

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



'22 AUG -4 A9 :31

SENATE

RECEIVED BY:

S. No. 1022

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**Introduced by Senator Jinggoy Ejercito Estrada**

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**AN ACT  
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS, APPROPRIATING  
FUNDS THEREFOR, AND FOR OTHER PURPOSES**

**EXPLANATORY NOTE**

During his first State of the Nation Address (SONA), President Ferdinand "Bongbong" Marcos Jr., said that he intends to continue the flagship infrastructure program of the Duterte administration as the Build, Build, Build (BBB) has proven to be an effective program in plugging the infrastructure gaps in the country.

This bill is aimed to further develop and strengthen the framework for public and private sector collaborations by improving the "Build-Operate-Transfer" (BOT) law, through the expansion of its coverage and providing more incentives to the private sector who become partners of the government in implementing infrastructure projects.

Under the measure, the Public-Private Partnership (PPP) Center of the Philippines shall be institutionalized, the coverage of PPPs will be expanded to include Joint Ventures, and Operation and Maintenance contracts. It also seeks to safeguard public interest by guaranteeing reasonable and fair pricing and prompt delivery of quality infrastructure, goods and services, as well as implementing a policy of full public disclosure of all PPP transactions.

This bill was reported out by the Committees on Public Works; Economic Affairs; Ways and Means; and Finance in the 18<sup>th</sup> Congress.

In this light, the immediate passage of this bill is highly recommended.



**JINGGOY EJERCITO ESTRADA**

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**AN ACT  
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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. *Short Title.* – This Act shall be known as the “*Public-Private Partnership*  
2 *(PPP) Act*”.

3 Sec. 2. *Declaration of Policy.* – Section 20, Article II, of the Constitution declares  
4 that the State recognizes the indispensable role of the private sector, encourages private  
5 enterprise, and provides incentives to needed investments. To this end, the State shall  
6 provide an enabling environment for the private sector to mobilize its resources for the  
7 purpose of financing, designing, constructing, operating and maintaining development  
8 programs and projects traditionally undertaken by the government. As provided by law,  
9 the government shall foster robust private sector participation by providing financial  
10 incentives and by reducing costs of doing business.

11 It is further declared that the State shall protect the public interest by providing  
12 affordable, accessible, and efficient public services. In order to achieve better quality of  
13 PPP Projects at lower costs, the State shall ensure equitable risk allocation in PPP  
14 Projects, and take into account that all PPP Projects yield sufficient value for money,  
15 value for people, and value for planet.

1 The State shall pursue a policy of maintaining a reasonable balance on financing  
2 of infrastructure and other development projects through all means available that will  
3 most effectively meet the objectives of the government. These may include  
4 appropriations, official development assistance, and PPPs, as well as combinations  
5 thereof. The government shall determine the appropriate financing by considering  
6 budget availability, timelines, stakeholder commitments, and market capacity.

7 Finally, it is declared that the State shall affirm open, fair, transparent, and  
8 competitive selection as the central tenet for securing private investment in PPP  
9 Projects. It shall implement a policy of full public disclosure of all its transactions  
10 involving public interest, subject to terms and conditions as prescribed by pertinent laws.

11 *Sec. 3. Scope and Application.* – This Act shall apply to all PPP Projects  
12 undertaken by Implementing Agencies, through PPP contracts with a Private Proponent,  
13 including Joint Ventures, as defined under this Act. It shall likewise apply to and be  
14 enforceable among all parties to said PPP contracts.

15 Implementing Agencies are hereby authorized to undertake PPP Projects through  
16 PPP contracts with a Private Proponent in accordance with this Act.

17 *Sec. 4. Definition of Terms.* – As used in this Act:

- 18 (a) *Approving Body* refers to an entity authorized to approve PPP Projects, in  
19 accordance with Section 7 of this Act;
- 20 (b) *Construction* refers to new construction, rehabilitation, improvement,  
21 expansion, alteration, and related works and activities including the necessary  
22 supply and installation of equipment, materials, labor and services, and  
23 related items;
- 24 (c) *Contractor* refers to any entity allowed under Philippine laws, which may or  
25 may not be the Private Proponent, and which shall undertake the actual  
26 construction or supply of equipment or services for PPP Projects;
- 27 (d) *Contingent Liability* refers to an obligation that may or may not arise from  
28 events specified in a PPP contract, the occurrence, timing, and amount of  
29 which is uncertain. These events include regulatory risks, force majeure,  
30 breach of government warranties, and material adverse government action,  
31 among others;

- 1 (e) *Facility Operator* refers to an entity with legal personality authorized under  
2 existing laws, which may or may not be the Private Proponent, that shall be  
3 responsible for operating and maintaining a facility, including, but not limited  
4 to, the collection of tolls, fees, rentals or charges from facility users;
- 5 (f) *Government Undertakings* refers to any form of contribution and support,  
6 which the government may extend to a Private Proponent for the  
7 implementation of PPP Projects, as defined under this Act. The procedures on  
8 proposing and granting of Government Undertakings shall be prescribed in  
9 the IRR of this Act;
- 10 (g) *Greenfield Project* refers to a project which entails the creation of an entirely  
11 new facility or service, which does not depend on the improvement of an  
12 existing facility;
- 13 (h) *Green Financing* refers to investments that create environmental benefits in  
14 support of green growth, low-carbon, and sustainable development;
- 15 (i) *Guarantee on Demand* refers to an agreement whereby the Implementing  
16 Agency guarantees to assume market risks in a PPP Project;
- 17 (j) *Guarantee on Loan Repayment* refers to an agreement whereby the  
18 Implementing Agency guarantees to assume responsibility for the repayment  
19 of debt directly incurred by the Private Proponent in implementing the project  
20 in case of a loan default;
- 21 (k) *Guarantee on Private Sector Return* refers to an agreement whereby the  
22 Implementing Agency guarantees to provide a pre-identified rate of return on  
23 the investment of the Private Proponent;
- 24 (l) *Implementing Agency* refers to a department, bureau, office, instrumentality,  
25 commission, authority of the national government, state universities and  
26 colleges (SUCs), local government units (LGUs), or government owned-or-  
27 controlled corporation (GOCC) as defined in Republic Act No. 10149, including  
28 government instrumentalities with corporate powers (GICP), government  
29 corporate entities (GCE), government financial institutions (GFIs), which is  
30 authorized to undertake PPP Projects;
- 31 (m) *Joint Venture (JV)* refers to a contractual arrangement whereby both the  
32 Implementing Agency and the Private Proponent contribute to pool resources

1 comprising of capital, services, or assets (including equipment, land or  
2 intellectual property) to jointly undertake a specific investment activity. The  
3 investment activity shall be for the purpose of accomplishing a specific goal  
4 with the end view of facilitating private sector initiative in a particular industry  
5 or sector, and eventually transfer the activity to either the private sector under  
6 competitive market conditions or to the government. The JV involves a  
7 community or pooling of interests in the performance of the investment  
8 activity, and each party shall have the right to direct and govern the policies  
9 in connection therewith with the intention to share both profits, and risks and  
10 losses subject to agreement by the parties. A JV may be undertaken through  
11 a contract or by creating a JV entity;

- 12 (n) *Local PPP Project* refers to a PPP Project that shall be undertaken by LGUs,  
13 and local universities and colleges (LUCs) as defined in Republic Act (RA)  
14 10931;
- 15 (o) *National PPP Project* refers to a PPP Project that shall be undertaken by the  
16 national government, GOCCs including water districts, GICPs, GCEs, GFIs, and  
17 SUCs as defined in RA 10931;
- 18 (p) *Operation and Maintenance* refers to activities necessary and incidental to  
19 preserve or restore the operational status of an asset or system based on  
20 specified performance indicators;
- 21 (q) *Original Proponent* refers to the Private Proponent which submitted an  
22 unsolicited proposal which has been accepted and pre-qualified by the  
23 Implementing Agency, and has been conferred the "Original Proponent"  
24 status, as mentioned in Section 10 of this Act;
- 25 (r) *PPP Project* refers to infrastructure or development programs, projects,  
26 activities, facilities, and related services normally financed and undertaken by  
27 the public sector, but which shall now be wholly or partly financed, designed,  
28 built, operated and maintained by the private sector;
- 29 (s) *Private Proponent* refers to the private sector entity which shall either have  
30 submitted an unsolicited proposal, or a bid submission in relation to a solicited  
31 PPP Project, and/or have a contractual responsibility for the PPP Project. The  
32 Private Proponent may be Filipino or foreign-owned, and may engage the

- 1 services of a foreign Contractor or foreign Facility Operator, subject to  
2 requirements and limitations provided under the Philippine Constitution;
- 3 (t) *Project Cost* refers to the estimated cost of the PPP Project. The guidelines in  
4 determining the Project Cost shall be prescribed in the IRR of this Act;
- 5 (u) *Subsidy* refers to an agreement whereby the Implementing Agency will: (1)  
6 defray, pay for, or shoulder a portion of the Project Cost or the expenses and  
7 costs in operating or maintaining the project; (2) contribute any property or  
8 assets to the project; (3) waive or grant special rates on real property taxes  
9 on the project during the term of the contractual arrangement; and/or (4)  
10 waive charges or fees relative to business permits or licenses that are to be  
11 obtained for the construction of the project, all without receiving payment or  
12 value from the Private Proponent and/or Facility Operator for such payment,  
13 contribution, or support: *Provided*, That under no circumstance shall the total  
14 subsidy exceed fifty percent (50%) of the total Project Cost;
- 15 (v) *Termination Payment* refers to the amount payable by the government or the  
16 Private Proponent on the occurrence of an event or series of events provided  
17 for in the PPP contract that results in the termination of said contract;
- 18 (w) *Viability Gap Funding (VGF)* refers to a type of Subsidy in the form of a  
19 financial support that the government may provide to a revenue-based PPP  
20 Project with the objective of making fees affordable, while improving the  
21 commercial attractiveness of the project, excluding costs of right-of-way,  
22 resettlement, and real estate taxes.

23 *Sec. 5. Public-Private Partnership.* – A PPP is a contractual arrangement between  
24 the Implementing Agency and the Private Proponent for the financing, designing,  
25 constructing, operating and maintaining, or any combination thereof, of projects which  
26 are normally provided by the public sector. PPP Projects may be undertaken through  
27 contractual arrangements, including joint ventures, authorized under the Implementing  
28 Rules and Regulations (IRR) of this Act, and such other variations thereof as may be  
29 approved by the appropriate Approving Body.

30 *Sec. 6. Identification of PPP Projects.* – Implementing Agencies shall include in  
31 their development plans, strategies, and investment programs those priority PPP  
32 Projects that they want to undertake. In identifying those projects, the Implementing

1 Agencies shall be guided by the following principles: effectiveness in meeting  
2 government objectives, appropriateness of the chosen procurement modality and source  
3 of funding, value for money, accountability and transparency, consumer rights,  
4 affordability, public access, safety, and security. Priority projects shall be consistent with  
5 the national and local development and investment plans.

6 The Implementing Agencies shall submit their list of PPP Projects or any update  
7 thereto to the PPP Center, referred to in Section 22 of this Act, for information. Each  
8 proposed PPP Project shall be subject to the approval of the appropriate Approving  
9 Body.

10 The PPP Center shall ensure that the Congress of the Philippines and the public  
11 shall be provided with adequate and timely information on PPP Projects.

12 *Sec. 7. Approval of PPP Projects.* – (a) The approval of PPP Projects under this  
13 Act shall be in accordance with the following:

14 (1) **National PPP Projects.** National PPP Projects shall be approved as  
15 follows:

16 (i) Projects costing five billion pesos (P5,000,000,000.00) and below,  
17 shall be submitted to the Investment Coordination Committee of the  
18 National Economic and Development Authority (ICC-NEDA) for  
19 approval;

20 (ii) Projects costing above five billion pesos (P5,000,000,000.00) shall be  
21 submitted to the NEDA Board for approval, upon favorable  
22 recommendation by the ICC-NEDA.

23 The ICC-NEDA may, from time to time, update the aforementioned  
24 amounts when the need arises.

25 (2) **Local PPP Projects.** Local PPP Projects shall be approved by the local  
26 Sanggunians, regardless of the Project Cost: *Provided,* That Local PPP Projects involving  
27 Government Undertakings using national government funds shall require the approval  
28 of the ICC-NEDA. National Government Undertakings shall include, among others, the  
29 following items to be provided by the national government to a Local PPP Project: (i)  
30 Guarantees on Demand, (ii) Guarantees on Private Sector Return, (iii) Guarantees on  
31 Loan Repayment; (iv) Viability Gap Funding and other forms of Subsidy; (v) payment of  
32 Contingent Liability, including Termination Payments.

1           *Provided, further,* That permits, clearances, licenses or endorsements from  
2 national government agencies required for Local PPP Projects under laws, rules, and  
3 regulations, shall not be considered as Government Undertakings by the national  
4 government for Local PPP Projects.

5           (b) The Approving Body shall assess all PPP Projects based on its overall  
6 feasibility analysis and accord paramount importance on the affordability of user fees  
7 and efficiency in public service. To ensure that all risks associated with PPP Projects are  
8 managed and mitigated accordingly, all PPP contracts to be entered into by the  
9 Implementing Agency shall adhere to the principles stipulated under the Generic  
10 Preferred Risk Allocation Matrix (GPRAM) issued by the ICC-NEDA.

11           (c) The appropriate Approving Body shall notify and advise, in writing, the  
12 Implementing Agency of its receipt and assessment of the completeness, in form and in  
13 substance, of the PPP Project proposal. Upon complete submission of the requirements  
14 by the Implementing Agency, the appropriate Approving Body shall render its decision  
15 on the project within forty (40) working days therefrom. The Implementing Agency shall  
16 be duly notified in writing of the decision of the Approving Body on or before the end of  
17 the 40-day period. The failure of the appropriate Approving Body to render its decision  
18 on the project within the specified period shall be deemed an approval thereof and the  
19 concerned Implementing Agency may proceed with the procurement of the PPP Project,  
20 without prejudice to any liability that the erring or negligent officials or employees may  
21 incur under existing laws.

22           In cases of Local PPP Projects requiring national government undertakings, the  
23 ICC-NEDA shall be given twenty (20) working days from the receipt of the proposal for  
24 the Local PPP Project to render its decision on the requested government undertaking.  
25 In the event of disapproval of the requested government undertaking, the Implementing  
26 Agency has the right to resubmit the request for approval of the national government  
27 undertaking in accordance with the provisions of the IRR of this Act. The disapproval of  
28 the requested government undertaking shall not be construed as a disapproval of the  
29 Local PPP Project.

30           (d) In order to facilitate a comprehensive and timely review of the PPP Project,  
31 the PPP Center, in coordination with the ICC-NEDA, shall formulate forms and templates  
32 that shall be used by the Implementing Agency and the Approving Body in reviewing

1 and approving the PPP Project, as well as the national government undertaking involved  
2 in local PPP Projects.

3 (e) The decision of the appropriate Approving Body to approve and implement  
4 the project under any of the contractual arrangements or variations thereof under this  
5 Act shall be final and executory, unless the Implementing Agency can provide sufficient  
6 justifiable reason to convert the PPP Project to another project under a different  
7 procurement modality.

8 *Sec. 8. PPP Pre-qualification, Bids and Awards Committee.* – The head of the  
9 Implementing Agency undertaking PPP Projects shall create a PPP Prequalification, Bids  
10 and Awards Committee (PBAC), which shall be responsible for all aspects of pre-bidding  
11 and bidding process in solicited proposals, or the comparative bidding process in  
12 unsolicited proposals. The composition and specific functions of the PBAC for National  
13 PPP Projects and Local PPP Projects shall be specified in the IRR of this Act, which may  
14 include other relevant government entities.

15 *Sec. 9. Solicited Proposals.* – (a) Solicited Proposals refer to submissions by the  
16 Private Proponent to bid for PPP Projects through open, fair, transparent, and  
17 competitive public bidding initiated by the Implementing Agency. Government  
18 Undertakings are allowed, subject to the approval of the Approving Body.

19 (b) **General.** The public bidding may be conducted in a single-stage or two-  
20 stage bidding process, either manually or electronically, subject to the rules provided for  
21 in the IRR of this Act.

22 The contract shall be awarded to the bidder who satisfied all pre-qualification  
23 and eligibility requirements and has submitted the most favorable financial bid based on  
24 the parameters defined in the bid documents. In all instances, affordable user fees and  
25 efficient public services shall be of paramount importance in awarding a PPP contract.

26 If the winning bidder fails to comply with any post-award requirement or fails to  
27 enter into a contract with the Implementing Agency, the latter may proceed to consider  
28 the next technically and financially qualified bidder. In case the contract is awarded to  
29 the next technically and financially qualified bidder, it shall be without prejudice to legal  
30 remedies available to the Implementing Agency like forfeiture of bid security, withdrawal  
31 of award, and such other remedies allowed under existing laws, rules, and regulations.

1 Any change in control of the Private Proponent or composition of the consortium  
2 after the submission of a solicited proposal shall be subject to the approval of the  
3 Implementing Agency.

4 (c) **Failure of Bidding.** The Implementing Agency shall declare failure of  
5 bidding in case of any of the following:

- 6 (1) If no bids are received; or
- 7 (2) If there are no complying bids.

8 The ICC-NEDA or the local Sanggunian may also declare a failure of bid if, after  
9 advertisement, only one bidder applied for and met the pre-qualification requirements,  
10 unless otherwise provided in this Act.

11 The procedures and mechanisms in dealing with a failure of bidding shall be  
12 prescribed in the IRR of this Act.

13 (d) **Single Complying Bid.** Without prejudice to paragraph (a) of this  
14 Section, the Implementing Agency may consider, on a negotiated basis, a single  
15 complying and responsive bid in case of any of the following:

- 16 (1) If, after advertisement, more than one bidder applied for  
17 prequalification but only one met the pre-qualification requirements;
- 18 (2) If, after advertisement, only one bidder applied for and met the pre-  
19 qualification requirements, provided such was allowed by the ICC-  
20 NEDA or the local Sanggunian, whichever is applicable;
- 21 (3) If, after pre-qualification of more than one bidder, only one submitted  
22 a bid; or
- 23 (4) If, after pre-qualification, more than one bidder submitted bids but only  
24 one is found by the Implementing Agency to be complying.

25 In any of the four (4) instances described in sub-paragraphs (1) to (4) of the  
26 preceding paragraph, the Implementing Agency shall not consider negotiating with the  
27 single complying and responsive bid when there is a reasonable showing of collusion  
28 between or among prospective bidders or collusion between the remaining bidder with  
29 the officers of the Implementing Agency or any member or officer of the PBAC.

30 **Sec. 10. Unsolicited Proposals.** – (a) **General.** Unsolicited Proposals refer to  
31 project proposals submitted by a Private Proponent not in response to a formal  
32 solicitation or request issued by the Implementing Agency.

1 The Implementing Agency may accept, reject, or convert an unsolicited proposal  
2 into a solicited proposal, subject to the evaluation of eligibility and merits of the project,  
3 and other conditions set forth in this Section and the IRR of this Act

4 (b) **Limitations.** Unsolicited proposals may be considered for projects that are  
5 not in the priority list and projects that are in the priority list: *Provided*, That in case the  
6 Implementing Agency has already incurred any development cost for the priority project,  
7 such as the conduct of feasibility study, business case, and surveys, among others, for  
8 the last five (5) years, the Private Proponent must undertake to reimburse the  
9 Implementing Agency of such documented development costs. Reimbursable  
10 development costs for a specific priority project shall be determined by the  
11 Implementing Agency.

12 *Provided, further*, That any unsolicited proposal shall not contain any of the  
13 following Government Undertakings:

- 14 (i) Viability Gap Funding and other forms of Subsidy;
- 15 (ii) Payment of Right-of-Way related costs;
- 16 (iii) Performance undertaking;
- 17 (iv) Exemption from any taxes as required by laws, except local taxes  
18 imposed by local government units;
- 19 (v) Guarantee on Demand;
- 20 (vi) Guarantee on Loan Repayment;
- 21 (vii) Guarantee on Private Sector Return;
- 22 (viii) Government equity except in JV arrangements; and
- 23 (ix) Contribution of assets, properties, and rights except in JV arrangements.

24 As an exception, items (ii) and (ix) above may be allowed if the government  
25 receives appropriate compensation, which shall in no way be lower than the value of the  
26 Right-of-Way, assets, properties, and rights contributed.

27 (c) **Special Requirements.** (1) Within ten (10) working days from receipt of  
28 the unsolicited proposal, the Implementing Agency shall inform the PPP Center in writing  
29 of such receipt and shall furnish it with a copy of the proposal.

30 (2) Upon submission of an unsolicited proposal, the Private Proponent shall  
31 pay an administrative fee to the Implementing Agency for processing of the same,  
32 subject to the guidelines as may be set in the IRR of this Act.

1           (3)    An unsolicited proposal involving Right-of-Way acquisition of a property,  
2 whether owned or not owned by the Original Proponent, may only be considered if the  
3 submission includes proof that the Original Proponent can acquire the entire property it  
4 identified in the unsolicited proposal, and/or a detailed Right-of-Way and resettlement  
5 plan indicating the specific assistance it needs from the government in acquiring the  
6 Right-of-Way for the entire property it identified in the unsolicited proposal, as may be  
7 applicable.

8           (4)    Any change in control of the Original Proponent or composition of the  
9 consortium after the submission of the Unsolicited Proposal shall be subject to the  
10 approval of the Implementing Agency.

11          (5)    In evaluating unsolicited proposals, the Implementing Agency shall use a  
12 first in time approach. Under this approach, the first complete proposal is evaluated and  
13 decided upon. The second complete proposal shall only be processed if the first one is  
14 rejected or if there is a failure in the negotiation of the first proposal. In all instances,  
15 the Implementing Agency may seek the assistance of the PPP Center in the assessment,  
16 evaluation, and review of unsolicited proposals.

17          (d)    **Rejection of an Unsolicited Proposal.** The Implementing Agency shall  
18 have the right to automatically reject the unsolicited proposal upon receipt thereof, or  
19 formally reject it after evaluation. If the Implementing Agency fails to act on an  
20 unsolicited proposal within sixty (60) working days from receipt thereof, the project  
21 proposal shall be deemed rejected, without prejudice to any liability that the erring or  
22 negligent officials or employees may incur under existing laws.

23          In cases of automatic rejection and rejection resulting from inaction, the paid  
24 administrative fee shall be returned to the appropriate Private Proponent, and shall be  
25 without prejudice to the right of the Private Proponents to resubmit their proposals until  
26 such time that the proposal has been formally rejected by the Implementing Agency, in  
27 which case, the administrative fee shall not be returned. A formal rejection is a written  
28 rejection notice to the Private Proponent stating the reason/s why the submitted  
29 proposal was rejected.

30          (e)    **Conversion of an Unsolicited Proposal.** The Implementing Agency  
31 may be allowed to convert an unsolicited proposal to a solicited proposal, subject to the  
32 conditions set forth in the IRR of this Act. If the Implementing Agency converts an

1 unsolicited proposal and uses it as basis for public bidding, the Private Proponent shall  
2 be reimbursed of the cost incurred in the preparation of the proposal, such as the cost  
3 of any feasibility study undertaken: *Provided*, That such reimbursement shall be in an  
4 amount not exceeding six percent (6%) of the total Project Cost, excluding the cost of  
5 right-of-way acquisition: *Provided, further*, That reimbursement shall be paid in full by  
6 the winning bidder as a requirement for the award of the contract, or by the  
7 Implementing Agency in case of two consecutive failures of bidding. In the event the  
8 original Private Proponent wins the solicited bid, it shall return to the Implementing  
9 Agency the reimbursed amount. The PPP Governing Board, as referred to in Section 23  
10 of this Act, may adjust such reimbursement amount as the need arises.

11 (f) **Acceptance of an Unsolicited Proposal.** If the Implementing Agency  
12 accepts, on a negotiated basis an unsolicited proposal, it shall grant the Private  
13 Proponent who submitted the unsolicited proposal an "Original Proponent" status, which  
14 shall be valid for a period not exceeding one (1) year, and may be extended by the head  
15 of the Implementing Agency: *Provided*, That such extension shall not exceed a period  
16 of one (1) year.

17 (g) **Comparative Challenge.** The Implementing Agency shall publish an  
18 invitation for the submission of comparative proposals.

19 The comparative challenge shall be conducted either manually or electronically,  
20 by the Implementing Agency within the period proposed by it and approved by the  
21 appropriate Approving Body, taking into consideration the nature and complexity of the  
22 PPP Project: *Provided*, That the period shall start from the date of last publication of the  
23 invitation for the submission of comparative proposals and shall be reasonable, fair, and  
24 upholds the competitive nature of public bidding. Comparative proposals shall be  
25 evaluated based on the best-and-final offer method and the bid bonus system, the  
26 procedure of which shall be discussed in the IRR.

27 If no other proposal is received after the challenge period, the PPP contract shall  
28 be awarded to the Original Proponent.

29 **Sec. 11. Protest Mechanism.** – In all stages of the procurement process, the  
30 following protest protocol shall be strictly followed:

31 (a) In case of National PPP Projects:

1 (i) Decisions of the PBAC may be questioned by filing a motion for  
2 reconsideration within fifteen (15) working days from receipt thereof. The PBAC shall  
3 act on the motion and render a decision within thirty (30) calendar days, otherwise it  
4 shall be deemed denied.

5 (ii) The decision of the PBAC on the motion for reconsideration in the  
6 immediately preceding paragraph may be further questioned by filing an appeal to the  
7 head of the Implementing Agency concerned, and paying a non-refundable appeal fee  
8 in an amount equivalent to no less than ½ of 1% of the Project Cost within fifteen (15)  
9 working days from receipt thereof. The head of the Implementing Agency shall act on  
10 the appeal and render a decision within thirty (30) calendar days, otherwise it shall be  
11 deemed denied. The PPP Governing Board may adjust the appeal fee as the need arises.

12 If the head of the Implementing Agency in the immediately preceding  
13 paragraph is not a Department Secretary, the decision of the head of the Implementing  
14 Agency may be further questioned by filing an appeal to the Secretary of the Department  
15 to which the Implementing Agency is attached within fifteen (15) working days from  
16 receipt thereof. The Department Secretary shall act on the appeal and render a decision  
17 within thirty (30) calendar days, otherwise it shall be deemed denied.

18 (iii) The decision of the Department Secretary in the immediately preceding  
19 paragraph may be questioned by filing an appeal to the Office of the President within  
20 fifteen (15) working days from receipt thereof. If, within sixty (60) calendar days, the  
21 Office of the President does not act on the appeal, the same is deemed denied.

22 (b) In the case of Local PPP Projects:

23 (i) Decisions of the PBAC may be questioned by filing a motion for  
24 reconsideration within seven (7) calendar days from receipt thereof. The PBAC shall act  
25 on the motion and render a decision within thirty (30) calendar days, otherwise it shall  
26 be deemed denied.

27 (ii) The decision of the PBAC on the motion for reconsideration in the  
28 immediately preceding paragraph may be further questioned by filing an appeal to the  
29 local chief executive or his authorized representative concerned within seven (7)  
30 calendar days from receipt thereof, and paying a non-refundable appeal fee in an  
31 amount equivalent to no less than ½ of 1% of the Project Cost.

1 The local chief executive shall resolve the appeal within thirty (30) calendar days  
2 from receipt thereof, otherwise it shall be deemed denied. The selection process will be  
3 suspended for a maximum period of thirty (30) calendar days while the appeal is being  
4 evaluated. The decision of the local chief executive or his authorized representative on  
5 the appeal shall be final and immediately executory.

6 Unless otherwise provided in this Act, in no case shall a motion for reconsideration  
7 or an appeal from any decision by the PBAC, Head of Implementing Agency, or  
8 Department Secretary stay or delay the bidding process. No award shall however be  
9 made until a decision on any pending appeal is rendered, or deemed denied.

10 *Sec. 12. Adoption of Contract Management and Risk Mitigation Plans in PPP*  
11 *Projects.* – In order to manage the fiscal risks arising from PPP Projects, strengthen the  
12 credibility of the PPP program and projects among the private sector, and to ensure the  
13 timely compliance with the contractual obligations of Implementing Agencies, projects  
14 undertaken shall require the adoption of a contract management and risk mitigation plan  
15 (CMRMP). The CMRMP shall contain the agreed project execution plan and risk  
16 mitigation plans of the contractual parties, which shall ensure that value for money  
17 derived from undertaking a PPP Project shall not be diminished and that all risks are  
18 mitigated, to avoid contingent liabilities from being realized. All CMRMPs shall be  
19 submitted to the PPP Center for monitoring. The procedures in creating, managing, and  
20 monitoring the CMRMP shall be prescribed in the IRR.

21 *Sec. 13. Project Supervision, Monitoring, and Impact Evaluation.* – Every PPP  
22 Project shall be implemented in accordance with the project terms as approved by the  
23 appropriate Approving Body, as well as the signed PPP contract. The coverage of the  
24 project terms and the minimum required provisions in a PPP contract shall be set forth  
25 in the IRR of this Act. The Implementing Agency shall be entitled to exercise sufficient  
26 powers of supervision, monitoring, and control over the implementation of each PPP  
27 contract it has entered into.

28 (a) Supervision. The Implementing Agency shall be responsible for the overall  
29 supervision of the PPP Project and for submission of periodic monitoring reports,  
30 executed under oath, to the appropriate oversight agencies. The approval by any public  
31 officer of any certificate of compliance or certificate of completion that is submitted by  
32 the Private Proponent shall also be made under oath. The liability of the public officer

1 or former public officer for any criminal act under existing pertinent laws related to the  
2 actions made on such reports and such approvals shall survive the retirement of the  
3 public officer, the termination of the project contract, and the lapse of the applicable  
4 warranty period/s.

5 (b) Monitoring. The PPP Governing Board shall set the framework for  
6 monitoring of the compliance of the parties to PPP contracts.

7 The PPP Center shall be responsible for the coordination and monitoring of  
8 projects implemented under this Act. For this purpose, the Implementing Agency shall  
9 submit to the PPP Center all executed PPP contracts, information on the status of  
10 projects implemented by, as well as copies of all unsolicited proposals and related  
11 documents received by, the former. At the end of every calendar year, the PPP Center  
12 shall submit a report to the President of the Philippines and to the Congress of the  
13 Philippines– particularly to the Senate President and the Speaker of the House of  
14 Representatives, and the Chairpersons of the Committee on Public Works – on the  
15 progress of all projects implemented under this Act.

16 (c) Impact Evaluation. As the primary socio-economic policy think tank of the  
17 national government, the Philippine Institute for Development Studies (PIDS) is hereby  
18 mandated to conduct periodic impact evaluation studies of PPP Projects implemented  
19 under this Act. The results of these studies shall be submitted to the PPP Governing  
20 Board, the PPP Center, and other relevant oversight agencies.

21 Sec. 14. *Investment Incentives.* – PPP Projects undertaken through this Act shall  
22 be entitled to various incentives under applicable laws and existing policies of the  
23 government.

24 Sec. 15. *Investment Recovery Scheme.* – In undertaking PPP Projects, the Private  
25 Proponent shall be allowed to recover its investments and earn profit through any of the  
26 following schemes or a combination thereof:

27 (a) Revenue-based - refers to a scheme where the Private Proponent is  
28 authorized to charge and collect, in whole or in part, from the public  
29 reasonable user fees or tariffs subject to appropriate regulation in  
30 accordance with Section 16 of this Act. Where applicable, the Private  
31 Proponent may likewise be repaid in the form of a share in the revenue of  
32 the project; and

1 (b) Availability-based - refers to a scheme where the Implementing Agency  
2 commits to make predetermined payments, which do not take the form of  
3 charges paid by the users of the works or of the service, but of regular  
4 payments by the Implementing Agency based on contractually-defined  
5 performance delivery.

6 Other non-monetary payments, such as commercial development rights, or the  
7 grant of a portion or percentage of the reclaimed land, subject to the constitutional  
8 requirements on land ownership, may also be allowed to supplement the foregoing  
9 schemes.

10 The framework and mechanism in determining the allowable return of the  
11 Private Proponent on a PPP Project shall be prescribed in the IRR of this Act.

12 Sec. 16. *Regulation.* – All PPP Projects shall be subject to regulation by the  
13 appropriate regulatory body or by contract in the absence of the former.

14 Sec. 17. *Variation, Expansion, or Extension of an Existing PPP Project.* – A contract  
15 variation or extension, or an expansion or extension of an existing PPP Project may be  
16 allowed by the Implementing Agency, subject to the rules and procedures as provided  
17 in the IRR of this Act: *Provided,* That upon prior approval by the Approving Body, the  
18 Private Proponent of an existing PPP Project may be allowed to expand or extend the  
19 same even without further bidding: *Provided,* further, That the cost thereof shall not  
20 exceed twenty-five percent (25%) of the price-adjusted original approved Project Cost:  
21 *Provided, finally,* That any subsequent expansion or extension shall no longer be  
22 allowed, and such shall be considered a new project and shall be tendered accordingly.

23 Application for contract variation or extension, or expansion or extension of an  
24 existing PPP Project shall be governed by existing laws, decrees, orders, rules and  
25 regulations at the time of application.

26 Sec. 18. *Divestiture/Divestment.* – Subject to the approval of the head of the  
27 Implementing Agency, a Private Proponent may divest its ownership, rights, or interest  
28 in a PPP Project: *Provided,* That the divestiture shall be after a holding or lock-in period  
29 as indicated in the PPP contract: *Provided further,* That the new Private Proponent has  
30 equal or better qualifications as with the previous Private Proponent.

31 The Implementing Agency may divest its ownership, rights, or interest in a  
32 project: *Provided,* That projects which involve full or partial divestment or transfer of

1 ownership of government assets or properties shall be subject to approval of the  
2 appropriate Approving Body and applicable laws, decrees, orders, rules and regulations.

3       Sec. 19. *Contract Termination.* – If a PPP contract is revoked, cancelled, or  
4 terminated prior to its completion, either contracting party shall compensate the other  
5 party pursuant to terms as defined in the PPP contract. Depending on the contractual  
6 stipulations, the grounds for contract termination which would warrant the right of  
7 compensation may include, but are not limited to, default, insolvency, unlawful  
8 divestment or divestiture, or other unlawful acts, by the Private Proponent or by the  
9 government.

10       Sec. 20. *Wind-up and Transfer Measures.* – All PPP contracts shall provide for  
11 wind-up and transfer measures. Such provision shall include, among others, the  
12 following:

13       (a) Mechanisms and procedures for the transfer of assets to the Implementing  
14 Agency;

15       (b) The transfer of technology required for the operation of the PPP Project,  
16 subject to limitations under existing laws, rules and regulations;

17       (c) The training of the personnel of the Implementing Agency or of a successor  
18 in the operation and maintenance of the PPP Project;

19       (d) The provision, by the Private Proponent, of a warranty that the PPP Project  
20 meets the project technical specifications, agreed system features, and  
21 performance standards and services for a certain period as may be defined  
22 in the IRR of this Act after the transfer of the PPP Project to the  
23 Implementing Agency or to a successor; and,

24       (e) In case of JV Projects, the compensation to which the Private Proponent  
25 may be entitled in case of buy-out and transfer of assets to the  
26 Implementing Agency, or to a successor.

27       Sec. 21. *Prohibition on the issuance of Temporary Restraining Orders, Preliminary*  
28 *Injunctions and Preliminary Mandatory Injunctions.* – No temporary restraining order,  
29 preliminary injunction, or preliminary mandatory injunction shall be issued by any court,  
30 except the Supreme Court, against any Implementing Agency or the PPP Center, its  
31 officials or employees, or any person or entity, whether public or private acting under  
32 the government direction, to restrain, prohibit, or compel the following acts:

- 1 (a) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;
- 2 (b) Qualification or disqualification of bidders;
- 3 (c) Awarding of any PPP contract;
- 4 (d) Acceptance of any unsolicited PPP project proposal, even if not acted upon
- 5 by the Implementing Agency concerned under Section 10 of this Act;
- 6 (e) Acquisition, clearance, development of the right-of-way, site or location of
- 7 any PPP Project;
- 8 (f) Construction, operation and maintenance of any PPP Project;
- 9 (g) Commencement, execution, implementation, termination or rescission of any
- 10 PPP contract; and,
- 11 (h) Undertaking or authorization of any other lawful activity necessary for such
- 12 PPP Project or contract.

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

18 In addition to any civil and criminal liabilities a judge may incur under existing  
19 laws, any judge who shall issue a temporary restraining order, preliminary injunction or  
20 preliminary mandatory injunction in violation of this Section, shall suffer the penalty of  
21 suspension of at least sixty (60) days without pay.

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

24 *Sec. 22. PPP Center.* – To achieve the goals of this Act, the PPP Center created  
25 under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136,  
26 series of 2013, is hereby institutionalized. It is hereby authorized to adopt its current  
27 organizational structure, absorb its existing employees, and upgrade its human resource  
28 component, as may be necessary, subject to evaluation and approval by the DBM.

29 In order to work towards a more efficient and effective performance of its  
30 mandate, the PPP Center shall have the following powers and functions:

- 31 (a) Assist Implementing Agencies in identifying, developing, prioritizing, and
- 32 maintaining a pipeline of PPP Projects;

- 1 (b) Provide advisory services, technical assistance, trainings, and capacity  
2 development to Implementing Agencies, Approving Bodies, and other  
3 oversight agencies in all PPP-related matters, and act as a procurement  
4 agent upon the request of the Implementing Agency;
- 5 (c) Manage and administer the Project Development and Monitoring Facility  
6 (PDMF) as provided in Section 24 of this Act;
- 7 (d) Recommend plans, policies, and implementation guidelines related to PPP,  
8 in consultation with appropriate oversight committees or agencies,  
9 Implementing Agencies, private sector and other relevant stakeholders;
- 10 (e) Ensure sustainability of the implemented PPP program and projects through  
11 monitoring, documenting, and sharing the lessons learned and best practices  
12 to Implementing Agencies and appropriate oversight committees or  
13 agencies;
- 14 (f) Provide regular monitoring and status reports on the implementation of all  
15 PPP programs and projects entered into by Implementing Agencies,  
16 including potential public interest concerns and violations of the PPP Act, to  
17 the Office of the President, the Congress of the Philippines, relevant  
18 oversight committees and agencies, and publish the same in the official  
19 website of the PPP Center;
- 20 (g) Promote and market the implemented PPP programs and projects, in  
21 collaboration with other government investment promotion agencies;
- 22 (h) Review PPP contracts and issue advisory opinions relating to PPPs, including  
23 how the PPP Act and its IRR shall be implemented;
- 24 (i) Serve as the central repository of all PPP Project documents, including all  
25 executed PPP contracts and any subsequent amendment or supplement  
26 thereto, including settlement agreements, entered into by Implementing  
27 Agencies;
- 28 (j) Act as Secretariat to the PDMF Committee and the PPP Governing Board;
- 29 (k) Perform such other functions as may be necessary to achieve the objectives  
30 and purposes of this Act.

1 The PPP Center shall report directly to the PPP Governing Board and shall be  
2 attached to the National Economic and Development Authority (NEDA) for purposes of  
3 policy and program coordination.

4 The PPP Center shall be headed by an Executive Director with the rank equivalent  
5 to an Undersecretary, who shall be appointed by and co-terminus with the President of  
6 the Philippines. The Executive Director shall perform the following functions:

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

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

12 (c) Sit as a non-voting member of the PPP Governing Board, INFRACOM, and  
13 ICC-NEDA; resource person/observer in the NEDA Board on PPP matters;  
14 and as a member of other inter-agency bodies in cases where PPPs are  
15 concerned; and

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

18 *Sec. 23. PPP Governing Board.* – The PPP Governing Board, created under  
19 Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is  
20 hereby institutionalized. It shall be the overall policy-making body for all PPP-related  
21 matters, including the PDMF. It shall be responsible for setting the strategic direction of  
22 PPP programs and projects and in creating an enabling policy and institutional  
23 environment for PPP.

24 The Board shall be composed of the following:

25 (a) The Secretary of Socio-Economic Planning as Chairperson;

26 (b) The Secretary of Finance as Vice-Chairperson;

27 (c) The Secretary of Budget and Management;

28 (d) The Secretary of Justice;

29 (e) The Secretary of Trade and Industry;

30 (f) The Executive Secretary;

31 (g) The Secretary of Interior and Local Government;

32 (h) The Executive Director of the PPP Center, as non-voting member; and

1 (i) Any one of the two (2) private sector representatives of the Ease of Doing  
2 Business and Anti-Red Tape Advisory Council.

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

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

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

13 *Sec. 24. Project Development and Monitoring Facility.* – (a) The PDMF is hereby  
14 established and shall be used for the procurement of advisory and support services  
15 related to the preparation, structuring, probity management, procurement, financial  
16 close, project evaluation, and monitoring of implementation of PPP Projects, in  
17 accordance with the relevant provisions of Republic Act No. 9184 or the Government  
18 Procurement Reform Act and its Implementing Rules and Regulations.

19 (b) The PDMF referred to under EO No. 8, series of 2010, as amended by  
20 EO No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF  
21 may be funded through and such amount as may be needed and included in the general  
22 appropriations act, official development assistance, or other sources.

23 (c) The PDMF shall be managed and administered by the PPP Center as a  
24 revolving fund. In order to sustain the PDMF, the PPP Center may collect and receive  
25 fees and recover costs expended through PDMF in accordance with the guidelines to be  
26 approved by the PPP Governing Board. Such amount shall be retained and authorized  
27 to be used by the PPP Center for the purposes indicated herein.

28 A PDMF Committee is hereby created which shall approve applications for  
29 PDMF support submitted by the Implementing Agencies.

30 The PDMF Committee shall be composed of: (1) the Secretary of SocioEconomic  
31 Planning as chairperson; (2) the Secretary of Finance, (3) the Secretary of Budget and

1 Management, and (4) the Executive Director of the PPP Center, as members. The PPP  
2 Center shall serve as the Secretariat for the PDMF Committee.

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

6 *Sec. 25. Creation of a Risk Management Fund.* – To ensure fiscal sustainability  
7 and negotiate better financing terms of PPP Projects, there is hereby created a PPP Risk  
8 Management Fund to be used for the payment of contingent liabilities arising from PPPs  
9 in accordance with its contract terms.

10 The target amount in the PPP Risk Management Fund is to be determined by the  
11 Development Budget Coordination Committee (DBCC) using risk-adjusted methods or  
12 such other means that estimate the exposure of the Government of the Philippines to  
13 PPP contingent liabilities.

14 The PPP Risk Management Fund shall be funded from the following sources:

- 15 (a) Concession fees;
- 16 (b) Implementing Agency reimbursements;
- 17 (c) Interest earnings from the PPP Risk Management Fund; and
- 18 (d) National government contributions.

19 National government contributions shall cover only the difference between the  
20 target amount of the PPP Risk Management Fund, as mentioned above, and the current  
21 value of the fund. The DOF shall regularly monitor and review the viability of the PPP  
22 Risk Management Fund in relation to the magnitude of PPP Projects undertaken by  
23 Government, and if necessary, recommend the increase in the target amount of the PPP  
24 Risk Management Fund and the reason therefor. All national government contributions  
25 to the PPP Risk Management Fund shall be included in the proposed DOF budget.

26 When the value of the PPP Risk Management Fund is in excess of the target  
27 amount, excess funds may be transferred to the general fund of the national  
28 government. The agency implementing PPP Projects must seek confirmation from the  
29 DOF that the national government can bear the additional contingent liabilities  
30 associated with the project taking into consideration fiscal sustainability.

1 Further, to foster accountability and efficiency in implementing PPP Projects, it is  
2 mandatory for implementing agencies to enter into a recourse agreement with the DOF  
3 before any payment can be drawn from the PPP Risk Management Fund for  
4 contingent liabilities that have materialized within contract terms.

5 The Bureau of the Treasury shall maintain the PPP Risk Management Fund in the  
6 Treasury Single Account. Interest earnings therefrom shall accrue to the PPP Risk  
7 Management Fund. Notwithstanding the establishment of this fund, the government  
8 may still provide an un-programmed appropriation for unforeseen risks that the  
9 government may incur from PPP Projects.

10 To monitor such government obligations on liabilities that have materialized and  
11 other unforeseen risks that may arise from PPP Projects; and to develop the guidelines  
12 to access the PPP Risk Management Fund, the inter-agency technical working group  
13 created under DBCC Resolution No. 2015-2, is hereby institutionalized.

14 The procedures and mechanisms in managing the PPP Risk Management Fund  
15 shall be prescribed in the IRR of this Act.

16 In the case of Local PPP Projects, a similar PPP Risk Management Fund may be  
17 established by the LGU. The details pertaining to maintaining and administering such  
18 fund shall be provided in the IRR of this Act. Sources of the fund may include the budget  
19 of the LGU and the income of the LGU from PPP Projects.

20 *Sec. 26. Establishment of a PPP Unit.* – Each concerned Implementing Agency  
21 shall organize a PPP unit headed by a senior official, who shall be responsible for  
22 planning, overseeing, and monitoring PPP Projects of the Implementing Agency. In the  
23 case of LGUs undertaking PPP Projects, the local chief executive shall organize such PPP  
24 unit.

25 The PPP units may include as members, among others, technical and legal  
26 personnel who are knowledgeable on the technical and legal aspects, respectively, of  
27 the PPP Projects. The rules on membership and specific functions of which shall be  
28 identified in the IRR of this Act.

29 *Sec. 27. Safekeeping and Public Disclosure of Contracts.* – Copies of all PPP  
30 contracts executed under this Act shall be considered and appropriately kept safe and  
31 preserved as public documents. Except those provisions in the contract which are  
32 proprietary, or may pose threats to national security or public safety, the procedures for

1 the disclosure of such documents shall be consistent with existing policies, laws, decrees,  
2 orders, rules and regulations, including the IRR of this Act.

3 The Implementing Agency and the PPP Center shall publicly make available copies  
4 of PPP contracts through their respective websites, unless otherwise prohibited by  
5 existing laws, rules and regulations, including national security and public safety  
6 concerns.

7 Sec. 28. *Miscellaneous Provisions.* – (a) Mitigation Interconnectivity and  
8 Interface Risks. All PPP Projects which will interconnect or interface with a local or  
9 national facility, shall be required to submit a Memorandum of Agreement (MOA)  
10 containing an interconnection/interface plan agreed upon by all relevant parties. For  
11 National PPP Projects, said MOA shall be submitted to the ICCNEDA; while for Local PPP  
12 Projects, said MOA shall be submitted to the local Sanggunian.

13 (b) Issuance of Franchise. Subject to the provisions of the Constitution and  
14 other existing laws, rules and regulations, once a PPP contract is executed by the Private  
15 Proponent and the Implementing Agency, a presumption arises that the public interest  
16 will be served by the implementation of the PPP Project covered thereby, and  
17 immediately upon application by the Private Proponent, the regulator shall automatically  
18 grant in favor of the Private Proponent a franchise to operate the facility and collect the  
19 tolls, fees, rentals, and other charges stipulated under the PPP contract.

20 (c) Standardization of Required Endorsements, Permits, and Licenses for PPP  
21 Projects. All relevant government and regulatory agencies, bodies, institutions and LGUs,  
22 shall, in coordination with the PPP Center, adopt standard timelines and requirements  
23 for the issuance of relevant endorsements, approvals, and permits for PPP Projects.

24 (d) Real Property Tax for PPPs. The DOF shall issue the guidelines on real  
25 property tax valuation of PPP Projects to ensure uniform and consistent implementation  
26 among all LGUs. All real properties which are actually, directly, and exclusively used for  
27 a Greenfield PPP Project shall be exempted from the payment of real property taxes  
28 during the period of construction and until such time the facility is used or operational,  
29 whether partial or full. The details of the exemption shall be prescribed in the IRR of  
30 this Act.

31 (e) Exemption from Payment of Transfer Taxes. For all PPP Projects, the  
32 transfer of ownership of the PPP Project to the Implementing Agency shall be exempt

1 from capital gains tax, documentary stamp tax, donor's tax, and all taxes and fees,  
2 whether from national or local, related to the transfer thereof.

3 (f) Mandatory Inclusion of Dispute Avoidance and Alternative Dispute  
4 Resolution Mechanisms in PPP Contracts. All PPP contracts shall include provisions on  
5 the use of dispute avoidance and Alternative Dispute Resolution (ADR) mechanisms. The  
6 contracting parties shall be given complete freedom to choose which ADR mechanisms  
7 and venue shall govern their dispute, as well as the rules or procedures to be followed  
8 involving the same.

9 (g) Conflict of Interest. Conflict of interest shall be prohibited at all times in  
10 the interpretation and implementation of this Act. Conflict of interest, which refers to  
11 any act or omission tending to oppose or disrupt the faithful performance of one's duty  
12 or mandate, shall include personal, pecuniary, and regulatory conflicts of interests:  
13 *Provided*, That no national Implementing Agency shall implement a PPP Project that it  
14 regulates; *Provided, further*, That any regulatory agency or body which implements a  
15 PPP Project shall adopt a conflict mitigation and management plan.

16 (h) Alternative Sources of Financing. In addition to Private Proponent equity  
17 and debt, alternative financial instruments such as Green Financing, corporate or project  
18 bonds and securities, and other forms of capital market financing may be allowed for  
19 PPP Projects, subject to the approval of relevant regulatory bodies for such instruments  
20 under existing laws, rules, and regulations.

21 (i) Private Legal and Medical Assistance. All the PPP PBAC members and other  
22 public officials providing services to the PPP PBAC shall be authorized to engage the  
23 services of private lawyers, or shall be provided with free legal assistance, where a civil,  
24 criminal, or administrative action is filed against them by reason of the performance of  
25 their official functions or duties, unless they are finally adjudged in such action or  
26 proceeding to be liable for gross negligence or misconduct or grave abuse of discretion.  
27 The PPP PBAC members shall also be entitled to medical assistance for injuries incurred  
28 in the performance of their functions.

29 (j) Preferential Hiring of Filipino Workers. For the construction stage  
30 of infrastructure facilities where the Contractor is a foreigner, Filipino labor shall be  
31 employed or hired in the different phases of construction where Filipino skills are  
32 available.

1 (k) Safeguard Mechanisms to Protect Public Interest. In order to improve  
2 transparency and to promote bankability and social acceptability of PPP  
3 Projects, the following mechanisms shall be observed: (1) Whenever applicable, the  
4 Implementing Agency shall assess the affordability of fee or tariff, and conduct a  
5 willingness-to-pay survey among the users of the infrastructure facility; (2) The  
6 Implementing Agency shall conduct public consultation or dialogue with all potential  
7 stakeholders, the details of which shall be threshed out in the IRR; and (3) The  
8 Implementing Agency and the PPP Center shall post in their respective websites the  
9 approved starting fare or user fee in a PPP Project as well as the approved parametric  
10 formula on fare increases or adjustments, if applicable.

11 *Sec. 29. Implementing Rules and Regulations.* – The IRR Committee shall be  
12 composed of representatives from the NEDA, DOF, DBM, DPWH, DOTr, DILG, DOJ, DTI,  
13 DENR, Office of the President, PPP Center, and Private Sector Representatives and other  
14 agencies, as may be identified by the PPP Governing Board. Within forty (40) working  
15 days from the effectivity of this Act, the PPP Center shall formulate and prescribe, in  
16 consultation with the IRR Committee, after public hearing and publication as required  
17 by law, the rules and regulations to implement the provisions of this Act. The IRR shall  
18 be approved by the PPP Governing Board.

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

23 *Sec. 30. Administrative, Civil, and Penal Sanction.* – Any person, whether private  
24 individual or public officer or employee, who commits any of the prohibited acts  
25 hereunder proscribed, shall be punished by imprisonment from a minimum of three (3)  
26 years to a maximum of six (6) years.

27 The following acts shall be prohibited:

28 (a) Downgrading the category of the Project Cost for purposes of evading the  
29 required approvals under this Act;

30 (b) Representation that the Private Proponent has the necessary capitalization  
31 to commence, complete, and implement the PPP Project when the same is  
32 false in material respects;

1 (c) Falsification or insertion of certain provisions in the execution copy of the  
2 contract which are materially and substantially different from the approved  
3 final draft contract;

4 (d) Any violation of Sections 7, 9, 10, 11, 17, 18, 28(g) under this Act; and

5 (e) A public officer or employee, whether in connivance with others or acting  
6 alone, negligently or by fraud commits a failure to ensure compliance with  
7 the project terms as approved by the Approving Body, and the signed PPP  
8 contract, by approving, issuing, or confirming any certification, required  
9 documents, or deliverables of the Private Proponent, which are noncompliant  
10 with existing rules, erroneous, not authentic, or fraudulent.

11 In addition, such acts committed by the Private Proponent and its concerned  
12 officers shall cause the rescission of its contract for the said PPP Project without  
13 compensation and shall be perpetually disqualified from participating in any bidding or  
14 other contractual arrangement for any government project. This is without prejudice to  
15 any other civil or administrative liability that erring officials or Private Proponents may  
16 incur.

17 The liability of the public officer or employee or former public officer or employee  
18 for any violation of the prohibitions under this Act shall survive the retirement of said  
19 public officer or employee, and shall include the prohibition for the erring officer to hold  
20 public office, either as an elected, or an appointed government official on any local or  
21 national position, and to act as a consultant for the Philippine Government, the  
22 termination of the project contract, and the lapse of any applicable warranty period/s.

23 *Sec. 31. Accountability in PPP Projects.* – The head of the concerned  
24 Implementing Agency shall at all times be accountable to PPP Projects undertaken  
25 through this Act. The Private Proponent shall likewise be held accountable for the works  
26 it has delivered and services it has rendered for a PPP Project. All PPP contracts are  
27 hereby required to clearly define the scope of each party's accountability under the PPP  
28 contract.

29 To further promote accountability in PPP Projects, the Commission on Audit (COA)  
30 shall have visitorial power, as defined in the 2009 Revised Rules of Procedure of the  
31 COA and any amendments thereto, over PPP Projects. This power shall include  
32 determining whether the contribution or share of the Implementing Agency in the PPP

1 Project is being allocated and utilized according to its intended purpose, and if the  
2 Implementing Agency is getting its rightful share from the revenues generated, as may  
3 be applicable. The COA shall also have visitorial jurisdiction over compliance to  
4 conditions, requirements, and processes set forth under this Act. To this end, the COA,  
5 in consultation and coordination with the PPP Center, shall promulgate the necessary  
6 framework and guidelines on auditing PPP Projects.

7 *Sec. 32. Joint Congressional Oversight Committee.* – A Joint Congressional  
8 Oversight Committee is hereby created to oversee the implementation of this Act. The  
9 Committee shall be composed of five (5) members each from the Senate and House of  
10 Representatives to be designated by the Senate President and the Speaker of the House  
11 of Representatives, respectively. The Committee shall be jointly chaired by the  
12 respective Chairpersons of the House Committee on Public Works and Highways, the  
13 House Committee on Appropriations, the Senate Committee on Public Works, and the  
14 Senate Committee on Finance.

15 *Sec. 33. Transitory Clause.* – The provisions of this Act shall apply to all PPP  
16 Projects except: (a) all projects wherein a PPP contract between the winning Private  
17 Proponent and the Implementing Agency concerned has been executed prior to  
18 effectivity of this Act; and (b) all projects undertaken through competitive selection  
19 wherein the bid/s have already been opened prior to the effectivity of this Act. For PPP  
20 Projects not covered under items (a) and (b) above, this Act shall govern: *Provided,*  
21 That this Act shall not, in any manner, operate to impair vested rights already accruing  
22 to a party.

23 All unexpended funds for the calendar year, properties, equipment, contracts and  
24 records of the PPP Center are hereby retained. The amount necessary to carry out the  
25 organizational changes of the PPP Center provided in this Act shall be determined by the  
26 PPP Governing Board. Appropriations for succeeding years shall be incorporated in its  
27 budget proposals, subject to the existing budgeting rules and regulations.

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

30 *Sec. 34. Separability Clause.* – If any provision of this Act is declared  
31 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall  
32 continue to be in full force and effect.

1 Sec. 35. *Repealing Clause.* – The following are hereby repealed:

2 (a) Republic Act No. 6957, as amended by Republic Act No. 7718 (An Act Authorizing  
3 the Financing, Construction, Operation and Maintenance of Infrastructure  
4 Projects by the Private Sector, and for other purposes);

5 (b) Executive Order No. 8, s. 2010, as amended by Executive Order No. 136, s. 2013  
6 (Reorganizing and Renaming the Build-Operate And Transfer (BOT) Center to  
7 the Public-Private Partnership (PPP) Center of the Philippines and Transferring  
8 its Attachment from the Department of Trade and Industry to the National  
9 Economic and Development Authority and for other purposes);

10 (c) Executive Order No. 78, s. 2012 (Mandating the Inclusion of Provisions on the  
11 Use of Alternative Dispute Resolution Mechanisms in All Contracts Involving  
12 Public-Private Partnership Projects, Build-Operate and Transfer Projects, Joint  
13 Venture Agreements Between the Government and Private Entities and those  
14 Entered into by Local Government Units);

15 (d) Section 8 of Executive Order No. 423, s. 2005 (Repealing Executive Order No.  
16 109-A Dated September 18, 2003 Prescribing the Rules and Procedures on the  
17 Review and Approval of All Government Contracts to Conform with Republic Act  
18 No. 9184, Otherwise Known as “The Government Procurement Reform Act”);

19 (e) 2013 Revised Guidelines and Procedures for Entering Into Joint Venture  
20 Agreements Between Government and Private Entities; and,

21 (f) PPP Codes and Joint Venture Guidelines issued by LGUs and GOCCs.

22 All other laws, decrees, orders, rules and regulations, and all other related  
23 national and local issuances or parts thereof inconsistent with this Act are hereby  
24 repealed or amended accordingly.

25 Sec. 36. *Effectivity.* – This Act shall take effect fifteen (15) days after its  
26 publication in the Official Gazette or in a newspaper of general circulation.

*Approved,*