

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Seventeenth Congress
First Regular Session

HOUSE BILL NO. **778**

HOUSE OF REPRESENTATIVES	
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Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT CREATING THE PUBLIC-PRIVATE PARTNERSHIP AUTHORITY,
FURTHER AMENDING REPUBLIC ACT NO. 6957, AS AMENDED BY
REPUBLIC ACT NO. 7718, ENTITLED "AN ACT AUTHORIZING THE
FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF
INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR
AND FOR OTHER PURPOSES"
FOR THIS PURPOSE

EXPLANATORY NOTE

RA No. 6957, as amended: An Offshoot of the Important Role of the Private Sector in Nation Building. The private sector is an indispensable component in sustainable development. Recognizing the contribution of the private sector to nation building, Section 20, Article II of the 1987 Philippine Constitution explicitly provides that "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."

Pursuant to this declared State policy, two primary laws were enacted by Congress namely: Republic Act No. 9184 or the Government Procurement Reform Act (RA 9184) for the procurement of goods, supplies and services, and Republic Act No. 6957 as amended by Republic Act No. 7718 or the Philippine Build-Operate-and-Transfer (BOT) Law allowing for a more focused framework in PPP infrastructure development. R.A. No. 9184 was enacted to, among others, promote transparency in the procurement process and in the implementation of procurement contracts. Republic Act No. 6957 allows for LGUs to enter into contractual arrangements with the private sector to implement infrastructure projects thru a Built-Operate-And-Transfer and Build-Transfer-and-Operate. Eventually, R.A. No. 6957 was amended by Republic Act No. 7718 or the Philippine Build-Operate-and-Transfer (BOT) Law broadened the list of PPP government implementing government entities to include government owned and controlled corporations (GOCCs), government financing institutions (GFIs) and state universities and colleges (SUCs); putting up incentives for attracting private sector investments to venture into PPP projects; and allowing negotiated unsolicited

proposals provided that these comply with conditions outlined in the Law. More importantly, RA 7718 allowed for other contractual arrangements or schemes to implement PPP projects.

Under existing law, the overall policy making body for all PPP-related matters is lodged with the PPP Governing Board (PPGGB), composed of the Secretary of Socio-Economic Planning as chairperson, the Secretary of Finance, as vice-chairperson and as members, the Secretary of Budget and Management, Secretary of Justice, Secretary of Trade and Industry, Executive Secretary and the Private Sector Co-Chairman of the National Competitiveness Council.

Salient Features of the Proposed Bill. This proposed bill further enhances and reinforces the provisions of R.A. 6957, as amended to engender transparency in transactions, efficiency in the performance of project obligations, and putting additional thrust and impetus to the PPP program through a more robust cooperation between the public and private sectors. With these in mind, the bill proposes the following additional amendments to RA 6957, as amended, to wit:

Section 1, as proposed, emphasizes the role of the private sector as “prime mover” for national growth and development. It expresses in a categorical and explicit terms the bounden obligation of the government to provide support to allow the private sector to achieve reasonable rate of return on investments (ROI) in financing the construction etc. through a competitive and transparent selection process. It also makes it the declared policy of the state to abide by the principle of transparency with the end in view of protecting the interest of the public by ensuring fair and reasonable pricing and timely delivery of quality services.

Amendments to *Section 2. (Definition of Terms)* under the proposed bill are hereunder enumerated, to wit:

- a) Inclusion of “bulk grains handling facility or logistic support system” among the list of Public-Private Infrastructure or Development Projects or “projects” enumerated in R.A. 6957 as amended.
- b) Inclusion of a definition of “PPP Infrastructure AND Development Plan (PLAN)”.
- c) Under RA6957 as amended, the definition of “Facility operator” spells out in specific terms that Filipino ownership of the public utility franchise should be at least 60% which is reflective of the wording of Sec. 11 Art. XII of the 1987 Constitution. However, under the proposed bill “Facility operator” as defined makes reference not only to the nationality and equity requirements as stated in the Constitution but also to include requirements under all applicable laws.
- d) Allows for a more specific and expanded definition of “Government guarantee” to include “full or partial responsibility” by the government.
- e) The definition of “Return on Investment” as proposed specifies the factors to be considered in determining the ROI. The definition of ROI in RA6957 is more restrictive and does not take into account the aforementioned factors.
- f) More detailed definition of the “Project Cost.”

As proposed, *Section 3. Private Initiative in Infrastructure* includes a proviso that specifically requires the submission to the BOT Authority for approval of all national and local government projects; with the exception of projects that require national government guarantee or undertaking, in which case the project shall be recommended by the BOT Authority Board to the president for approval.

A new section, to be numbered as *Section 4*, defines contractual arrangements.

The previous *Section 4*, renumbered as *Section 5* in the proposed bill, makes it a requirement for government agencies and LGUs to submit to the PPP authority list of projects for possible listing in the plan and harmonized investment promotion.

Section 4-A of Republic Act No. 6957, as amended, renumbered as *Section 5-A* in the proposed bill, makes it a requirement for Unsolicited Proposals accepted by any appropriate government agencies / LGUs to be submitted to the PPP Authority for evaluation and approval, subject to certain conditions.

Section 5, to be renumbered as *Section 6* in the proposed bill, requires that projects under the law shall be done through competitive and transparent public bidding.

A new section (*Section 8*) is introduced establishing a Project Development Facility (PDF) to serve as a revolving fund to, among others, finance the proper identification, study, validation, development, and preparation for public bidding.

Section 9, as proposed, spells out the consequences of contract terminations as a result of the fault or non-fault of the project proponent. Notice that RA No. 6957, as amended, envisages two situations for contract termination, namely:

- 1) it is the government that initiates contract termination without the fault of the proponent, or
- 2) the government defaults on certain major obligations.

The proposed provision however shifts the emphasis and perspective to the project proponent's fault or non-fault which, for all intents and purposes, will have substantial bearing on the burden of proof.

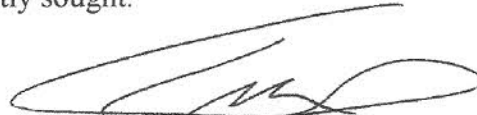
Section 10 of the RA 6957, as amended, renumbered as *Section 12* in the proposed bill, removes the one billion peso (P1,000,000,000) threshold for projects entitled to incentives. As proposed, projects, except unsolicited projects, are entitled to incentives regardless of cost.

A new section, to be numbered as *Section 13* in the proposed bill, makes it the obligation of the Republic of the Philippines or LGUs to uphold the validity and enforceability of a duly executed contract, unless proven otherwise.

A new section (*Section 15*), which we will consider as the most substantive, allows for the creation and establishment of the Public-Private Partnership Authority to serve as the central body of the government for BOT, Private Sector Participation (PSP) or Public-Private Partnership projects (PPP), attached to the Department of Trade and Industry (DTI). This is a significant departure from the organizational structure under RA 6957 which vests upon the PPP Governing Board the power to set the policy direction of the PPP. As envisioned under the proposed bill however, the PPP Authority institutionalizes the policy-making body of the government for BOT and other contractual arrangements. This will make for a more consistent policy direction for the PPP programs. Subsequent provisions as proposed concern the composition of the Authority including its powers and functions, budget, and appointment

of its personnel. To give more teeth to the proposed bill, a penalty clause is also introduced, defining the penalties and sanctions for the violation of any provision of the law and its implementing rules and regulations.

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

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a series of smaller, more intricate strokes that form the letters of the name.

JOEY SARTE SALCEDA

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

SECTION 1. Section 1 of Republic Act. No. 6957, as amended, is hereby further amended to read as follows:

"Sec. 1. Declaration of Policies. – It is the declared policy of the State to recognize the indispensable role of the private sector as the PRIME MOVER for national growth and development and TO provide GOVERNMENT SUPPORT AND incentives THAT SHALL ALLOW THE PRIVATE SECTOR TO ACHIEVE A REASONABLE RATE OF RETURN ON ITS INVESTMENTS IN financing the construction, operation and/or maintenance of facilities, infrastructure or development projects normally financed and undertaken by the Government THROUGH COMPETITIVE AND TRANSPARENT SELECTION PROCESS.

IT IS ALSO THE POLICY OF THE STATE TO PROTECT THE PUBLIC INTEREST BY ENSURING FAIR AND REASONABLE PRICING AND TIMELY DELIVERY OF QUALITY SERVICES UNDER THE GUIDING PRINCIPLE OF FULL PUBLIC DISCLOSURE OF ALL TRANSACTIONS, AND EQUITABLE RISKS ALLOCATION INHERENT IN PROJECTS UNDERTAKEN THROUGH CONTRACTUAL ARRANGEMENTS AUTHORIZED IN THIS ACT.

THE GRANT BY THE GOVERNMENT OF ANY FORM OF SUPPORT TO THE PRIVATE SECTOR SHALL BE JUDICIOUSLY AND TRANSPARENTLY ARRANGED CONSISTENT WITH THE APPROPRIATE ECONOMIC AND TECHNICAL REGULATORY FRAMEWORKS TO ENSURE FAITHFUL PERFORMANCE AND DELIVERY OF CONTRACTUAL OBLIGATIONS.”

SECTION 2. Section 2 of the same Act, as amended, is hereby further amended to read as follows:

“Sec. 2. *Definition of Terms.* – The following terms used in this Act shall have the meanings stated below:

(a) Public-Private Infrastructure or Development Projects (hereafter referred to as ‘PROJECT(S)’) – The general description of infrastructure or development projects 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, BULK GRAINS HANDLING FACILITY OR LOGISTIC SUPPORT SYSTEM 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 government agency or LOCAL GOVERNMENT UNIT (LGU) pursuant to this Act. Such projects shall be undertaken through contractual arrangements UNDER THIS ACT.

For the construction stage of these infrastructure projects, the project proponents may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: Provided, That in case an infrastructure or a development facility’s operation requires a public utility franchise, the facility operator must be Filipino CITIZENS OR CORPORATION OR ASSOCIATION ORGANIZED UNDER PHILIPPINE LAWS AT LEAST SIXTY PERCENT (60%) OF WHOSE CAPITAL IS OWNED BY FILIPINOS; Provided, further, That in the case of foreign contractors, Filipino labor, WHENEVER AVAILABLE, shall be employed or hired in the different phases of the construction: Provided, FINALLY, That 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 not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.

(b) PPP INFRASTRUCTURE AND DEVELOPMENT PLAN (PLAN)
– REFERS TO THE LIST OF PRIVATE SECTOR

INFRASTRUCTURE OR DEVELOPMENT PROJECTS
FORMULATED BY THE BOT AUTHORITY EVERY FIVE YEARS.

- (c) Build-operate-and-transfer – A contractual arrangement...
- (d) Build-and-transfer – A contractual arrangement...
- (e) Build-own-and-operate – A contractual arrangement...
- (f) Build-lease-and-transfer – A contractual arrangement...
- (g) Build-transfer-and-operate – A contractual arrangement...
- (h) Contract-add-and-operate – A contractual arrangement...
- (i) Develop-operate-and-transfer – A contractual arrangement...
- (j) Rehabilitate-operate-and-transfer – A contractual arrangement...
- (k) Rehabilitate-own-and-operate – A contractual arrangement...
- (l) Project proponent – The private sector entity...
- (m) Contractor – Any entity accredited...

- (n) Facility operator – A company registered with the Securities and Exchange Commission, 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 COMPLY WITH THE NATIONALITY AND OWNERSHIP REQUIREMENTS UNDER THE CONSTITUTION AND OTHER APPLICABLE LAWS.

- (o) GOVERNMENT GUARANTEE – an agreement whereby the government or any of its agencies or local government units assume FULL OR PARTIAL responsibility, THROUGH ANY OF THE FOLLOWING: (1) PROVISION OF EQUITY, SUBSIDIES, INCENTIVES, OR CREDIT ENHANCEMENTS, OF WHATEVER FORM OR NATURE; (2) GUARANTEED PROJECTED REVENUES/FEES/CHARGES; or (3) for the repayment of debt incurred by the project proponent in implementing the project, in case of a loan default.

- (p) REASONABLE RATE OF RETURN – REFERS TO THE RATE OF RETURN THAT A PROJECT PROPONENT SHALL BE ENTITLED TO, TAKING INTO ACCOUNT, AMONG OTHERS, THE PREVAILING COST OF CAPITAL, IN TERMS OF EQUITY AND DEBT, IN THE DOMESTIC AND INTERNATIONAL MARKETS, RISKS BEING ASSUMED BY THE PROJECT PROPONENT AND THE LEVEL OF GOVERNMENT UNDERTAKINGS EXTENDED FOR THE PROJECT, AS DETERMINED BY THE APPROPRIATE GOVERNMENT AGENCY OR LGU AND APPROVED BY THE BOT AUTHORITY BOARD.

- (q) Construction – Refers to new construction, rehabilitation, improvement, expansion, alteration and related works and activities including the necessary DESIGN, supply, INSTALLATION, TESTING

AND COMMISSIONING of equipment, SYSTEMS, PLANTS, materials, labor and services, and related items.

(r) PROJECT COST – REFERS TO THE TOTAL COST TO BE EXPENDED BY THE PROJECT PROPONENT TO PLAN, DEVELOP AND CONSTRUCT THE PROJECT TO COMPLETION, INCLUDING BUT NOT LIMITED TO, WORKING CAPITAL, COST OF FEASIBILITY STUDIES, DETAILED ENGINEERING AND DESIGN, CONSTRUCTION EQUIPMENT, LAND AND RIGHT-OF-WAY, TAXES IMPOSED ON SAID COST, AND DEVELOPMENT COST.

(s) UNSOLICITED PROPOSAL – REFERS TO PROJECT PROPOSALS WHICH ARE NOT IDENTIFIED IN THE PLAN AND SUBMITTED BY THE PRIVATE SECTOR NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST BY GOVERNMENT AGENCY OR LGU TO UNDERTAKE A PROJECT WHICH MAY BE ACCEPTED BY THE SAID GOVERNMENT AGENCY OR LGU ON A NEGOTIATED BASIS.”

SECTION 3. Section 3 of Republic Act No 6957, as amended, is hereby further amended to read as follows:

“Sec. 3. PRIVATE INITIATIVE IN INFRASTRUCTURE – All government infrastructure agencies, including government-owned and controlled-corporations (GOCCs) and LGUs are hereby authorized to enter into contract with any duly qualified project proponent for the financing, construction, operation and maintenance of any financially viable infrastructure or development facility through any of the projects authorized in this Act.

ALL NATIONAL AND LOCAL GOVERNMENT PROJECTS TO BE IMPLEMENTED UNDER THIS ACT SHALL BE SUBMITTED TO THE BOT AUTHORITY FOR APPROVAL; PROVIDED, THAT FOR PROJECTS THAT REQUIRE NATIONAL GOVERNMENT GUARANTEE OR UNDER-TAKING, THE PROJECT SHALL BE RECOMMENDED BY THE BOT AUTHORITY BOARD TO THE PRESIDENT FOR APPROVAL.”

SECTION 4. A new section to be numbered as Section 4 of the same Act, as amended, is hereby added, to read as follows:

“Sec. 4. CONTRACTUAL ARRANGEMENTS – REFER TO ARRANGEMENTS INVOLVING PRIVATE SECTOR INVESTMENTS IN PROJECTS IDENTIFIED BY THE APPROPRIATE GOVERNMENT AGENCIES OR LGUS AS DEFINED IN THE IMPLEMENTING RULES AND REGULATIONS AND APPROVED BY THE BOT AUTHORITY.”

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

“Sec. 5. Priority Projects. – All concerned government agencies, including government-owned and controlled corporations and local government units, shall include in their development programs priority projects that may be financed, constructed, operated and maintained by the private sector under the provisions of this Act. Further, concerned government agencies AND LOCAL GOVERNMENT UNITS SHALL SUBMIT TO THE PPP AUTHORITY LIST OF PROJECTS FOR POSSIBLE LISTING IN THE PLAN AND HARMONIZED INVESTMENT PROMOTION.”

SECTION 6. Section 4-A of Republic Act No. 6957, as amended by Republic Act No. 7718, is hereby renumbered as Section 5-A and further amended to read as follows:

“Sec. 5-A. Unsolicited Proposals. – Unsolicited proposals for projects accepted by any APPROPRIATE GOVERNMENT AGENCIES/ LGUS, SHALL BE SUBMITTED TO THE PPP AUTHORITY FOR EVALUATION AND APPROVAL WITHIN THIRTY (30) WORKING DAYS, UPON SUBMISSION OF COMPLETE DOCUMENTS, *PROVIDED*, THAT NO GOVERNMENT GUARANTEE, SUBSIDY OR EQUITY, IN WHATEVER FORM OR NATURE, IS GRANTED: *PROVIDED FURTHER*, THAT THE UNSOLICITED PROPOSAL UPON APPROVAL BY THE PPP AUTHORITY BOARD SHALL BE SUBJECT TO OPEN, COMPARATIVE OR COMPETITIVE TENDER PROCESS.”

SECTION 7. Section 5 of the same Act, as amended, is hereby renumbered as Section 6 and further amended to read as follows:

“Sec. 6. Public Bidding of Projects. – PROJECTS TO BE IMPLEMENTED UNDER THIS ACT SHALL BE DONE THROUGH COMPETITIVE AND TRANSPARENT PUBLIC BIDDING.”

SECTION 8. Section 5-A of Republic Act No. 6957, as amended by Republic Act No. 7718, is hereby renumbered as Section 6-A and further amended to read as follows:

“Sec. 6-A. Direct Negotiation of Contracts. – Direct negotiation shall be resorted to when there is only one complying bidder left as defined IN THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF THIS ACT.”

SECTION 9. Section 6 of the same Act, as amended, is hereby renumbered as Section 7 to read as follows:

“Sec. 7. Repayment Scheme. – For the financing, construction, operation and maintenance of any infrastructure OR DEVELOPMENT projects undertaken through the CONTRACTUAL ARRANGEMENT UNDER THIS ACT, the project proponent shall be repaid by authorizing it to

charge and effect reasonable tolls, fees, and rentals for the use of the project facility not exceeding those incorporated in the contract and, where applicable, the PROJECT 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 negotiated contracts, and for projects which have been granted a natural monopoly or where the public has no access to alternative facilities, the appropriate government regulatory bodies, shall approve the tolls, fees, rentals, and charges based on a reasonable rate of return AS APPROVED BY THE PPP AUTHORITY : Provided, further, That the imposition and collection of tolls, fees, rentals, and charges shall be for a fixed term 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 EFFECTIVITY of the contract, 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 EFFECTIVITY OF THE CONTRACT, 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 build-and-transfer CONTRACTUAL arrangement, the repayment scheme is to be effected through amortization payments by the APPROPRIATE GOVERNMENT AGENCY or LGU concerned to the project proponent according to the scheme proposed in the bid and incorporated in the contract.”

SECTION 10. A new section to be numbered as Section 8 of the same Act, as amended, is hereby added to read as follows:

“Sec. 8. PROJECT DEVELOPMENT FACILITY. – THERE IS HEREBY CREATED A PROJECT DEVELOPMENT FACILITY (PDF) THAT SHALL SERVE AND BE OPERATED AS A REVOLVING FUND TO FINANCE THE PROPER IDENTIFICATION, STUDY, VALIDATION, DEVELOPMENT, AND PREPARATION FOR PUBLIC BIDDING OR OTHER COMPETITIVE PROCESS, OF PRIVATE SECTOR INFRASTRUCTURE OR DEVELOPMENT PROJECTS IMPLEMENTED UNDER THIS ACT OR OTHER LAWS. THE PDF SHALL BE ADMINISTERED BY THE BOT AUTHORITY, AND SHALL BE SUBJECT TO THE CONDITIONS PRESCRIBED BY LAW ON REVOLVING FUNDS AND OTHER APPLICABLE GOVERNMENT RULES AND REGULATIONS.”

SECTION 11. Section 7 of the same Act, as amended, is hereby renumbered as Section 9 and further amended to read as follows:

“Sec. 9. CONTRACT TERMINATION. – IN THE EVENT THAT A CONTRACT IS TERMINATED THROUGH NO FAULT ON THE PART OF THE PROJECT PROPONENT, THE APPROPRIATE GOVERNMENT AGENCY OR LGU SHALL COMPENSATE THE SAID PROJECT PROPONENT FOR ITS ACTUAL EXPENSES REASONABLY INCURRED IN THE PROJECT PLUS A REASONABLE RATE OF RETURN ON INVESTMENTS NOT EXCEEDING THAT STATED IN THE CONTRACT AS OF THE DATE OF SUCH TERMINATION.

IN THE EVENT THAT THE PROJECT PROPONENT DEFAULTS ON CERTAIN MAJOR OBLIGATIONS IN THE CONTRACT AND SUCH FAILURE IS NOT REMEDIABLE OR IF REMEDIABLE SHALL REMAIN UNREMEDIED FOR AN UNREASONABLE LENGTH OF TIME, THE APPROPRIATE GOVERNMENT AGENCY OR LGU MAY, BY PRIOR NOTICE TO THE PROJECT PROPONENT, TERMINATE THE CONTRACT. THE APPROPRIATE GOVERNMENT AGENCY OR LGU SHALL CALL ON THE PERFORMANCE SECURITY POSTED BY THE PROJECT PROPONENT AND OTHER JUST AND EQUITABLE REMEDIES AS CONSEQUENTIAL COMPENSATION AS PROVIDED FOR IN THE CONTRACT.”

SECTION 12. Section 8 and 9 of the same Act, as amended, is hereby renumbered as Section 10 and 11.

SECTION 13. Section 10 of the same Act, as amended, is hereby renumbered as Section 12 to read as follows:

“Sec. 12. Investments Incentives. – PROJECTS EXCEPT UNSOLICITED PROJECTS, REGARDLESS OF COST, shall be entitled to incentives as provided by the Omnibus Investments Code OR THE APPLICABLE INCENTIVES LAW AND LOCAL GOVERNMENT CODE, upon registration with the APPROPRIATE GOVERNMENT AGENCY.”

SECTION 14. A new section to be numbered as Section 13 of the same Act, as amended, is hereby further added to read as follows:

“Sec. 13. WARRANTY TO UPHOLD THE VALIDITY OF THE CONTRACT. – THE REPUBLIC OF THE PHILIPPINES OR LOCAL GOVERNMENT UNITS SHALL BE BOUND TO UPHOLD THE VALIDITY AND ENFORCEABILITY OF A DULY EXECUTED CONTRACT, UNLESS PROVEN OTHERWISE.”

SECTION 15. Section 11 of the same Act, as amended, is hereby renumbered as Section 14 and further amended to read as follows:

“Sec. 14. Implementing Rules and Regulations. – A COMMITTEE SHALL BE CREATED TO PROMULGATE THE IRR OF THIS ACT TO BE CHAIRED BY PPP AUTHORITY and composed of one (1) representative each from the Department of Public Works and Highways, the Department of Transportation and Communications, the Department of Energy, the Department of Environment and Natural Resources, the Department of Agriculture, the Department of Trade and Industry, the Department of Finance, the Department of the Interior and Local Government, the National Economic and Development Authority, and other concerned government agencies shall, within sixty (60) days from the effectivity of this Act, formulate and prescribe, after public hearing and publication as required by law, the implementing rules and regulations including, among others, the criteria and guidelines for evaluation of bid proposals, list of financial incentives and arrangements that the Government may provide for the project, in order to carry out the provisions of this Act in the most expeditious manner.

From time to time the committee may conduct, formulate and prescribe, after due public hearing and publication, amendments to the implementing rules and regulations, consistent with the provisions of this Act.”

SECTION 16. Section 12 of the same Act, as amended, is hereby renumbered as Section 15 of the same Act, as amended, is hereby further amended to read as follows:

“Sec. 15. *CREATION OF THE PUBLIC-PRIVATE PARTNERSHIP AUTHORITY.* THERE IS HEREBY CREATED A PUBLIC-PRIVATE PARTNERSHIP AUTHORITY (PPP AUTHORITY) THAT SHALL SERVE AS THE CENTRAL BODY OF THE GOVERNMENT FOR BOT, PRIVATE SECTOR PARTICIPATION (PSP) OR PUBLIC-PRIVATE PARTNERSHIP PROJECTS (PPP), ATTACHED TO THE DEPARTMENT OF TRADE AND INDUSTRY (DTI). THE PPP AUTHORITY SHALL BE COMPOSED OF THIRTEEN (13) BOARD OF DIRECTORS. THE SECRETARY OF TRADE AND INDUSTRY SHALL BE THE CHAIRMAN, CO-CHAIRER BY THE SECRETARY OF THE DEPARTMENT OF FINANCE. THE MEMBERS OF THE BOARD SHALL BE THE SECRETARIES OF NEDA, OP, DENR, DOLE, DBM, DIRECTOR GENERAL OF THE PPP AUTHORITY AND FIVE (5) REPRESENTATIVES FROM THE PRIVATE SECTOR TO BE APPOINTED BY THE PRESIDENT, WHO SHALL BE AT LEAST 35 YEARS OLD, WITH PROVEN PROBITY AND INTEGRITY AND WITH A DEGREE IN LAW, ENGINEERING, ECONOMICS, BUSINESS, PUBLIC ADMINISTRATION, MANAGEMENT OR ITS EQUIVALENT, FOR A TERM NOT EXCEEDING THREE (3) YEARS: *PROVIDED*, THAT THE PRIVATE SECTOR REPRESENTATIVE MAY BE REAPPOINTED; *PROVIDED FURTHER*, THAT HE SHALL SERVE AS SUCH UNTIL HIS SUCCESSOR SHALL HAVE BEEN APPOINTED AND QUALIFIED.

THE PPP AUTHORITY SHALL BE HEADED BY A DIRECTOR GENERAL WITH THE RANK OF AN UNDERSECRETARY, TO BE APPOINTED BY THE PRESIDENT AND ASSISTED BY (2) DEPUTY DIRECTORS GENERAL, RECOMMENDED BY THE SECRETARY TO BE APPROVED BY THE BOARD.

MEMBERS OF THE BOARD SHALL RECEIVE A REASONABLE PER DIEM TO BE FIXED BY THE BOARD.

THE BOARD SHALL HOLD MEETINGS AT LEAST ONCE A MONTH FOR THE CONDUCT OF BUSINESS OR AS OFTEN AS MAY BE NECESSARY UPON THE CALL OF THE CHAIRMAN. THE NOTICE OF MEETING SHALL BE GIVEN TO ALL THE MEMBERS OF THE BOARD AND THE PRESENCE OF SEVEN (7) MEMBERS SHALL CONSTITUTE A QUORUM AND THE AFFIRMATIVE VOTE OF THE MAJORITY OF THE MEMBERS PRESENT IN A MEETING VALIDLY HELD SHALL BE NECESSARY TO CARRY THE ACTION. IN THE ABSENCE OF THE SECRETARY, HE MAY BE REPRESENTED BY A DULY AUTHORIZED ALTERNATE WITH THE RANK OF AN UNDERSECRETARY AND VESTED WITH FULL AUTHORITY TO ACT IN THE BOARD MEETINGS.

SECTION 17. A new section to be numbered as Section 16 of the same Act, as amended, is hereby further added to read as follows:

Sec. 16. POWERS AND FUNCTIONS. THE PPP AUTHORITY SHALL EXERCISE THE FOLLOWING POWERS AND FUNCTIONS:

1. FORMULATE THE INFRASTRUCTURE AND DEVELOPMENT PLAN FOR PRIVATE SECTOR PARTICIPATION AND PUBLIC-PRIVATE PARTNERSHIP.
2. FORMULATE POLICIES ON PRIVATE SECTOR INVESTMENTS IN INFRASTRUCTURE AND DEVELOPMENT PROJECTS.
3. PROMOTE THE INFRASTRUCTURE AND DEVELOPMENT INVESTMENT PROGRAMS THROUGH BOT, PSP OR PPP.
4. EVALUATE, REVIEW AND APPROVE THE PROJECTS SUBMITTED BY THE APPROPRIATE GOVERNMENT AGENCIES OR LGUS TO BE IMPLEMENTED UNDER THIS ACT. FOR THIS PURPOSE, PROJECT PROPOSALS AND CONTRACTS INVOLVING CONTRACTUAL ARRANGEMENTS PROPOSED TO BE IMPLEMENTED UNDER THIS LAW SHALL BE SUBMITTED BY THE APPROPRIATE GOVERNMENT AGENCIES AND LGUS TO THE PPP AUTHORITY. THE PPP AUTHORITY SHALL BE

THE SOLE AND EXCLUSIVE APPROVING AUTHORITY FOR BOT, PSP OR PPP PROJECTS. FURTHER, THE PPP AUTHORITY SHALL ACT ON THE PROJECT WITHIN THIRTY WORKING DAYS, UPON SUBMISSION OF COMPLETE DOCUMENTS, OTHERWISE, THE PROJECT IS AUTOMATICALLY APPROVED.

5. COORDINATE, MONITOR AND FACILITATE PROJECT IMPLEMENTATION UNDER THIS ACT.
6. SERVE AS THE OFFICIAL REPOSITORY OF ALL BOT, PSP, AND PPP CONTRACTS, DULY APPROVED BY THE BOARD AND EXECUTED BY THE APPROPRIATE GOVERNMENT AGENCY OR LGU CONCERNED.
7. MANAGE AND ADMINISTER THE REVOLVING FUND FOR PROJECT DEVELOPMENT.
8. DETERMINE THE ORGANIZATIONAL STRUCTURE OF THE PPP AUTHORITY. APPOINT, DISCIPLINE OR REMOVE ITS PERSONNEL CONSISTENT WITH THE PROVISIONS OF CIVIL SERVICE LAWS, RULES AND REGULATIONS.
9. AFTER DUE PROCESS, IMPOSE FINES, PENALTIES AND SANCTIONS, INCLUDING SUSPENSION AND CANCELLATION OF CONTRACTS, FOR VIOLATION OF THE PROVISIONS OF THIS ACT, ITS IMPLEMENTING RULES AND REGULATIONS OR THE TERMS AND CONDITIONS OF THE CONTRACT.
10. REPORT TO THE PRESIDENT AND TO CONGRESS ON THE IMPLEMENTATION OF ALL PROJECTS WITH CONTRACTUAL ARRANGEMENTS COVERED BY THIS ACT.

SECTION 18. A new section to be numbered as Section 17 of the same Act, as amended, is hereby further added to read as follows:

Sec. 17. APPROPRIATION. – THE INITIAL ANNUAL BUDGET FOR THE OPERATIONS OF THE AUTHORITY IS PESOS: FIVE HUNDRED MILLION (PHP 500,000,000.00) DIVIDED INTO 200 MILLION FOR THE PROJECT DEVELOPMENT FACILITY AS SEED MONEY AND 300 MILLION FOR OPERATIONS. IN THE EVENT THAT THE SEED MONEY FOR THE PDF IS IN A PRECARIOUS SITUATION, THE GOVERNMENT SHALL APPROPRIATE AN AMOUNT AS REPLENISHMENT. APPROPRIATION HERETO SHALL BE TAKEN FROM THE GENERAL APPROPRIATION ACT. THEREAFTER, THERE WILL BE A CONTINUING APPROPRIATIONS FOR ITS OPERATION.

THE PPP AUTHORITY SHALL BE ALLOWED TO RETAIN ITS INCOME ARISING FROM ITS OPERATIONS TO FINANCE ITS ACTIVITIES AND PROGRAMS.

SECTION 19. A new section to be numbered as Section 18 of the same Act, as amended, is hereby further added to read as follows:

Sec. 18. *APPOINTMENT OF BOT AUTHORITY PERSONNEL.* – THE PPP AUTHORITY SHALL APPOINT ITS TECHNICAL STAFF AND OTHER PERSONNEL SUBJECT TO CIVIL SERVICE LAWS, RULES AND REGULATIONS. ALL POSITIONS IN THE PPP AUTHORITY SHALL BE GOVERNED BY A COMPENSATION, POSITION CLASSIFICATION SYSTEMS, AND QUALIFICATION STANDARDS APPROVED BY THE PPP AUTHORITY BOARD BASED ON A COMPREHENSIVE JOB ANALYSIS AND AUDIT OF ACTUAL DUTIES AND RESPONSIBILITIES. THE COMPENSATION PLAN SHALL BE COMPARABLE WITH THE PREVAILING COMPENSATION PLANS OF A GOVERNMENT FINANCIAL INSTITUTION AND SHALL BE SUBJECT TO PERIODIC REVIEW BY THE PPP AUTHORITY BOARD NO MORE THAN EVERY TWO YEARS WITHOUT PREJUDICE TO YEARLY MERIT REVIEWS OR INCREASES BASED ON PRODUCTIVITY. THE BOT AUTHORITY SHALL THEREFORE BE EXEMPT FROM EXISTING LAWS, RULES AND REGULATIONS ON COMPENSATION, POSITION CLASSIFICATION AND QUALIFICATION STANDARDS.

SECTION 20. A new section to be numbered as Section 19 of the same Act, as amended, is hereby further added to read as follows:

Sec. 19. *ESTABLISHMENT OF PPP UNITS.* – EACH AGENCY OR LGU SHALL CREATE A BOT UNIT HEADED BY A SENIOR OFFICIAL OF THE AGENCY/LGUS AND SHALL DESIGNATE A SENIOR OFFICIAL AS BOT PROJECT DEVELOPMENT OFFICER (PDO), WHO SHALL BE RESPONSIBLE FOR PLANNING, OVERSEEING AND MONITORING PROJECTS OF APPROPRIATE GOVERNMENT AGENCIES OR LGUS AUTHORIZED UNDER THIS ACT. THE PDO SHALL CLOSELY COORDINATE WITH THE PPP AUTHORITY.

SECTION 21. A new section to be numbered as Section 20 of the same Act, as amended, is hereby further added to read as follows:

Sec. 20. *PPP ACTION CENTER.* – THERE IS HEREBY CREATED A PPP ACTION CENTER UNDER THIS ACT TO SERVE AS AN INFORMATION SOURCE OF BOT PROJECTS AND LINKAGE TO ALL GOVERNMENT AGENCIES TO FACILITATE PROCESSING OF GOVERNMENT REQUIREMENTS FOR THE IMPLEMENTATION OF BOT, PSP OR PPP PROJECTS.

THE PPP ACTION CENTER SHALL BE COMPOSED OF ALL GOVERNMENT AGENCIES INVOLVED IN THE IMPLEMENTATION OF THE PROJECT INCLUDING, BUT NOT LIMITED TO, SECURITIES AND EXCHANGE COMMISSION, BUREAU OF IMMIGRATION AND DEPORTATION, THE DEPARTMENTS OF TRADE AND INDUSTRY, FINANCE, ENVIRONMENTAL AND NATURAL RESOURCES, LABOR AND EMPLOYMENT, AND SUCH OTHER APPROPRIATE REGULATORY AGENCIES OR INSTITUTIONS AS MAY BE REQUIRED BY THE PPP AUTHORITY. THE GOVERNMENT AGENCIES INVOLVED SHALL DESIGNATE REPRESENTATIVES TO THE BOT ACTION CENTER THAT ARE CLOTHED WITH AUTHORITY TO ACT ON ANY MATTER RELATIVE TO HIS AGENCY.

SECTION 22. A new section to be numbered as Section 21 of the same Act, as amended, is hereby further added to read as follows:

Sec. 21. APPEAL FROM THE BOARD'S DECISION. ALL ORDERS OR DECISIONS OF THE PPP AUTHORITY IN CASES INVOLVING THE PROVISIONS OF THIS ACT SHALL IMMEDIATELY BE EXECUTORY. NO APPEAL FROM THE ORDER OR DECISION OF THE BOT AUTHORITY BY THE PARTY ADVERSELY AFFECTED SHALL STAY SUCH ORDER OR DECISION, UNLESS A *SUPERSEDEAS* BOND EQUIVALENT TO THE AMOUNT STATED IN THE ORDER OR DECISION IS POSTED BY THE APPELLANT. ONLY ONE MOTION FOR RECONSIDERATION SHALL BE ALLOWED AND SHOULD BE FILED WITHIN THIRTY (30) DAYS FROM DATE OF RECEIPT OF NOTICE OF BOARD'S ORDER OR DECISION SUBJECT TO THE POSTING OF THE AFOREMENTIONED *SUPERSEDEAS* BOND WHICH SHALL BE LIMITED TO CASH AND/OR SURETY BOND FROM A BOT-ACCREDITED BONDING COMPANY.

IN THE EVENT OF DENIAL OF THE MOTION FOR RECONSIDERATION, THE PROJECT PROPONENT MAY APPEAL TO THE OFFICE OF THE PRESIDENT WITHIN THIRTY (30) DAYS FROM NOTICE OF THE ORDER OR DECISION OR OF THE DENIAL OF THE APPELLANT'S MOTION FOR RECONSIDERATION."

SECTION 23. A new section to be numbered as Section 22 of the same Act, as amended, is hereby further added to read as follows:

"Sec. 22. *PENAL PROVISIONS*. PENALTIES AND SANCTIONS, SHALL BE STRINGENTLY APPLIED TO PROMOTE TIMELY COMPLETION OF INFRASTRUCTURE FACILITIES OR DEVELOPMENT PROJECTS.

ANY ENTITY WHICH VIOLATES ANY PROVISION OF THIS ACT, ITS IMPLEMENTING RULES AND REGULATIONS, THE TERMS AND CONDITIONS OF ITS CONTRACT, SHALL BE SUBJECT TO A FINE NOT TO EXCEED ONE MILLION PESOS (P1,000,000.00) BUT, WITHOUT PREJUDICE TO THE CANCELLATION OF ITS CONTRACT; *PROVIDED*, THAT ANY WILLFUL COMMISSION OF FRAUDULENT MISREPRESENTATION, CONTRACT FALSIFICATION IN ITS SUBMISSION OF DOCUMENTS OR GROSS VIOLATION OF THIS ACT AND ITS IMPLEMENTING RULES AND REGULATIONS, A FINE OF AT LEAST ONE MILLION PESOS (P1,000,000.00) BUT NOT TO EXCEED TEN MILLION PESOS (P10,000,000.00) SHALL BE IMPOSED, IN ADDITION TO OTHER PENALTIES THAT MAY BE IMPOSED BY THE BOARD.

THE PPP AUTHORITY SHALL PREPARE A SCHEDULE OF FINES AND PENALTIES TO BE IMPOSED ON ERRING PARTIES DEPENDING ON THE VIOLATION INCURRED, WHICH MAY BE REDUCED IN EXCEPTIONAL CASES.

RESPONSIBLE OFFICERS OF SUCH ENTITIES, INCLUDING DULY APPOINTED EXTERNAL CONSULTANTS-AGENTS WHO KNOWINGLY COMMIT, AID OR ABET THE COMMISSION OF ANY OF THE ACTS MENTIONED ABOVE, SHALL BE SUBJECT TO A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (P100,000.00) BUT NOT MORE THAN THREE HUNDRED THOUSAND PESOS (P300,000.00).

GOVERNMENT OFFICERS AND EMPLOYEES WHO PARTICIPATE DIRECTLY OR INDIRECTLY IN THE COMMISSION OF THE FOREGOING ACTS SHALL BE SUBJECT TO CRIMINAL AND ADMINISTRATIVE PENALTIES IMPOSABLE UNDER THE CIVIL SERVICE LAW, REVISED PENAL CODE, REPUBLIC ACT NO. 3019 (*ANTI-GRAFT AND CORRUPT PRACTICES ACT*), REPUBLIC ACT NO. 6713 (*CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS*) AND OTHER APPLICABLE LAWS, IN ADDITION TO FORFEITURE OF RETIREMENT BENEFITS AND PROHIBITION FROM RE-EMPLOYMENT INTO GOVERNMENT SERVICE.

IF THE OFFENDER IS A FOREIGN NATIONAL, IN ADDITION TO THE IMPOSABLE FINES AND PENALTIES ABOVE, THE FOREGOING ACTS SHALL BE GROUNDS FOR HIS SUMMARY DEPORTATION."

SECTION 24. A new section to be numbered as Section 23 of the same Act, as amended, is hereby further added to read as follows:

"Sec. 23. *MISCELLANEOUS PROVISION*. – THE AUTHORITY IS HEREBY AUTHORIZED TO CHARGE APPROPRIATE FEES AS

MAY BE PROVIDED FOR UNDER THE IMPLEMENTING RULES
AND REGULATIONS OF THIS ACT.

SECTION 25. A new section to be numbered as Section 24 of the same Act, as amended, is hereby further added to read as follows:

Sec. 24. TRANSITORY PROVISION. – UNTIL THE IMPLEMENTING RULES AND REGULATIONS OF THIS CODE TAKE EFFECT, THE PRESENT RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS CODE.”

SECTION 26. Section 16 of Republic Act No. 6957, as amended by Republic Act No. 7718, is hereby renumbered as Section 25 to read as follows:

“Sec. 25. Repealing Clause. – SEC. 302 OF THE LOCAL GOVERNMENT CODE AND OTHER laws or parts of any law inconsistent with the provisions of this Act are hereby repealed or modified accordingly.”

SECTION 27. Section 17 of Republic Act No. 6957, as amended by Republic Act No. 7718, is hereby renumbered as Section 26 to read as follows:

“Sec. 26. Separability Clause. – If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.”

SECTION 28. Section 18 of Republic Act No. 6957, as amended by Republic Act No. 7718, is hereby renumbered as Section 27 to read as follows:

“Sec. 27. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.”

Approved,