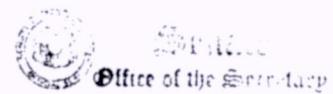


EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE

'19 SEP 30 P12:08

S. No. 1080

RECEIVED

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Introduced by Senator Ralph G. Recto

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

EXPLANATORY NOTE

The Philippines is envisioned as a country that has high sustainable growth, generates mass employment and enjoys reduced poverty. Towards this end, encouraging public-private partnerships (PPPs) should be a means to develop the country's infrastructure in all sectors and secure our economic global ranking. It is therefore of utmost importance to revisit 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" or what is otherwise called the "Build-Operate-Transfer" (BOT) law.

This bill is aimed at further improving the "Build-Operate-Transfer" (BOT) law by expanding its coverage and providing more incentives to the private sector who become partners of the government in implementing infrastructure projects.

This bill limits the projects to be implemented as PPP projects to hard infrastructure charging user fee or tariff and excludes social infrastructure projects such as prisons, education and health facilities, and other infrastructure projects like government buildings, tourism projects, power projects, climate change mitigation and adaptation measures.

One salient feature of this bill is the automatic approval by the Regional Development Council of PPP projects which have satisfactorily complied with the requirements to avoid arbitrary and unreasonable withholding of endorsement of projects.

Another salient feature of this bill is the classification of infrastructure projects with a direct economic impact which should not be less than the threshold set by the Investment Coordination Committee (ICC); with a direct positive impact on at least two cities or municipalities; and can create new jobs as "Projects of National Significance". When classified as such, these projects will be exempted from real property tax.

This bill also protects these projects from being the subject of judicial reliefs such as temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions issued by any court, except the Supreme Court.

To ensure consumer protection, the bill gives paramount consideration to the affordability of user fees and efficiency of public services when awarding PPP projects.

In the interest of transparency and good governance, four (4) private sector representatives shall be elected by the private sector associations concerned in the PPP Governing Board, which shall be the overall policy-making body for all PPP-related matters.

All of these features work to strengthen the BOT law and encourage more PPPs in national and local infrastructure projects.

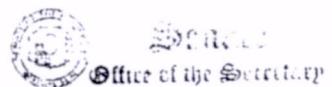
With these in mind, the passage of this bill is earnestly sought.



RALPH G. RECTOR

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



SENATE
Office of the Secretary

SENATE

19 SEP 30 P12:08

S. No. 1080

RECEIVED

A handwritten signature in blue ink, appearing to read "R. G. Recto".

Introduced by Senator Ralph G. Recto

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

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

1 Section 1. This Act shall be known as the "Public-Private Partnership (PPP) Act"
2 of the Philippines.

3 Sec. 2. *Declaration of Policy.* – It is the declared policy of the State to recognize
4 the indispensable role of the private sector as the main engine for national growth
5 and development, create an enabling environment for PPP, and provide the most
6 appropriate incentives to mobilize private resources for the purpose of financing,
7 designing, constructing, operating and maintaining infrastructure projects and services
8 normally financed and undertaken by the government.

9 The State recognizes the long-term nature of private investment in infrastructure
10 projects.

11 The State shall protect the public interest by providing affordable, accessible,
12 and efficient public infrastructure facilities. Subject to reasonable rules and under the
13 guiding principle of full public disclosure of all transactions, the State shall ensure fair
14 and reasonable pricing and timely delivery of quality infrastructure through equitable
15 risk allocation inherent in projects implemented under this Act and its implementing
16 rules and regulations (IRR).

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

1 Sec. 3. *Definition of Terms.* – The following terms used in this Act shall have the
2 meanings stated below:

3 a) *Approving Body* – refers to an entity authorized to approve PPP projects
4 proposed under this Act and its IRR, in accordance with Section 7 of this Act.

5 b) *Availability-based PPP* – refers to a PPP where the implementing agency
6 commits to make predetermined payments for contractually-defined
7 performance delivery.

8 c) *Concession-based PPP* – refers to a PPP where the implementing agency
9 grants the project proponent the right to recover its investment, operating and
10 financing costs by charging the public a user fee or tariff.

11 d) *Construction* – refers to new construction, rehabilitation, improvement,
12 expansion, alteration, installation, and related works and activities in connection
13 with an infrastructure facility, including the necessary supply of equipment,
14 materials, labor and services and related items.

15 e) *Contractor* – refers to any person, who may or may not be the project
16 proponent, and who shall undertake the actual construction of an infrastructure
17 facility.

18 f) *Cooperation Period* – refers to the period of operation of an
19 infrastructure facility, which period, in the case of public utilities requiring a
20 franchise, shall be in accordance with law.

21 g) *Facility Operator* – refers to a person registered with the Securities and
22 Exchange Commission, who may or may not be the project proponent, and who
23 is responsible for all aspects of operation and maintenance of an infrastructure
24 facility, including but not limited to the collection of tolls, fees, rentals or charges
25 from facility users.

26 h) *Grantor* – refers to an implementing agency and other government
27 agencies that own the project assets or franchise.

28 i) *GOCC* – refers to a government-owned or -controlled corporation as
29 defined in Republic Act No. 10149.

30 j) *ICC* – refers to the Investment Coordination Committee of the National
31 Economic and Development Authority (NEDA) Board.

1 k) *Implementing Agency* – refers to the Department of Public Works and
2 Highways (DPWH), Department of Transportation (DOTr), Department of
3 Information and Communications Technology (DICT), National Irrigation
4 Administration (NIA), National Housing Authority (NHA), Philippine Reclamation
5 Authority (PRA), local government units (LGUs), and government-owned and
6 controlled corporations (GOCCs) attached to these respective departments and
7 agencies such as: Light Rail Transit Authority (LRTA), North Luzon Railways
8 Corporation (NLRC), Philippine Ports Authority (PPA), Manila International Airport
9 Authority (MIAA), and Mactan Cebu International Airport Authority (MCIAA).

10 l) *Infrastructure Facility* – refers to such facility as are established by the
11 government in relation to or as may be necessary for the discharge of its
12 functions, whether governmental or proprietary, including highways, railroads
13 and railways, transport systems, ports, airports, telecommunications, information
14 technology systems and infrastructure, dams, water supply, irrigation, sewerage,
15 drainage, dredging, land reclamation projects, housing, markets,
16 slaughterhouses, warehouses and solid waste management facilities.

17 For the construction stage of these infrastructure facilities where the contractor
18 is a foreigner, Filipino labor shall be employed or hired in the different phases of
19 construction.

20 m) *IRR* – refers to the implementing rules and regulations of this Act.
21 n) *LGU* – refers to a local government unit.
22 o) *Local PPP Project* – refers to a PPP Project that will be undertaken by an
23 LGU.

24 p) *National PPP Project* – refers to a PPP Project that will be undertaken by
25 the national government and shall be approved by the NEDA Board upon
26 recommendation by the ICC and endorsement by the PPP Governing Board.
27 Such approval shall be carried by the implementing agency or grantor
28 concerned.

29 q) *PDMF* – refers to the Project Development and Monitoring Facility
30 created under Section 8 of this Act.
31 r) *PPP BAC* – refers to the PPP Bids and Awards Committee.

1 s) *PPP or Public-Private Partnership* – refers to a contractual arrangement
2 between the implementing agency and the project proponent for the financing,
3 design, construction, operation, and maintenance, or any combination thereof,
4 of an infrastructure facility under this Act.

5 t) *PPP Center* – refers to the Public-Private Partnership Center of the
6 Philippines created under Executive Order No. 8, series of 2010, as amended.

7 u) *PPP Contract* – refers to the contract between the implementing agency
8 and the project proponent for the design, financing, construction, operation, or
9 maintenance of an infrastructure facility under a PPP Project.

10 v) *PPP Project* – refers to a project undertaken under this Act.

11 w) *Person* – refers to an individual, sole proprietorship, partnership,
12 corporation or any other form of organization, whether domestic or foreign.

13 x) *Priority project* – refers to a project identified by an implementing
14 agency that may be undertaken under this Act as a PPP project and is consistent
15 with the Philippine Development Plan (PDP) or its equivalent at the local level.

16 y) *Project Cost* – refers to total capital cost, financing and other expenses
17 for the design, construction, operation, and maintenance of an infrastructure
18 facility, depending on the PPP contractual arrangement as provided for in Section
19 4 of this Act.

20 z) *Project Proponent* – refers to any private person, as defined in item w of
21 this section, who proposes to undertake a PPP project.

22 aa) *Rate of Return* – refers to the maximum rate of return that a project
23 proponent shall be entitled to, as determined by the Approving Body, taking into
24 account, among others, the prevailing cost of capital in the domestic and
25 international markets, the risks being assumed by the project proponent, and
26 prevailing tariff on similar projects: *Provided*, That in case of an unsolicited or
27 solicited proposal, such rate of return shall be determined by the appropriate
28 Approving Body prior to the call for proposals.

29 bb) *Services* – refers to technical services and other services related to
30 infrastructure facilities such as, but not limited to, construction supervision,
31 management, operation and maintenance and related services, which may be
32 included as part of a PPP project.

1 cc) *Solicited PPP Project* – refers to priority projects identified by the
2 implementing agency.

3 dd) *Unsolicited PPP Project* – refers to project proposals submitted by a
4 private person which are not in response to a formal solicitation or request
5 issued by the implementing agency.

6 ee) *Viability Gap Funding (VGF)* – refers to such financial support the
7 government may provide to a concession-based PPP project with the objective of
8 making user fees affordable while improving the commercial attractiveness of
9 the project.

10 Sec. 4. *Variations of Contractual Arrangements.* – PPP Projects may be
11 undertaken through any of the following contractual arrangements and such other
12 variations as may be approved by the ICC:

13 i) *Build-and-Transfer* – refers to a contractual arrangement whereby the
14 project proponent undertakes the financing and construction of a given
15 infrastructure facility and after the completion thereof, turns it over to the
16 implementing agency concerned, which shall pay the project proponent on an
17 agreed schedule its total investments expended on the project, plus a rate of
18 return thereon. This arrangement may be employed in the construction of any
19 infrastructure facility, including critical facilities which, for security or strategic
20 reasons, must be operated directly by the government.

21 ii) *Build-Lease-and-Transfer* – refers to a contractual arrangement whereby
22 a project proponent undertakes to finance and construct an infrastructure facility
23 and upon its completion turns it over to the implementing agency concerned on
24 a lease arrangement for a cooperation period, after which ownership thereof is
25 automatically transferred to the implementing agency concerned.

26 iii) *Build-Own-and-Operate* – refers to a contractual arrangement whereby a
27 project proponent is authorized to undertake a PPP project, specifically to
28 finance, construct, own, operate and maintain an infrastructure facility from
29 which the project proponent is allowed to recover its total investment, operating
30 and maintenance costs plus a return thereon by collecting tolls, fees, rentals or
31 other charges from facility users.

iv) *Build-Operate-and-Transfer* – refers to a contractual arrangement whereby the project proponent undertakes a PPP project and transfers ownership of the infrastructure facility to the implementing agency at the end of the cooperation period.

v) *Build-Transfer-and-Operate* – refers to a contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to the project proponent. Once the facility is commissioned satisfactorily, ownership is transferred to the implementing agency. The project proponent, however, operates the infrastructure facility on behalf of the implementing agency.

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

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

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

For joint venture arrangements, the ownership of the infrastructure facility may be transferred to either the implementing agency or to the project proponent: *Provided*, That in the latter case, the transfer shall be made under competitive market conditions: *Provided, further*, That the equity contribution of the implementing agency in a joint venture corporation shall in no case exceed fifty percent (50%) of the outstanding capital stock of the said corporation:

1 *Provided, finally,* That the return on investment of either party shall be in
2 proportion to their respective contribution.

3 ix) *Operations and Maintenance Contract* – refers to a contractual
4 arrangement whereby the project proponent undertakes the day-to-day
5 operation and maintenance of an infrastructure facility owned by the
6 implementing agency. The project proponent shall undertake the acquisition or
7 provision and upgrading of equipment, systems and other items related to
8 operation and maintenance. The project proponent shall be compensated in the
9 form of a performance-based management or service fee during the cooperation
10 period.

11 x) *Rehabilitate-Operate-and-Transfer* – refers to a contractual arrangement
12 whereby an existing infrastructure facility is turned over to the project proponent
13 to refurbish, improve, operate and maintain for a cooperation period, at the
14 expiry of which the ownership of the facility is transferred to the implementing
15 agency.

16 xi) *Supply-and-Operate* – refers to a contractual arrangement whereby the
17 supplier of equipment and machinery for a given infrastructure facility, if the
18 interest of the government so requires, operates such facility. Foreign firms who
19 are allowed to operate the facility shall provide technology transfer and training
20 to Filipino nationals.

21 Sec. 5. *Authority of Implementing Agencies.* – Implementing agencies, in
22 accordance with their respective charters, are hereby authorized to undertake PPP
23 projects with any project proponent in accordance with the provisions of this Act.

24 In undertaking a PPP project under this Act, every GOCC and its subsidiaries
25 shall secure the approval of the head of the implementing agency to which the GOCC
26 is attached.

27 Sec. 6. *Identification of Priority Projects.* – Implementing agencies shall include
28 in their development plans, strategies and investment programs those priority projects
29 that may be undertaken as PPP Projects under this Act. In identifying those projects,
30 the implementing agencies shall be guided by the following principles: effectiveness in
31 meeting government objectives, accountability and transparency, consumer rights,

1 affordability, public access, safety, and security. Priority projects shall be consistent
2 with the Philippine Development Plan or its equivalent at the local level.

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

7 The PPP Center must ensure that the Congress and the public shall be provided
8 with adequate and timely information on PPP projects.

9 Sec 7. *Unsolicited Proposals.* – Projects that are not in the list of priority projects
10 may be considered for unsolicited proposals. Priority projects shall not be considered
11 for unsolicited proposals, except when they involve a new concept or technology or do
12 not have feasibility studies.

13 When a project proponent submits an unsolicited proposal, the implementing
14 agency may either:

15 a) Accept the unsolicited proposal on a negotiated basis: *Provided*, That the
16 following conditions are met:

17 i) The project does not receive VGF or direct payments from any
18 government agency; and

19 ii) Guided by the principles of transparency and competitiveness, the
20 implementing agency has invited by publication for three (3) consecutive
21 weeks in a newspaper of general circulation, as well as websites of the PPP
22 Center and of the implementing agency, the submission of comparative
23 proposals and no other proposal is received for a period stated in the IRR
24 of this Act, which period should not be less than three (3) months nor more
25 than six (6) months from the date of last publication in a newspaper of
26 general circulation. In the event another proponent submits a superior
27 counter-proposal within the period referred to above and it is accepted by
28 the appropriate Approving Body, the original proponent shall have the right
29 to outbid.

30 b) Use the unsolicited proposal as the basis for public bidding as provided
31 in Section 10 of this Act. Upon approval by the appropriate Approving Body, the
32 original proponent thereof shall be reimbursed of the cost incurred in the

1 preparation of the proposal, such as the cost of any feasibility study undertaken:

2 *Provided*, That such reimbursement:

3 i) shall be in an amount specified in the IRR of this Act, but not
4 exceeding three percent (3%) of the project cost excluding those which will
5 be borne by the implementing agency; and

6 ii) shall be paid in full by the winning project proponent as a
7 requirement for the award of the contract.

8 c) Reject the proposal;

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

13 Within ten (10) working days from receipt of the unsolicited proposal, the
14 implementing agency shall inform the PPP Center in writing of such receipt and
15 furnish it with a copy of the proposal. The PPP Center shall provide assistance to the
16 implementing agency in the evaluation of the unsolicited proposal.

17 Sec. 8. *Approval of PPP Projects.* – The approval of PPP projects under this Act
18 shall be in accordance with the following:

19 a) *National PPP Projects* – National PPP projects shall be approved by the
20 NEDA Board depending on the project cost as prescribed by the PPP Governing
21 Board. Such approval shall be carried by the implementing agency or grantor
22 concerned.

23 For national projects that have impact on the region, the implementing
24 agency shall secure the endorsement of the Regional Development Council
25 (RDC) prior to submitting the project for approval to the Approving Body. The
26 RDC shall have thirty (30) days from receipt of the request of the implementing
27 agency within which to issue its endorsement; otherwise, the same shall be
28 deemed automatically endorsed by the RDC.

29 b) *Local Projects* – Local PPP projects shall be confirmed by the local
30 development councils concerned and approved by the local Sanggunians.

1 The Approving Body shall assess all PPP projects based on its overall
2 feasibility analysis and accord paramount importance on the affordability of user
3 fees and efficiency in public service.

4 *Sec. 9. Project Development and Monitoring Facility (PDMF).* – The Project
5 Development and Monitoring Facility is hereby created to be known as the PDMF,
6 which shall be used for the procurement of advisory and support services related to
7 the preparation, structuring, probity management, procurement, financial close, and
8 monitoring of implementation of PPP projects. The PDMF Fund referred to under
9 Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series
10 of 2013, shall be transferred to the PDMF herein created. The funding requirements of
11 the PDMF may be included in the General Appropriations Act, Official Development
12 Assistance or other sources of funding.

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

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

23 To facilitate access to global best practices in PPP and enhance value for money,
24 the selection of consultants for project preparation and transaction support, and
25 probity advisors, all with PPP expertise, as well as independent consultants, and such
26 other consultancy services that may be financed through PDMF shall be open to
27 qualified consultancy firms, subject to existing laws on the practice of profession
28 reserved to Filipino nationals.

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

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

1 Sec. 10. *Public Bidding of Projects.* – The public bidding of projects shall be in
2 accordance with the following:

3 A. *Publication.* – Upon approval of PPP projects as mentioned in Section 8
4 of this Act, the head of the implementing agency concerned shall immediately
5 cause the publication of a notice inviting all prospective project proponents to
6 participate in a transparent and competitive public bidding, once every week for
7 three (3) consecutive weeks, in at least two (2) newspapers of general
8 circulation and in at least one (1) local newspaper which is circulated in the
9 region, province, city or municipality where the project will be implemented. Said
10 notice shall also be posted continuously in the websites of the implementing
11 agency and the PPP Center.

12 B. *Public Bidding.* – The public bidding shall be conducted under a single or
13 two-stage system. The pre-qualification documents, technical, and financial
14 proposals shall be submitted in at least three (3) separate envelopes. The
15 procedures for public bidding, which shall be transparent and competitive,
16 including the conduct of one-on-one meetings with prequalified bidders, shall be
17 outlined in the IRR of this Act.

18 C. *Award.* – The contract shall be awarded to the bidder who has passed
19 the pre-qualification stage for having satisfied the minimum financial,
20 organizational and legal standards required by this Act, has passed the technical
21 proposal evaluation, and has submitted the most favorable financial bid based on
22 the parameters defined in the bid documents. Affordable user fees and efficient
23 public services shall be of paramount importance in awarding PPP projects.

24 D. Single Complying and Responsive Bid. – In case of a single complying
25 and responsive bidder, the implementing agency may award the PPP contract to
26 that bidder upon its compliance with the post-award requirements under the
27 bidding rules of the PPP project.

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

30 a) If, after advertisement, only one bidder applied for
31 prequalification and it meets the prequalification requirements, after which

1 it is required to submit a bid or proposal which is subsequently found by
2 the implementing agency to be complying;

3 b) If, after advertisement, more than one bidder applied for
4 prequalification but only one meets the prequalification requirements, after
5 which it submits a bid or proposal which is found by the implementing
6 agency to be complying;

7 c) If, after prequalification of more than one bidder, only one
8 submits a bid which is found by the implementing agency to be complying;
9 or

10 d) If, after prequalification, more than one bidder submits bids but
11 only one is found by the implementing agency to be complying.

12 E. Protest. – In all stages of the procurement process, the following protest
13 protocol shall be strictly followed:

14 a) Decisions of the PPP Prequalification Bids and Awards Committee
15 (PPP PBAC) may be questioned by filing a motion for reconsideration within
16 fifteen (15) working days from receipt thereof.

17 b) The decision of the PBAC on the motion for reconsideration in the
18 immediately preceding paragraph may be further questioned by filing an
19 appeal to the head of the implementing agency concerned and paying a
20 non-refundable appeal fee in an amount equivalent to no less than one half
21 ($\frac{1}{2}$) of one percent (1%) of the project cost within fifteen (15) working
22 days from receipt thereof.

23 If the head of the implementing agency in the immediately preceding
24 paragraph is not a Department Secretary, the decision of the head of the
25 implementing agency may be further questioned by filing an appeal to the
26 Secretary of the Department to which the implementing agency is attached
27 within a period prescribed in the IRR of this Act.

28 c) The decision of the Department Secretary in the immediately
29 preceding paragraphs of item (b) may be questioned by filing an appeal to
30 the Office of the President within fifteen (15) working days from receipt
31 thereof.

1 In no case shall any appeal taken from any decision treated in this Act stay
2 or delay the bidding process: *Provided, however,* That all appeals must first be
3 resolved before any award is made.

4 F. Failure to Comply or Execute the Contract. – If the winning bidder fails
5 to comply with any post-award requirement or fails to enter into a contract with
6 the implementing agency, the latter may proceed to a negotiation with the next
7 technically and financially qualified bidder. This is without prejudice to other
8 legal remedies available to the implementing agency such as, but not limited to,
9 the forfeiture of bid security, the withdrawal of Notice of Award, or both.

10 Sec. 11. *PPP BAC.* – The head of the implementing agency shall create a PPP
11 BAC which shall be responsible for all aspects of the pre-bidding and bidding process
12 in the case of solicited proposals, and for the comparative bidding process in the case
13 of unsolicited proposals. The PPP BAC shall be chaired by at least a third ranking
14 regular official of the said agency and its composition shall be specified in the IRR of
15 this Act: *Provided,* That the PPP BAC constituted for National PPP Projects shall also
16 include other relevant government agencies as may be determined in the IRR of this
17 Act.

18 Sec. 12. *Contract Termination.* – In the event that a contract is revoked,
19 cancelled or terminated, either contracting party shall compensate the other pursuant
20 to terms as defined in the contract.

21 Sec. 13. *Issuance of Administrative Franchise, License or Permit.* – Upon receipt
22 of notice that an implementing agency and a project proponent have entered in a PPP
23 contract, the regulator or licensing authority shall automatically grant in favor of the
24 said project proponent an administrative franchise, license, permit, or any other form
25 of authorization required for the implementation of a PPP project subject to
26 submission by the project proponent of the requirements by the regulator or licensing
27 authority.

28 Any provision of law to the contrary notwithstanding, it shall be mandatory on
29 the part of the regulator or licensing authority to accept and approve the application
30 for administrative franchise, license or permit subject to submission by the project
31 proponent of the requirements by the regulator or licensing authority. Failure to act

1 on a proper and complete application thereof within thirty (30) working days from
2 receipt of the same shall be deemed as approval thereof.

3 Sec. 14. *Expansion or Extension of an Existing Infrastructure Facility.* – Subject
4 to prior approval by the appropriate Approving Body, the project proponent of an
5 existing PPP infrastructure facility may be allowed to expand or extend the same even
6 without further bidding: *Provided*, That the cost thereof shall not exceed twenty-five
7 percent (25%) of the price-adjusted original project cost: *Provided*, further, that any
8 subsequent expansion or extension shall no longer be allowed.

9 Sec. 15. *Contracts and Public Disclosure.* – Copies of all PPP contracts concluded
10 under this Act shall be considered public documents.

11 The implementing agency shall transmit to the PPP Center for recording and
12 monitoring purposes, a copy of the duly executed contract, within thirty (30) working
13 days from its complete execution.

14 Sec. 16. *Prohibition on the Issuance of Temporary Restraining Orders or
15 Injunctions.* –

16 A. No temporary restraining order, preliminary injunction or preliminary
17 mandatory injunction shall be issued by any court, except the Supreme Court,
18 against any implementing agency, its officials or employees, or any person or
19 entity, whether public or private acting under the government direction, to
20 restrain, prohibit or compel the following acts:

- 21 a) Bidding, rebidding or declaration of failure of bidding of PPP
22 projects, either national or local;
- 23 b) Qualification or disqualification of bidders;
- 24 c) Awarding of PPP contract;
- 25 d) Acceptance of any unsolicited PPP project proposal, even if not
26 acted upon by the implementing agency concerned under Section 9 of this
27 Act;
- 28 e) Acquisition, clearance, development of the right-of-way, site or
29 location of any PPP project;
- 30 f) Construction, operation and maintenance of any PPP project;
- 31 g) Commencement, execution, implementation, termination or
32 rescission of any PPP contract; and

h) Undertaking or authorization of any other lawful activity necessary for such PPP project or contract.

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

C. Void. – Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of this section is void and of no force and effect.

D. Application. – The foregoing prohibition shall apply in all disputes, cases, or controversies instituted by any and all parties, including but not limited to cases filed by bidders, implementing agencies or those claiming to have rights through such bidders or implementing agencies involving PPP project or contract.

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

Sec. 17. Regulatory Boards. – No regulatory body shall be allowed to enter into any PPP contract that they regulate: *Provided*, That a regulatory agency that owns public infrastructure or right-of-way that is intended for a PPP project shall assign the same to the department exercising administrative supervision over it, or to the department to which it is attached, in order that such department may enter into a PPP contract involving such public infrastructure or right-of-way.

Sec. 18. Project Supervision and Monitoring. – Every PPP project undertaken under the provisions of this Act shall be in accordance with the designs, plans, specifications, and standards as approved by the implementing agency, and the cost as approved by the appropriate Approving Body. Such project shall be under the supervision of the implementing agency concerned.

1 Sec. 19. *Projects of National Significance.* – Upon certification and
2 recommendation by the ICC, and prior consultation with the Department of Interior
3 and Local Government (DILG), the President may classify certain projects, such as toll
4 road, mass transit, water, sewerage and such other projects undertaken under this
5 Act as projects of national significance. All real properties which are actually, directly
6 and exclusively used for the projects shall be exempt from any and all real property
7 taxes levied under Republic Act No. 7160.

8 For a project to qualify as a project of national significance, it shall meet the
9 following criteria:

- 10 (a) The project has a direct economic impact which should not be
11 less than the threshold set by the ICC;
- 12 (b) The project has a direct positive impact on at least two (2) cities
13 or municipalities; and
- 14 (c) The project can create new jobs.

15 Sec. 20. *Exemption from Payment of Transfer Taxes.* – For all PPP projects, the
16 transfer of ownership of infrastructure facility to the implementing agency shall be
17 exempt from capital gains tax, documentary stamp tax, donor's tax, and all national
18 taxes and fees related to the transfer thereof.

19 Sec. 21. *Institutionalization of PPP Center.* – To achieve the goals of this Act, the
20 PPP Center created under Executive Order No. 8, series of 2010, as amended by
21 Executive Order No. 136, series of 2013, is hereby institutionalized. It is hereby
22 authorized to adopt its current organizational structure, absorb its existing employees,
23 and upgrade its human resource component, as may be necessary, towards a more
24 efficient and effective performance of the following functions:

- 25 (a) Assist implementing agencies in identifying, developing,
26 prioritizing and maintaining a pipeline of PPP projects;
- 27 (b) Provide advisory services, technical assistance, trainings, and
28 capacity development to implementing agencies in all PPP-related matters;
- 29 (c) Manage and administer the PDMF as provided in Section 8 of this
30 Act;
- 31 (d) Work with implementing agencies in setting procurement and
32 implementation timelines for approved PPP projects;

- (e) Recommend plans, policies and implementation guidelines related to PPP, in consultation with appropriate oversight committees or agencies, implementing agencies, private sector and other relevant stakeholders;
 - (f) Facilitate, monitor, and evaluate the implementation of PPP programs and projects developed by the implementing agencies;
 - (g) Report to the Office of the President and Congress on the implementation of the PPP programs and projects of the government at the end of each year;
 - (h) Serve as a link between the government and the private sector;
 - (i) Promote and market PPP programs and projects, in collaboration with other government promotion agencies;
 - (j) Issue advisory opinions relating solely to technical aspects of PPP;
 - (k) 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;
 - (l) Provide and transmit copies of duly executed PPP contracts to Congress;
 - (m) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP projects are concerned;
 - (n) Maintain an integrated projects' bank to serve as an interactive database of all current and past projects; and
 - (o) Such other functions as may be necessary to achieve the objectives and purposes of this Act.

The PPP Center shall report directly to the PPP Governing Board and under the administrative supervision of the NEDA.

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

- (a) Undertake the day-to-day management and supervise the operations of the PPP Center;

(b) Recommend to the PPP Governing Board such policies and measures which are deemed necessary for the effective exercise and discharge of the powers and functions of the PPP Center;

(c) Sit as an ex-officio, non-voting member of the PPP Governing Board, Infrastructure Committee (INFRACOM), ICC and other inter-agency bodies, except for regulatory boards, where a PPP project is a major concern; and

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

Sec. 22. PPP Governing Board. – The PPP Governing Board is hereby created and referred to as the Board, which shall be the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of PPP programs and projects and in creating an enabling policy and institutional environment for PPP.

The Board shall be composed of the following:

- (a) Secretary of Socio-economic Planning as Chairperson;
- (b) Secretary of Finance as Vice-Chairperson;
- (c) Secretary of Budget and Management;
- (d) Secretary of Public Works and Highways;
- (e) Secretary of Transportation;
- (f) Secretary of Information and Communications Technology;
- (f) One (1) private sector representative from the field of architecture or urban planning, recommended by the Philippine Institute of Architects/United Architects of the Philippines/Philippine Institute of Environmental Planners/Intelligent Community Forum Philippines;

(g) One (1) private sector representative from the construction industry, recommended by the Philippine Constructors Association (PCA);

(h) One (1) private sector representative from the business sector, recommended by the Management Association of the Philippines (MAP); and

(i) One (1) private sector representative from the finance industry, recommended by the Bankers Association of the Philippines (BAP).

1 The *ex-officio* members of the Board may designate their respective alternates,
2 with a rank not lower than assistant secretary or its equivalent, and whose acts shall
3 be considered as the acts of their principals.

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

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

11 Sec. 23. *Mandatory Inclusion of Alternative Dispute Resolution (ADR)*
12 *Mechanisms in PPP Contracts.* – All PPP contracts shall include provisions on the use
13 of ADR mechanisms. The contracting parties shall be given complete freedom to
14 choose which venue and forum shall govern their dispute, as well as the rules or
15 procedures to be followed in resolving the same.

16 Sec. 24. *Miscellaneous Provisions.* –

17 (a) Safeguard Mechanisms to Protect Public Interest. – In order to
18 improve transparency and to promote bankability and social acceptability of PPP
19 projects, the following mechanisms shall be observed:

20 (i) Whenever applicable, the implementing agency shall assess the
21 affordability of fee or tariff, and conduct a willingness-to-pay survey among
22 the users of the infrastructure facility;

23 (ii) The implementing agency shall conduct public consultation or
24 dialogue with all potential stakeholders, including the users, in all stages of
25 the PPP project; and

26 (iii) The implementing agency and the PPP Center shall post in their
27 respective websites the approved starting fare or user fee in a PPP project
28 as well as the approved parametric formula on fare increases or
29 adjustments, if applicable.

30 (b) Recovery of Investment. – As may be agreed in the PPP contract,
31 the project proponent may be allowed to collect tolls, fees, rentals, or charges,

1 engage in commercial development, receive viability gap funding, and receive
2 direct government payments, among others, to recover investment.

3 (c) Wind-up and Transfer Measures. – The PPP contract shall
4 provide, as appropriate, for:

5 (i) Mechanisms and procedures for the transfer of assets to the
6 implementing agency;

7 (ii) The compensation to which the project proponent may be entitled
8 in respect of assets transferred to the implementing agency, or to a
9 successor, or purchased by the implementing agency;

10 (iii) The transfer of technology required for the operation of the
11 infrastructure facility;

12 (iv) The training of the implementing agency's personnel or of a
13 successor in the operation and maintenance of the infrastructure facility;
14 and

15 (v) The provision, by the project proponent, of a warranty that the
16 infrastructure facility meets the project technical specifications, agreed
17 system features, and performance standards and services for a certain
18 period as may be defined in the IRR of this Act after the transfer of the
19 infrastructure facility to the implementing agency or to a successor.

20 (d) Prescription. – No one shall in any proceedings before any court
21 or tribunal allege the invalidity of any PPP contract on the ground of non-
22 compliance with the provisions of this Act or its IRR after a period of one (1)
23 year has elapsed from the signing of the PPP contract.

24 (e) Construction. – If the person, whether or not the project
25 proponent, that shall actually perform the construction of the infrastructure
26 facility is a foreigner, such person shall hire Filipino employees throughout the
27 period of construction.

28 (f) Operation. – The person, whether or not the project proponent,
29 who shall actually operate and maintain the infrastructure facility, including but
30 not limited to the collection of tolls, fees, rentals or charges from users of the
31 infrastructure facility, must be registered with the Securities and Exchange
32 Commission.

1 Sec. 25. *Transitory Provisions.* – All unexpended funds for the calendar year,
2 properties, equipment, contracts and records of the PPP Center are hereby retained.
3 The amount necessary to carry out the organizational changes of PPP Center provided
4 in this Act shall be determined by the PPP Governing Board. Appropriations for
5 succeeding years shall be incorporated in its budget proposals for Congressional
6 action.

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

9 Sec. 26. *Joint Oversight Committee.* – There is hereby created a Joint
10 Congressional Oversight Committee to oversee the implementation of this Act. The
11 Committee shall be composed of the Chairpersons of the Senate Committees on Public
12 Works, on Finance, and on Economic Affairs, and the Chairpersons of the House
13 Committees on Public Works and Highways, on Appropriations, and on Economic
14 Affairs. To effectively monitor the implementation of this Act, the Philippine
15 Development Plan (PDP) and the priority list of national and local projects shall be
16 submitted to the Joint Congressional Oversight Committee.

17 Sec. 27. *Implementing Rules and Regulations.* – The members of the PPP
18 Governing Board shall designate its representatives who shall constitute the IRR
19 Committee. Within sixty (60) days from the effectivity of this Act, the IRR Committee
20 shall formulate and prescribe, in consultation with the PPP Center, after public hearing
21 and publication as required by law, the rules and regulations to implement the
22 provisions of this Act. The IRR shall be approved by the PPP Governing Board.

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

27 Sec. 28. *Separability Clause.* – If any portion or provision of this Act is declared
28 unconstitutional, the remainder of this Act or any provisions not affected thereby shall
29 remain in force and effect.

30 Sec. 29. *Repealing Clause.* – Republic Act No. 7718, Republic Act No. 6957, Sec.
31 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and Executive
32 Order (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s. 2012),

1 Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures for
2 Entering Into Joint Venture Agreements Between Government and Private Entities,
3 Joint Venture Guidelines issued by LGUs, and PPP Codes issued by LGUs, are hereby
4 repealed. All other laws, rules and regulations or parts thereof inconsistent with the
5 provisions of this Act are hereby repealed or modified accordingly.

6 Sec. 30. *Effectivity*. This Act shall take effect after fifteen (15) days following its
7 complete publication in the *Official Gazette* or in at least two (2) newspapers of
8 general circulation.

Approved,