publication for three (3) consecutive weeks in a newspaper
4 of general circulation, as well as posting in the websites of the PPP Center
5 and of the implementing agency: *Provided*, That no other proposal is
6 received within a period of not less than three (3) months nor more than
7 six (6) months from the date of last publication in a newspaper of general
8 circulation. In the event another proponent submits a superior counter-
9 proposal within the period referred to above and it is accepted by the
10 Approving Body, the original proponent shall have the right to outbid;

11
12 (b) Use the unsolicited proposal as the basis for public bidding as provided in
13 Section 10 of this Act. Upon approval by the Approving Body, the original
14 proponent thereof shall be reimbursed of the cost incurred in the preparation
15 of the proposal, such as the cost of any feasibility study undertaken:
16 *Provided*, That the reimbursement is:

17 (1) In an amount specified in the IRR of this Act, not to exceed three
18 percent (3%) of the project cost excluding those which are borne by
19 the implementing agency, such as the cost of right-of-way acquisitions;
20 and

21
22 (2) Paid in full by the winning project proponent as a requirement for the
23 award of the contract; and

24 (c) Reject the proposal.
25

26 If the implementing agency fails to act on the proposal within the period stated
27 in the IRR of this Act, the project proposal shall be deemed rejected, without
28 prejudice to any liability that the erring or negligent officials or employees may
29 incur under existing laws.
30

31 Within ten (10) working days from receipt of the unsolicited proposal, the
32 implementing agency shall inform the PPP Center in writing of such receipt and
33 furnish it with a copy of the proposal. The PPP Center shall provide assistance
34 to the implementing agency in the evaluation of unsolicited proposal.
35

36 **SECTION 10. Public Bidding of Projects. -**

37 (a) Upon approval of PPP projects as mentioned in Section 7 of this Act, the
38 head of the implementing agency concerned shall immediately cause the
39 publication of a notice inviting all prospective project proponents to participate
40 in a transparent and competitive public bidding, once every week for three (3)
41 consecutive weeks, in at least two (2) newspapers of general circulation and
42 in at least one (1) local newspaper which is circulated in the region,
43 province, city or municipality where the project is implemented. The notice

1 must also be posted continuously in the websites of the implementing agency
2 and the PPP Center.

3
4 The public bidding shall be conducted under a single or two-stage system.
5 The prequalification documents, technical and financial proposals shall be
6 submitted in at least three (3) separate envelopes. The procedures for public
7 bidding shall be transparent and competitive, including the conduct of one-on-
8 one meetings with prequalified bidders.

9
10 The contract shall be awarded to the bidder who has passed the
11 prequalification stage after having satisfied the minimum financial,
12 organizational, and legal standards required under this Act; has passed the
13 technical proposal evaluation; and has submitted the most favorable financial
14 bid based on the parameters defined in the bid documents.

15
16 In case of a single complying and responsive bidder, the implementing agency
17 may award the PPP contract to that bidder upon its compliance with the post-
18 award requirements under the bidding rules of the PPP project.

19
20 (b) A bid is considered a single complying and responsive bid submission if it
21 falls under any of the following circumstances:

22 (1) If, after advertisement, only one (1) bidder applied for
23 prequalification and it meets the prequalification requirements, after
24 which it is required to submit a bid or proposal which is subsequently
25 found by the implementing agency to be complying;

26 (2) If, after advertisement, more than one (1) bidder applied for
27 prequalification but only one (1) meets the prequalification requirements,
28 after which it submits a bid or proposal which is found by the
29 implementing agency to be complying;

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

33 (4) If, after prequalification, more than one (1) bidder submits bids but
34 only one (1) is found by the implementing agency to be complying.

35
36 (c) In all stages of the procurement process, the following protest protocol
37 shall be strictly followed:

38 (1) Decisions of the Prequalification, Bids and Awards Committee
39 (PBAC) may be questioned by filing a motion for reconsideration within a
40 period prescribed in the IRR of this Act;

41 (2) The decision of the PBAC on the motion for reconsideration in the
42 immediately preceding paragraph may be further questioned by the filing
43 of an appeal to the head of the implementing agency concerned and

1 paying a nonrefundable appeal fee in an amount equivalent to no less
2 than one-half ($\frac{1}{2}$) of one percent (1%) of the project cost within a period
3 prescribed in the IRR of this Act.
4

5 If the head of the implementing agency in the immediately preceding
6 paragraph is not a Department Secretary, the decision of the head of
7 the implementing agency may be further questioned by filing an appeal to
8 the Secretary of the Department to which the implementing agency is
9 attached within a period prescribed in the IRR of this Act; and
10

11 (3) The decision of the Department Secretary in the immediately
12 preceding paragraph (2) may be questioned by the filing of an appeal to
13 the Office of the President.
14

15 (d) PPP PBAC – The head of the implementing agency shall create a PPP PBAC
16 which shall be responsible for all aspects of the pre-bidding and bidding
17 process in the case of solicited proposals, and for the comparative bidding
18 process in the case of unsolicited proposals. The PPP PBAC shall be chaired by
19 at least a third ranking regular official of the said agency and its composition
20 shall be specified in the IRR of this Act: *Provided*, That the PPP PBAC
21 constituted for national PPP projects shall also include other relevant
22 government agencies as may be determined in the IRR of this Act.
23

24 In no case shall any appeal taken from any decision rendered pursuant to this
25 Act stay or delay the bidding process. An appeal must first be resolved before any
26 project is awarded.
27

28 If the winning bidder fails to comply with any post-award requirement or fails
29 to enter into a contract with the implementing agency, the latter may proceed to
30 negotiate with the next technically and financially qualified bidder, without
31 prejudice to availment of other legal remedies by the implementing agency such as
32 the forfeiture of bid security, the withdrawal of Notice of Award, or both.
33

34 **SECTION 11. Private Legal and Medical Assistance.** – All the PPP PBAC
35 members and other public officials providing services to the PPP PBAC shall be
36 authorized to engage the services of private lawyers, or shall be provided with free
37 legal assistance, where a civil, criminal, or administrative action is filed against
38 them by reason of the performance of their official functions or duties, unless they
39 are finally adjudged in such action or proceeding to be liable for gross negligence
40 or misconduct or grave abuse of discretion. The PPP PBAC members shall also be
41 entitled to medical assistance for injuries incurred in the performance of their
42 functions.

1 **SECTION 12. Contract Termination.** – In the event that a contract is
2 revoked, cancelled or terminated, either contracting party shall compensate the
3 other party pursuant to terms as defined in the contract.
4

5 **SECTION 13. Issuance of Administrative Franchise, License or Permit.** –
6 Once a PPP contract is duly executed, the regulator, licensing authority or LGUs
7 shall automatically grant in favor of the project proponent an administrative
8 franchise, license or permit, or any other form of authorization required for the
9 implementation of a PPP project, subject to submission by the project proponent of
10 the requirements by the regulator, licensing authority or LGU.
11

12 Any provision of law to the contrary notwithstanding, it shall be mandatory on
13 the part of the regulator, licensing authority or LGUs to accept and approve the
14 application for administrative franchise, license or permit. Failure to act on a proper
15 and complete application thereof within thirty (30) working days from receipt of the
16 same shall be deemed as approval thereof.
17

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

26 **SECTION 15. Contracts and Public Disclosure.**– Copies of all PPP contracts
27 concluded under this Act shall be considered public documents. However, any
28 proprietary information or information relating to security or national security
29 matters contained in the PPP contract and its annexes may be kept confidential for a
30 limited period, as may be determined by the implementing agency but not to exceed
31 five (5) years.
32

33 The determination of whether or not such contracts shall be kept confidential, as well
34 as the terms and duration of confidentiality, shall be the responsibility of the
35 implementing agency concerned. The implementing agency shall transmit to the PPP
36 Center for records and monitoring purposes, a copy of the duly executed contract,
37 within thirty (30) working days from its complete execution.
38

39 **SECTION 16. Prohibition on the Issuance of Temporary Restraining Orders or**
40 **Injunctions.** – No temporary restraining order, preliminary injunction or
41 preliminary mandatory injunction shall be issued by any court, except the Supreme
42 Court, against any implementing agency, its officials or employees, or any person or

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

3 (a) Bidding, rebidding or declaration of failure of bidding of PPP projects,
4 either national or local;

5
6 (b) Qualification or disqualification of bidders;

7
8 (c) Awarding of PPP contract;

9
10 (d) Acceptance of any unsolicited PPP project proposal, even if not acted
11 upon by the implementing agency concerned under Section 9 of this Act;

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

14
15 (f) Construction, operation and maintenance of any PPP project;

16
17 (g) Commencement, execution, implementation, termination or rescission of
18 any PPP contract; and

19
20 (h) Undertaking or authorization of any other lawful activity necessary for
21 such PPP project or contract: *Provided*, That the temporary restraining
22 order, preliminary injunction or preliminary mandatory injunction issued by
23 the Supreme Court shall be effective for a period not to exceed six (6) months.

24
25 The applicant for such temporary restraining order, preliminary injunction or
26 preliminary mandatory injunction shall file a bond, in an amount to be fixed by the
27 court. The bond shall accrue in favor of the government if the court should finally
28 decide that the applicant was not entitled to the relief sought.

29
30 Any temporary restraining order, preliminary injunction or preliminary
31 mandatory injunction issued in violation of this section is void and of no force and
32 effect.

33
34 The foregoing prohibition shall apply in all disputes, cases, or controversies
35 instituted by any and all parties, including cases filed by bidders, implementing
36 agencies or those claiming to have rights through such bidders or implementing
37 agencies involving a PPP project or contract.

38
39 In addition to civil and criminal liabilities as may be incurred under existing
40 laws, any judge who shall issue a temporary restraining order, preliminary injunction
41 or preliminary mandatory injunction in violation of this section shall be disciplined
42 by the Supreme Court and suffer the penalty of removal from office.

1 **SECTION 17. Assignment of Assets for PPP Projects** – A regulatory agency
2 that owns public infrastructure or right-of-way that is intended for a PPP project
3 shall assign the same to the department exercising administrative supervision over
4 it, or to the department to which it is attached, in order that such department may
5 enter into a PPP contract involving such public infrastructure or right-of-way.
6

7 **SECTION 18. Project Supervision**. – Every PPP project undertaken under the
8 provisions of this Act shall be in accordance with the designs, plans, specifications,
9 standards, and costs approved by the implementing agency and Approving Body,
10 and shall be under the supervision of the implementing agency concerned.
11

12 **SECTION 19. Investment Incentives**. – Among other incentives, PPP
13 projects in excess of one billion pesos (P1,000,000,000.00) may be entitled to
14 incentives as provided by the Omnibus Investment Code, upon prior endorsement of
15 the PPP Center and registration by the project proponent with the Board of
16 Investments.
17

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

24 (a) All real properties which are actually and directly used for the
25 project shall be exempt from any and all real property taxes levied under
26 Republic Act No. 7160, otherwise known as the "Local Government Code of
27 1991";
28

29 (b) All projects of national significance shall likewise be exempt from any and
30 all local taxes, fees and charges; and

31 (c) Automatic grant or issuance of the necessary business permits,
32 including renewals thereof, in favor of the winning project proponent.
33

34 For a project to qualify as a project of national significance, it shall meet the
35 following criteria:
36

37 (1) The total project cost falls within the threshold set by the ICC;
38

39 (2) The project has direct and indirect economic impact which shall not be less
40 than the threshold set by the ICC;
41

42 (3) The project will have direct and indirect economic impact beyond the LGU
43 where it is located; and

1
2 (4) The project can create new jobs.
3

4 **SECTION 21. Exemption from Payment of Transfer Taxes.** – For all PPP
5 projects, the transfer of ownership of infrastructure facility to the
6 implementing agency shall be exempt from capital gains tax, documentary stamp
7 tax and all taxes and fees, whether from national or local, related to the transfer
8 thereof.
9

10 **SECTION 22. Institutionalization of the PPP Center.** – To achieve the goals of
11 this Act, the PPP Center, created under Executive Order No. 8, series of 2010, as
12 amended by Executive Order No. 136, series of 2013, is hereby institutionalized. It
13 is hereby authorized to adopt its current organizational structure, absorb its
14 existing employees, and upgrade its human resource component, as may be
15 necessary. Towards a more efficient and effective performance of its mandate, the
16 PPP Center shall have the following powers and functions:
17

18 (a) Assist implementing agencies in identifying, developing, prioritizing and
19 maintaining a pipeline of PPP projects;
20

21 (b) Provide advisory services, technical assistance, trainings, and capacity
22 development to implementing agencies in all PPP-related matters, and act as
23 a procurement agent upon the request of an implementing agency;
24

25 (c) Manage and administer the PDMF as provided in Section 8 of this Act;
26

27 (d) Work with implementing agencies in setting procurement and
28 implementation timelines for approved PPP projects;
29
30

31 (e) Recommend plans, policies and implementation guidelines related to PPP,
32 in consultation with appropriate oversight committees or agencies,
33 implementing agencies, private sector and other relevant stakeholders;
34

35 (f) Facilitate, monitor, and evaluate the implementation of PPP programs
36 and projects developed by implementing agencies;
37

38 (g) Report to the Office of the President and Congress on the implementation of
39 PPP programs and projects of the government at the end of each year;
40

41 (h) Serve as a link between the government and the private sector;
42

- (i) Promote and market PPP programs and projects, in collaboration with other government promotion agencies;
- (j) Sit as member of the NEDA-Infrastructure Committee (INFRACOM), ICC, and other interagency bodies where a PPP project is a major concern;
- (k) Issue advisory opinions and interpret the provisions of this Act and its IRR, relating solely to technical aspects of the PPP;
- (l) Serve as the central repository of all executed PPP contracts and any subsequent amendment or supplement thereto, including settlement agreements, entered into by implementing agencies;
- (m) Review PPP contracts prior to execution, and provide and transmit copies of duly executed PPP contracts to Congress;
- (n) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP projects are concerned;
- (o) Maintain an integrated projects' bank to serve as an interactive database of all current and past projects; and
- (p) Perform such other functions as may be necessary to achieve the objectives and purposes of this Act.
- (q) The PPP Center shall report directly to the PPP Governing Board and shall be attached to the NEDA for purposes of policy and program coordination.

SECTION 23. PPP Governing Board. – The PPP Governing Board, hereinafter referred to as the Board, is hereby created. It 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:

- (a) The Secretary of Socio-Economic Planning as Chairperson;
- (b) The Secretary of the Department of Finance as Vice Chairperson;
- (c) The Secretary of the Department of Budget and Management;
- (d) The Secretary of the Department of Justice;

- (e) The Secretary of the Department of Trade and Industry;
- (f) The Executive Secretary;
- (g) The Secretary of the Interior and Local Government;
- (h) The Executive Director of the PPP Center; and
- (i) The Private Sector as Co-Chairperson of the National Competitiveness Council (NCC), as members.

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

The presence of the Chairperson and 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.

SECTION 24. Executive Director. – 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 for a term of six (6) years, upon recommendation of the PPP Governing Board: *Provided*, That the term of the first Executive Director appointed under this Act shall expire at noon of June 30, 2019 and the term of the next Executive Director shall commence on the said hour and date: *Provided, further*, That in case a vacancy occurs before the expiration of the term, the person appointed to such vacancy shall serve only the unexpired term of the predecessor.

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;

1 (c) Sit as an *ex officio* member of the PPP Governing Board, INFRACOM, ICC
2 and other interagency bodies where a PPP project is a major concern; and

3
4 (d) Perform such other functions as may be assigned by the PPP Governing
5 Board.

6
7 **SECTION 25. Mandatory Inclusion of Alternative Dispute Resolution (ADR)**
8 **Mechanisms in PPP Contracts.** – All PPP contracts shall stipulate therein the use
9 of ADR mechanisms. The contracting parties shall be given complete freedom to
10 choose which ADR mechanisms shall govern their dispute, as well as the rules or
11 procedures to be followed in resolving the same.

12
13 **SECTION 26. Creation of a PPP Contingent Liability Fund.** – To ensure fiscal
14 sustainability and negotiate better financing terms of PPP projects, there is hereby
15 created a PPP Contingent Liability Fund to be used for the payment of contingent
16 liabilities arising from PPPs in accordance to its contract terms.

17
18 The target amount in the PPP Contingent Liability Fund is to be determined by
19 the Development Budget Coordination Committee (DBCC) using risk-adjusted
20 methods or such other means that estimate the exposure of the Government of the
21 Philippines to PPP contingent liabilities.

22 The PPP Contingent Liability Fund shall be funded from the following sources:

23 (a) Concession fees;

24
25 (b) Implementing agency reimbursements;

26
27 (c) Interest earnings from the contingent liability fund; and

28
29 (d) National Government contributions.

30
31 National Government contributions shall cover only the difference between the
32 target amount of the PPP Contingent Liability Fund and the current value of the
33 fund. The DOF shall regularly monitor and review the viability of the PPP
34 Contingent Liability Fund in relation to the magnitude of PPP projects undertaken
35 by the government and, if necessary, recommend the increase in the target amount
36 of the PPP Contingent Liability Fund and the reason therefor. All National
37 Government contributions to the PPP Contingent Liability Fund shall be included in
38 the proposed budget of the DOF.

39
40 When the value of the PPP Contingent Liability Fund is in excess of the target
41 amount, the excess funds may, upon the recommendation of the DBCC, be
42 transferred to the general fund of the National Government.

1 The implementing agency must seek confirmation from the DOF that the
2 National Government can bear the additional contingent liabilities associated with
3 the project, taking into consideration fiscal sustainability.
4

5 Further, to foster accountability and efficiency in implementing PPP projects, it
6 is mandatory for implementing agencies to enter into a recourse agreement with the
7 DOF before any payment can be drawn from the PPP Contingent Liability Fund for
8 contingent liabilities that have materialized within contract terms.
9

10 The Bureau of the Treasury shall maintain the PPP Contingent Liability Fund
11 in the Treasury Single Account. Interest earnings therefrom shall accrue to the PPP
12 Contingent Liability Fund.
13

14 **SECTION 27. Penal Provision.** – Any person, whether private individual or public
15 officer or employee, who commits any of the acts hereunder proscribed, shall be
16 punished by imprisonment from a minimum of three (3) years to a maximum of six
17 (6) years and one (1) day:
18

19 (a) Representation that the project proponent has the necessary capitalization
20 to commence, complete and implement the project when the same is false in
21 material respects; and
22

23 (b) Falsification or insertion of certain provisions in the execution copy of the
24 contract which are materially and substantially different from the approved
25 final draft contract.
26

27 **SECTION 28. Miscellaneous Provisions.** –
28

29 (a) Build-and-Transfer and Social Infrastructure PPP Projects – For PPP
30 projects under the Build-and-Transfer scheme, as well as social infrastructure
31 PPP projects, Congress shall include the necessary appropriations to meet
32 the financial obligations arising from such projects on the fiscal year when the
33 obligation becomes due and demandable. Such appropriations shall be over
34 and above the annual budget of the implementing agency.
35

36 (b) Joint Venture Agreements – For joint venture arrangements, the
37 ownership of the infrastructure facility may be transferred to either the
38 implementing agency or to the project proponent: *Provided*, That in the latter
39 case, the transfer shall be made under competitive market conditions:
40 *Provided, further*, That the equity contribution of the implementing agency in a
41 joint venture corporation shall in no case exceed fifty percent (50%) of the
42 outstanding capital stock of the corporation: *Provided, finally*, That the return

1 on investment of either party shall be in proportion to their respective
2 contribution.

3
4 (c) Recovery of Investment - As may be agreed in the PPP contract, the
5 project proponent may be allowed to collect tolls, fees, rentals, or charges;
6 engage in commercial development; receive VGF; and receive direct
7 government payments, among others, to recover investment.

8
9 (d) Wind-up and Transfer Measures - The PPP contract shall provide, as
10 appropriate, for:

11 (1) Mechanisms and procedures for the transfer of assets to the
12 implementing agency;

13
14 (2) The compensation to which the project proponent may be entitled in
15 respect of assets transferred to the implementing agency, or to a
16 successor, or purchased by the implementing agency;

17
18 (3) The transfer of technology required for the operation of the
19 infrastructure facility;

20
21 (4) The training of the implementing agency's personnel or of a successor
22 in the operation and maintenance of the infrastructure facility; and

23
24 (5) The provision, by the project proponent, of a warranty that the
25 infrastructure facility meets the project technical specifications, agreed
26 system features, and performance standards and services for a certain
27 period as may be defined in the IRR of this Act after the transfer of the
28 infrastructure facility to the implementing agency or to a successor.

29 (e) Prescription - No one shall in any proceedings before any court or tribunal
30 allege the invalidity of any PPP contract on the ground of noncompliance with
31 the provisions of this Act after a period of one (1) year has elapsed from the
32 signing of the PPP contract.

33
34 (f) Preferential Hiring of Filipino Workers - For the construction stage of
35 infrastructure facilities where the contractor is a foreigner, Filipino labor shall
36 be employed or hired in the different phases of construction where Filipino
37 skills are available.

38
39 (g) Contracts, Procedures, and Authority Not Affected by this Act - This Act
40 shall not affect:

41

(1) PPP contracts entered into, and selection procedures undertaken, by implementing agencies prior to the effectivity of this Act in accordance with relevant laws, regulations, guidelines, and ordinances; and

(2) The authority of LGUs to enact their own PPP ordinances that are not inconsistent with this Act and its IRR.

SECTION 29. Joint Congressional Oversight Committee. – A Joint Congressional Oversight Committee is hereby created to oversee the implementation of this Act. The Committee shall be composed of five (5) members each from the Senate and the House of Representatives to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The Committee shall be jointly chaired by the respective Chairpersons of the House Committee on Public Works and Highways, the House Committee on Appropriations, the Senate Committee on Public Works, and the Senate Committee on Finance.

SECTION 30. Implementing Rules and Regulations. – The members of the PPP Governing Board shall designate their respective representatives who 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.

SECTION 31. 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 the PPP Center as 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.

SECTION 32. Separability Clause. – If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.

SECTION 33. Repealing Clause. – Republic Act No. 6957, Republic Act No. 7718, Section 3(a) of Presidential Decree No. 1112, Section 2 of Presidential Decree

1 No. 1894, and Executive Order No. 8, series of 2010, as amended by Executive
2 Order No. 136, series of 2013, Executive Order No. 78, series of 2012, Section 8 of
3 Executive Order No. 423, series of 2005, 2013 Revised Guidelines and
4 Procedures for Entering Into Joint Venture Agreements Between Government
5 and Private Entities, Joint Venture Guidelines issued by LGUs, and PPP Codes
6 issued by LGUs are hereby repealed. All other laws, rules and regulations or
7 parts thereof inconsistent with the provisions of this Act are hereby repealed or
8 modified accordingly.

9
10 **SECTION 34. Effectivity.** - This Act shall take effect fifteen (15) days after its
11 publication in the *Official Gazette* or in at least one (1) newspaper of general
12 circulation.

13
14
15 Approved,