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SENATE

S.B. NO. 2233

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(In substitution of Senate Bill Nos. 765, 1022, 1251, 1344, 1613, 1974, and 2068)

Prepared by the Committee on Public Works, upon the recommendation of the Subcommittee on Public-Private Partnerships (PPP) with Senators Angara, Ejercito Estrada, Marcos, Legarda, Zubiri, Villanueva, Ejercito, Gatchalian, and Revilla, Jr. as authors

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

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

1 SECTION 1. *Short Title.* – This Act shall be known as the “**Public-Private**
2 **Partnership (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
5 private enterprise, and provides incentives to needed investments. To this end, the
6 State shall provide an enabling environment for the private sector to mobilize its
7 resources for the purpose of financing, designing, construction, operations, and
8 maintenance of infrastructure and development projects. As provided by law, the
9 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
13 of PPP Projects at lower costs, the State shall ensure equitable risk allocation in PPP
14 Projects, and that all PPP Projects yield sufficient value for money, value for people,
15 and value for planet.

1 The State, through all means available, shall pursue a policy of maintaining a
2 reasonable balance on the financing of infrastructure and other development projects
3 that will 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 The State recognizes the autonomy of Local Government Units in entering and
8 implementing local PPP projects to enable them to attain their fullest development as
9 self-reliant communities and make them more effective partners in the attainment of
10 national goals.

11 The State shall also ensure the integration of climate resilience, sustainability,
12 and gender and development policies and programs in the planning, design, and
13 implementation of PPP Projects, in accordance with relevant laws, rules, and
14 regulations.

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

20 *Sec. 3. Scope and Application.* – This Act shall apply to all PPP Projects
21 undertaken by Implementing Agencies through PPP contracts with a Private
22 Proponent, including Joint Ventures, as defined under this Act. This shall also cover
23 lease agreements, when such is a component of a PPP Project or possess
24 characteristics or elements of a PPP as provided in Section 5 of this Act. This Act shall
25 also apply to all contractual agreements with a Private Proponent involving the
26 construction, operation, and maintenance, or a combination thereof, of toll facilities in
27 accordance with Presidential Decree (PD) No. 1112, s. 1977 or the Toll Operation
28 Decree, PD No. 1113, s. 1977, and PD No. 1894, s. 1983. This Act shall likewise apply
29 to and be enforceable among all parties to said PPP contracts.

30 This Act shall not be applicable to infrastructure projects undertaken through
31 the design and build scheme under Republic Act No. 9184 or the Government
32 Procurement Reform Act.

1 Furthermore, this Act shall not cover management contracts, service contracts,
2 divestments or dispositions, corporatization, incorporation of subsidiaries with private
3 sector equity, onerous donations, gratuitous donations, and other contractual
4 arrangements that do not demonstrate the necessary characteristics or elements of a
5 PPP as provided in Section 5 of this Act. In such cases, the Implementing Agencies
6 shall implement the aforementioned arrangements in accordance with provisions of
7 other applicable laws.

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

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

11 (b) *Availability Payments* refer to predetermined payments by the
12 Implementing Agency to the Private Proponent in exchange of delivering
13 an asset or service in accordance with the contract. Availability Payments
14 shall not be construed as Government Undertakings, Subsidy, or
15 government contribution;

16 (c) *Construction* refers to new construction, rehabilitation, improvement,
17 expansion, alteration, and related works and activities including the
18 necessary design, supply, installation, testing and commissioning of
19 equipment, systems, plants, materials, labor and services, and related
20 items needed to build or rehabilitate an infrastructure or development
21 facility;

22 (d) *Contractor* refers to any entity allowed and duly registered and licensed
23 under Philippine laws, which may or may not be the Private Proponent,
24 and which shall undertake the Construction and/or supply of equipment
25 or services for PPP Projects;

26 (e) *Contingent Liability* refers to an obligation that may or may not arise
27 from events specified in a PPP contract, the occurrence, timing, and
28 amount of which are uncertain. These events include, but are not limited
29 to regulatory risks, force majeure, breach of government warranties, and
30 material adverse government action, among others;

31 (f) *Facility Operator* refers to an entity with legal personality authorized
32 under existing laws, which may or may not be the Private Proponent,

1 that shall be responsible for operating and/or maintaining a facility,
2 including, but not limited to, the collection of tolls, fares, fees, rentals or
3 charges from facility users;

4 (g) *Government Undertakings* refer to any form of contribution and/or
5 support, which the government may extend to a Private Proponent for
6 the implementation of PPP Projects, as provided under this Act. The
7 procedures on proposing and granting of Government Undertakings,
8 including applicable caps, shall be prescribed in the IRR of this Act;

9 (h) *Green Financing* refers to investments that create environmental
10 benefits in support of green growth, low-carbon, and sustainable
11 development;

12 (i) *Guarantee on Demand* refers to an agreement whereby the
13 Implementing Agency guarantees a minimum amount of users,
14 consumers, traffic, or other similar assumptions for the PPP Project;

15 (j) *Guarantee on Loan Repayment* refers to an agreement whereby the
16 Implementing Agency guarantees to assume responsibility for the
17 repayment of debt directly incurred by the Private Proponent in
18 implementing the PPP Project in case of a loan default. As an exception,
19 government repayment of debt as part of Termination Payments shall
20 not be considered as Guarantee on Loan Repayment;

21 (k) *Guarantee on Private Sector Return* refers to an agreement whereby
22 the Implementing Agency guarantees to provide a predetermined rate
23 of return on the investment of the Private Proponent. This shall not cover
24 Termination Payments arising from government events of default;

25 (l) *Implementing Agency* refers to a department, bureau, office,
26 instrumentality, commission, authority of the national government, state
27 university and college (SUC), local university and college (LUC), local
28 government unit (LGU), government-owned or -controlled corporation
29 (GOCC) as defined in Republic Act No. 10149, otherwise known as the
30 "GOCC Governance Act of 2011", including government instrumentality
31 with corporate powers (GICP), government corporate entity (GCE), and
32 government financial institution (GFI), water district, and economic zone

1 authority which is hereby authorized to undertake PPP Projects with a
2 Private Proponent in accordance with its mandate or charter and the
3 provisions of this Act;

4 (m) *Joint Venture (JV)* refers to a contractual arrangement whereby both
5 the Implementing Agency performing a proprietary function, excluding
6 regulatory bodies, and the Private Proponent contribute to pool
7 resources comprising of capital, services, or assets (including equipment,
8 land, or intellectual property) to jointly undertake a specific and time-
9 bound investment activity to deliver an infrastructure or development
10 project typically provided by the public sector, subject to Section 11 of
11 this Act;

12 (n) *Material adverse government action (MAGA)* refers to any act of the
13 government which the Private Proponent had no knowledge of, or could
14 not be reasonably expected to have had knowledge of, prior to the
15 effectivity of the PPP contract, and that occurs after the effectivity of the
16 contract, other than an act which is authorized or permitted under the
17 PPP contract, which (1) specifically discriminates against the sector,
18 industry, or project, and (2) has a significant negative effect on the
19 ability of the Private Proponent to comply with any of its obligations
20 under the approved PPP contract. MAGA may include regulatory risks,
21 as stipulated in the approved PPP contract;

22 (o) *Local Public-Private Partnership (PPP) Project* refers to a PPP Project that
23 shall be undertaken by LGUs and LUCs as defined in RA 10931 otherwise
24 known as the Universal Access to Quality Tertiary Education Act;

25 (p) *National Public-Private Partnership (PPP) Project* refers to a PPP Project
26 that shall be undertaken by the national government, SUCs as defined
27 in RA 10931, GOCCs including GICPs, GCEs, and GFIs, water districts,
28 and economic zone authorities;

29 (q) *Original Proponent* refers to the Private Proponent which submitted an
30 unsolicited proposal that has been accepted, has been pre-qualified by
31 the Implementing Agency, and has been conferred the "Original
32 Proponent status (OPS)", as mentioned in Section 10 of this Act;

- 1 (r) *Public-Private Partnership (PPP) Project* - refers to any infrastructure or
2 development project implemented under this Act;
- 3 (s) *Private Proponent* refers to the private sector entity which has submitted
4 an unsolicited proposal, or a bid submission in relation to a solicited PPP
5 Project, and/or has a contractual responsibility for the PPP Project. The
6 Private Proponent may be Filipino or foreign-owned, and may engage
7 the services of a foreign Contractor or foreign Facility Operator, subject
8 to requirements and limitations provided under existing laws, rules, and
9 regulations;
- 10 (t) *Project Cost* refers to the estimated cost of the PPP Project, based on
11 its nature and structure, the determination of which shall be prescribed
12 in the IRR of this Act;
- 13 (u) *Solicited Proposal* refers to a submission by the Private Proponent to bid
14 for a PPP Project through open, fair, transparent, and competitive public
15 bidding initiated by the Implementing Agency, subject to Section 9 of
16 this Act;
- 17 (v) *Subsidy* refers to an agreement whereby the Implementing Agency will:
18 (i) defray, pay for, or shoulder a portion of the Project Cost or the
19 expenses and costs in operating or maintaining the project; (ii) bear a
20 portion of capital expenses associated with the establishment of an
21 infrastructure or development project, and/or any partial financing of the
22 project or component thereof; (iii) contribute any property or assets to
23 the project; (iv) in the case of LGUs, waive or grant special rates on real
24 property taxes on the project during the term of the contractual
25 arrangement; and/or (v) waive charges or fees relative to business
26 permits or licenses that are to be obtained for the Construction of the
27 project, all without receiving payment or value from the Private
28 Proponent, Contractor, and/or Facility Operator for such payment,
29 contribution, or support: *Provided*, That Subsidy falling under items (i)
30 and (ii) shall not exceed fifty percent (50%) of the total Project Cost;
- 31 (w) *Termination Payment* refers to the amount payable by the government
32 or the Private Proponent on the occurrence of an event or series of

1 events provided for in the PPP contract that results in the termination of
2 said contract;

3 (x) *Unsolicited Proposal* refers to a project proposal submitted by a Private
4 Proponent not in response to a formal solicitation or request issued by
5 the Implementing Agency, subject to Section 10 of this Act;

6 (y) *Viability Gap Funding (VGF)* refers to a type of Subsidy in the form of a
7 financial support that the government may provide to a revenue-based
8 PPP Project with the objective of making fees affordable, while improving
9 the commercial attractiveness of the project, excluding costs of right-of-
10 way, resettlement, and real estate taxes.

11 *Sec. 5. Public-Private Partnership (PPP)* – A PPP is a contractual arrangement
12 between the Implementing Agency and the Private Proponent for the financing,
13 designing, constructing, operating and maintaining, or any combination thereof, of
14 infrastructure or development projects which are typically provided by the public
15 sector, where each party shares in the associated risks. PPP Projects may also be
16 financed partly from direct government appropriations and/or from official
17 development assistance (ODA) of foreign governments or institutions.

18 PPP Projects may be undertaken through contractual arrangements, including
19 Joint Ventures, authorized under the Implementing Rules and Regulations (IRR) of
20 this Act, and such other variations thereof as may be approved by the appropriate
21 Approving Body. PPP also includes lease agreements providing for rehabilitation,
22 operation, and/or maintenance, including working capital and/or improvements to, by
23 the Private Proponent of an existing land or facility owned by the government for a
24 fixed period of time covering more than one (1) year.

25 Implementing Agencies, in accordance with their respective mandates or
26 charters, are hereby authorized to undertake PPP Projects with a Private Proponent in
27 accordance with the provisions of this Act.

28 *Sec. 6. Identification of PPP Projects.* – Implementing Agencies shall include in
29 their development plans, strategies, and investment programs those PPP Projects that
30 they are to undertake. In identifying those projects, the Implementing Agencies shall
31 be guided by the following principles: effectiveness in meeting government objectives,
32 appropriateness of the chosen procurement modality and source of funding, value for

1 money, accountability and transparency, consumer rights, affordability, and public
2 access, safety, and security. All PPP Projects shall be consistent and responsive to
3 national, local, and sectoral development and investment plans.

4 The Implementing Agencies shall submit their list of PPP Projects or any update
5 thereto to the appropriate oversight agencies, including the National Economic and
6 Development Authority (NEDA), regional development councils (RDCs), and the PPP
7 Center, for information and in accordance with existing rules, regulations, and
8 guidelines. Each proposed PPP Project shall be subject to the approval of the
9 appropriate Approving 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. –*

13 (a) The approval of PPP Projects under this Act shall be in accordance with the
14 following:

15 (1) National PPP Projects. - National PPP Projects shall be approved as
16 follows:

17 (i) Projects with Project Cost above five billion pesos (PhP
18 5,000,000,000.00) shall be submitted to the NEDA Board for
19 approval, upon favorable recommendation of the Investment
20 Coordination Committee (NEDA Board - ICC);

21 (ii) Projects with Project Cost from two billion five hundred million
22 pesos (PhP 2,500,000,000.00) to five billion pesos (PhP
23 5,000,000,000.00) shall be submitted to the NEDA Board - ICC
24 for approval;

25 (iii) Projects with Project Cost below two billion five hundred
26 million pesos (PhP 2,500,000,000.00) shall be submitted to
27 the following, whichever is applicable, for approval:

28 a. To the Head of the department or agency to which
29 the Implementing Agency is attached to; or

30 b. To the respective board of the Implementing
31 Agency, in case an Implementing Agency has a
32 governing board. If an Implementing Agency has a

1 governing board and is likewise an attached
2 agency, this rule shall apply; or

- 3 c. To the Head of the Implementing Agency, in case
4 the Implementing Agency has no governing board
5 or is not an attached agency.

6 The NEDA Board - ICC shall review the amounts every three years
7 after the enactment of this Act, and may, as necessary, update the
8 aforementioned amounts based on the cumulative growth of the
9 nominal Gross Domestic Product from the previous year of
10 adjustment, as calculated from the official estimates of the Philippine
11 Statistics Authority.

12 National JVs with contribution of the Implementing Agency exceeding
13 fifty percent (50%) of its entire assets shall also be approved by the
14 NEDA Board - ICC.

- 15 (2) Local PPP Projects - Regardless of Project Cost, Local PPP Projects
16 shall be approved by the local *Sanggunians* in the case of LGUs, or
17 by the boards in the case of LUCs. Prior to approval, Local PPP
18 Projects implemented by LGUs shall be confirmed by the respective
19 local development council.

20 Proposed Government Undertakings using national government
21 funds for Local PPP Projects shall be submitted to the NEDA Board -
22 ICC for approval, upon review and endorsement by the respective
23 RDCs. Such Government Undertakings shall include, among others,
24 the following items to be provided by the national government to a
25 Local PPP Project: (i) Guarantees on Demand, (ii) Guarantees on
26 Private Sector Return, (iii) Guarantees on Loan Repayment; (iv)
27 Viability Gap Funding and other forms of Subsidy; (v) payment of
28 Contingent Liability, including Termination Payments. Permits,
29 clearances, licenses or endorsements from national government
30 agencies required for Local PPP Projects under laws, rules, and
31 regulations, shall not be considered as Government Undertakings by
32 the national government for Local PPP Projects;

1 The NEDA Board - ICC shall render its decision on such requested
2 Government Undertakings within sixty (60) calendar days upon
3 receipt of such request. The disapproval of the requested
4 Government Undertakings shall not be construed as a disapproval of
5 the Local PPP Project.

6 Local PPP Projects affecting national development or master plans
7 and national projects shall secure the endorsement of the national
8 government through the respective RDCs, prior to approval by the
9 local *Sanggunians* in the case of LGUs, or by the Boards in the case
10 of LUCs. Such endorsement of the RDC shall be processed in the
11 most expeditious manner as prescribed in the IRR of this Act, and
12 shall not be unreasonably withheld.

13 A PPP Project covering two or more LGUs may be implemented by
14 the national government, subject to the approval process for National
15 PPP Project; or by the next higher level of LGU, subject to the
16 approval process for Local PPP Projects, or by the LGUs concerned.

17 In case of a Local PPP Project implemented by two or more LGUs,
18 such project shall be approved by the local *Sanggunians* of the LGUs
19 concerned, pursuant to Republic Act No. 7160 or the Local
20 Government Code of 1991. The respective RDCs may assist in the
21 coordination of LGUs in the development, approval, and
22 implementation of the Local PPP Project covering two or more LGUs.

23 (b) The Approving Body shall assess all PPP Projects based on its overall
24 feasibility, in accordance with the principle of protecting public interest
25 through the provision of affordable, accessible, and efficient public services.
26 All PPP Projects submitted to the Approving Body shall include proposed
27 indicators to determine their benefits and outcomes, which shall be used in
28 the monitoring and evaluation of PPP Projects during implementation. To
29 ensure that all risks associated with PPP Projects are managed and
30 mitigated accordingly, all PPP contracts to be entered into by the
31 Implementing Agency shall adhere to the principles stipulated under the

1 Generic Preferred Risk Allocation Matrix (GPRAM) issued by the NEDA Board
2 - ICC.

3 (c) The appropriate Approving Body shall notify and advise, in writing, the
4 Implementing Agency of its receipt and assessment of the completeness, in
5 form and in substance, of the PPP Project proposal. Upon complete
6 submission of the requirements by the Implementing Agency, the
7 appropriate Approving Body shall render its decision on the project in the
8 most expeditious manner considering the nature and complexity of the PPP
9 Project, as prescribed in the IRR of this Act. The Implementing Agency shall
10 be duly notified in writing of the decision of the Approving Body on or before
11 the prescribed period in the IRR of this Act. The failure of the appropriate
12 Approving Body to render its decision on the project within the specified
13 period shall be deemed an approval thereof, and the Implementing Agency
14 concerned may proceed with the procurement of the PPP Project, without
15 prejudice to any liability that the erring or negligent officials or employees
16 may incur under existing laws.

17 (d) In order to facilitate a comprehensive and timely review of PPP Projects, the
18 NEDA Board - ICC, in the case of National PPP Projects, and the PPP
19 Governing Board, in the case of Local PPP Projects, shall formulate
20 guidelines, forms, and templates that shall be used by the Implementing
21 Agency and the Approving Body in reviewing and approving the PPP Project.
22 The NEDA Board - ICC shall also formulate guidelines on the approval of
23 Government Undertakings using national government funds for Local PPP
24 Projects.

25 (e) The decision of the Approving Body to approve and implement the project
26 under any of the contractual arrangements or variations thereof shall be
27 final and executory unless the Implementing Agency can provide sufficient
28 justifiable reason to convert the PPP Project to another project under a
29 different procurement modality.

30 *Sec. 8. PPP Pre-qualification, Bids and Awards Committee.* – The Head of the
31 Implementing Agency undertaking PPP Projects shall create a PPP Pre-qualification,
32 Bids and Awards Committee (PBAC), which shall be responsible for all aspects of pre-

1 bidding and bidding process in solicited proposals, or the comparative bidding process
2 in unsolicited proposals.

3 *Sec. 9. Solicited Proposals. –*

4 (a) General - Solicited Proposals refer to submissions by the Private Proponent
5 to bid for PPP Projects through open, fair, transparent, and competitive
6 public bidding initiated by the Implementing Agency. Government
7 Undertakings are allowed, subject to the approval of the Approving Body.

8 (b) Public Bidding - The public bidding may be conducted in a single-stage or
9 two-stage bidding process, either manually or electronically.

10 The contract shall be awarded to the bidder who has satisfied all pre-
11 qualification and eligibility requirements and has submitted the most
12 compliant bid as defined in the bid documents. In all instances, the principle
13 of protecting public interest through the provision of affordable, accessible,
14 and efficient public services shall be of paramount importance in awarding
15 a PPP contract.

16 If the winning bidder fails to comply with any post-award requirement which
17 shall be set as part of the bidding documents, or fails to enter into a contract
18 with the Implementing Agency, the latter may proceed to consider the next
19 most compliant bidder. In case the contract is awarded to the next most
20 compliant bidder, it shall be without prejudice to legal remedies available to
21 the Implementing Agency such as forfeiture of bid security, withdrawal of
22 award, and such other remedies allowed under existing laws, rules, and
23 regulations.

24 All PPP contracts shall require a period within which financial close shall be
25 achieved by the Private Proponent. Failure to achieve financial close within
26 such period shall be subject to penalties to be provided for in the signed
27 contract: *Provided*, That such failure to achieve financial close is not due to
28 the fault of the government.

29 Any change in control of the Private Proponent or composition of the
30 consortium shall be allowed, subject to rules set forth in the IRR of this Act:
31 *Provided*, That the Private Proponent or consortium has equal or better
32 qualifications.

1 (c) Failure of Bidding - The PBAC shall declare failure of bidding in case of any
2 of the following:

3 (1) If no bids are received;

4 (2) If there are no complying bids; or

5 (3) If the winning bidder refuses without justifiable cause to accept the
6 award of contract, as the case may be.

7 The Head of the Implementing Agency, upon the recommendation of the
8 PBAC, may also declare a failure of bidding if, after advertisement, only one
9 bidder applied for and met the pre-qualification requirements, unless
10 otherwise provided in this Act.

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

14 (1) If, after advertisement, more than one bidder applied for pre-
15 qualification but only one met the pre-qualification requirements;

16 (2) If, after advertisement, only one bidder applied for and met the pre-
17 qualification requirements, provided such was allowed by the Head
18 of the Implementing Agency, upon recommendation of the PBAC;

19 (3) If, after pre-qualification of more than one bidder, only one
20 submitted a bid; or

21 (4) If, after pre-qualification, more than one bidder submitted bids but
22 only one is found by the Implementing Agency to be complying.

23 Negotiation between the Implementing Agency and the single complying
24 and responsive bidder shall be limited to the financial proposal of the bidder
25 and in compliance with the reasonable rate of return prescribed by the
26 appropriate Approving Body.

27 *Sec. 10. Unsolicited Proposals.* –

28 (a) General - Unsolicited Proposals refer to project proposals submitted by a
29 Private Proponent not in response to a formal solicitation or request issued
30 by the Implementing Agency.

31 The Implementing Agency may accept, reject, or convert an unsolicited
32 proposal into a solicited proposal, subject to the evaluation of eligibility and

1 merits of the project, and other conditions set forth in this Section and the
2 IRR of this Act.

3 (b) Limitations - Unsolicited proposals may be allowed for projects in the list of
4 PPP Projects, subject to the procedures and conditions set forth in this
5 Section and the IRR of this Act. In case the Implementing Agency has
6 already incurred any development cost for the PPP Project, such as the
7 conduct of feasibility study, business case, and surveys, among others, for
8 the last three (3) years, the Private Proponent must undertake to reimburse
9 the Implementing Agency of such documented development costs
10 notwithstanding whether it is funded through government appropriations,
11 grants, and other sources. Reimbursable development costs for such
12 proposal and the procedures for such reimbursement shall be determined
13 by the Implementing Agency.

14 An unsolicited proposal shall not contain any of the following Government
15 Undertakings:

- 16 (1) Viability Gap Funding and other forms of Subsidy;
- 17 (2) Payment of right-of-way (ROW) related costs;
- 18 (3) Performance undertaking;
- 19 (4) Exemption from any taxes as required by laws, except local taxes
20 imposed by local government units;
- 21 (5) Guarantee on Demand;
- 22 (6) Guarantee on Loan Repayment;
- 23 (7) Guarantee on Private Sector Return;
- 24 (8) Government equity; and
- 25 (9) Contribution of assets, properties, and rights.

26 As an exception, items (2) and (9) above may be allowed if the government
27 receives appropriate compensation, which shall in no way be lower than the
28 value of the ROW related costs, assets, properties, and rights contributed.

29 In the case of JV arrangements, items (8) and (9) may be allowed.

30 (c) Special Requirements -

- 31 (1) Within three (3) working days from receipt of the unsolicited
32 proposal, the Implementing Agency shall inform the PPP Center in

1 writing of such receipt and shall furnish it with a copy of the proposal.
2 The Implementing Agency and the PPP Center shall likewise publicly
3 disclose such receipt by posting information in their respective
4 websites.

5 (2) An unsolicited proposal involving ROW acquisition of a property,
6 whether owned or not owned by the Original Proponent, may be
7 considered: *Provided*, That the submission includes a ROW and
8 resettlement plan and such other documents that may be required in
9 the IRR of this Act; *Provided further*, That in no case shall the
10 Implementing Agency be obliged to make an advance payment for
11 such ROW acquisition and related costs.

12 (3) Any change in control of the Original Proponent or composition of
13 the consortium shall be allowed, subject to the rules set forth in the
14 IRR of this Act: *Provided*, That the Private Proponent or consortium
15 has equal or better qualifications.

16 (d) Treatment of More than One Unsolicited Proposal for the Same or Similar
17 Project - In cases where the Implementing Agency receives more than one
18 unsolicited proposal involving the same or similar project prior to acceptance
19 of the proposal and granting of OPS, the Implementing Agency may choose
20 among the submissions the best and most advantageous proposal for the
21 government and the public, pursuant to the rules set forth in the IRR of this
22 Act. The chosen proposal shall be accepted pursuant to subsection (g) of
23 this Section and shall be subject to the approval process in Section 7 of this
24 Act. Otherwise, the Implementing Agency may reject all such proposals,
25 and/or bid out the project as a solicited proposal.

26 The Implementing Agency may seek the assistance of the PPP Center in the
27 assessment, evaluation, and review of unsolicited proposals.

28 (e) Rejection of an Unsolicited Proposal - The Implementing Agency shall have
29 the right to automatically reject the unsolicited proposal upon receipt
30 thereof, or formally reject it after evaluation. If the Implementing Agency
31 fails to act on an unsolicited proposal within ninety (90) calendar days upon
32 receipt, the project proposal shall be deemed rejected, without prejudice to

1 any liability that the erring or negligent officials or employees may incur
2 under existing laws.

3 (f) Conversion of an Unsolicited Proposal - The Implementing Agency may be
4 allowed to convert an unsolicited proposal to a solicited proposal. If the
5 Implementing Agency converts an unsolicited proposal to a solicited
6 proposal, the Implementing Agency and the Private Proponent shall agree
7 on the terms and conditions of such conversion: *Provided*, That the Private
8 Proponent holds a valid OPS granted by the Implementing Agency and such
9 terms and conditions are consistent with applicable laws, rules, and
10 regulations.

11 Once an unsolicited proposal is converted to a solicited proposal, such
12 proposal shall be subject to the approval process in Section 7 and the
13 process for bidding as provided in Section 9 of this Act.

14 (g) Acceptance of an Unsolicited Proposal -The Implementing Agency shall have
15 the right to set conditions and requirements on the project's structure,
16 scope, and other relevant details, which the Private Proponent must comply
17 with before its proposal can be accepted on a negotiated basis. If the
18 Implementing Agency accepts such unsolicited proposal, it shall grant the
19 Private Proponent who submitted the unsolicited proposal an OPS, which
20 shall be valid for a period not exceeding six (6) months from the acceptance
21 of the unsolicited proposal.

22 (h) Comparative Challenge - Once an unsolicited proposal is approved by the
23 appropriate Approving Body, the unsolicited proposal shall be subjected to
24 a comparative challenge. The Implementing Agency shall, within seven (7)
25 calendar days upon approval by the Approving Body, publish an invitation
26 for the submission of comparative proposals.

27 The comparative challenge shall be conducted, either manually or
28 electronically, by the Implementing Agency within the period proposed by
29 it and approved by the appropriate Approving Body, taking into
30 consideration the nature and complexity of the PPP Project: *Provided*, That
31 the period shall be reasonable, fair, and upholds competition; *Provided*
32 *further*, That the period shall not exceed one (1) year.

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Comparative proposals shall be evaluated using a bonus system. The bonus shall be in the form of a percentage which shall be applied to the financial proposal of the Original Proponent, and shall be as approved by the Approving Body: *Provided*, That such bonus shall not be lower than five percent (5%) and exceed ten percent (10%). Comparative proposals shall be evaluated after the challenge period.

If the financial proposal of the top challenger is more advantageous to the government and/or public but is within the approved percentage of the financial proposal of the Original Proponent, the Original Proponent shall have the right to match such proposal within thirty (30) calendar days. If the Original Proponent matches the financial proposal of the top challenger, the PPP Project shall be awarded to the Original Proponent. Otherwise, the PPP Project shall be awarded to the top challenger.

If the financial proposal of the top challenger is more advantageous to the government and/or public and is beyond the approved percentage of the financial proposal of the Original Proponent, the PPP Project shall be awarded to the top challenger.

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

All PPP contracts shall require a period within which financial close shall be achieved by the Private Proponent. Failure to achieve financial close within such period shall be subject to penalties to be provided for in the signed contract: *Provided*, That such failure to achieve financial close is not due to the fault of the government.

Sec. 11. *Joint Ventures (JV)*. – Joint Ventures are contractual arrangement whereby both the Implementing Agency performing a proprietary function, excluding regulatory bodies, and the Private Proponent contribute to pool resources comprising of capital, services, or assets (including equipment, land, or intellectual property) to jointly undertake a specific and time-bound investment activity. The investment activity shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector. Each party shall

1 have the right to direct and govern the policies in connection therewith, with the
2 intention to share both profits, risks and losses subject to agreement by the parties.

3 A JV may be undertaken through a contract or by creating a JV company: *Provided,*
4 That the following shall be observed:

5 (a) The formation of a JV company shall be in accordance with the legal
6 mandate of the Implementing Agency and provisions of the Revised
7 Corporation Code of the Philippines and other applicable laws, rules, and
8 regulations.

9 (b) The equity contribution, which shall include contribution of assets,
10 properties, and rights, and other allowable Government Undertakings
11 and/or Subsidy, of the government in a JV arrangement shall in no case
12 exceed fifty percent (50%) of the Project Cost in the case of a contractual
13 JV, or fifty percent (50%) of the outstanding capital stock of the JV
14 company, subject to applicable laws, rules, and regulations. All equity
15 contribution of the government and the Private Proponent shall be subject
16 to fair valuation.

17 (c) The formation of the JV between the Implementing Agency and Private
18 Proponent shall not prevent the parties from entering into other JV
19 agreements and/or from profitably entering into other business ventures or
20 markets: *Provided,* That such other ventures shall not compete with the JV
21 between the parties.

22 (d) The cost of producing the particular product, conducting the activity, or
23 performance of service shall be efficient or potentially efficient towards
24 earning potential profits for the Implementing Agency and the Private
25 Proponent.

26 (e) The interests of the Implementing Agency and Private Proponent in and to
27 any profits, losses, assets acquired, constructed, and otherwise derived in
28 connection with the JV shall be proportionate to their respective
29 contributions to the JV: *Provided,* That the Implementing Agency's share in
30 any profits shall not be less than the proportion of its contribution to the JV.

31 (f) The parties may agree to a higher percentage of profit or lower percentage
32 of losses for the government as compared to the actual percentage of

1 government contribution in the JV. The Implementing Agency may also
2 accept any other more favorable terms as may be agreed upon with the
3 Private Proponent in the JV agreement.

4 (g) At the end of the JV agreement, all properties covered by such agreement
5 shall revert to the Implementing Agency. In cases where the government
6 deems that divestment from the JV is in the best interest of the public, JV
7 agreements may allow the private sector to take over the undertaking of
8 the projects in its entirety. Such takeover shall be subject to the approval
9 of the Privatization Council and in accordance with the requirements and
10 procedure provided for in Executive Order No. 323, "Constituting the
11 Privatization Council", series of 2000.

12 (h) All JV agreements, whether through a contractual JV or a JV company, shall
13 be approved by the appropriate Approving Body pursuant to Section 7 of
14 this Act. Furthermore, the selection process for a solicited and an unsolicited
15 JV shall be in accordance with Sections 9 and 10 of this Act.

16 All other rules provided under this Act, such as on regulation of tolls, fares,
17 fees, rentals and other charges, divestiture/divestment, variation,
18 expansion, or extension of a JV, project monitoring and supervision, shall
19 be applicable to all JV arrangements.

20 (i) Formation of JV between the Implementing Agency and Private Proponent
21 shall not change the nature or alter the mandate of the Implementing
22 Agency entering into such JV. The Implementing Agency's governmental
23 responsibility shall not be diminished and shall not be a reason to avoid
24 compliance/coverage of existing laws, rules, or regulations. A JV shall not
25 serve as a vehicle to create new GOCCs.

26 *Sec. 12. Protest Mechanism.* – In all stages of the procurement process, the
27 protest mechanism for national and local PPP Projects shall be provided in the IRR of
28 this Act: *Provided*, That such protests shall be resolved in the most expeditious manner
29 which shall not exceed forty-five (45) calendar days.

30 Unless otherwise provided in this Act, in no case shall a motion for
31 reconsideration or an appeal from any decision by the PBAC, Head of Implementing
32 Agency, or Department Secretary stay or delay the bidding process. No award shall

1 however be made until a decision on any pending appeal is rendered, or deemed
2 denied.

3 Sec. 13. *Issuance of Franchise and Regulation of Tolls, Fares, Fees, Rentals,*
4 *and Other Charges.* – Subject to the provisions of the Constitution and other existing
5 laws, rules and regulations, once a PPP contract is executed by the Private Proponent
6 and the Implementing Agency, a presumption arises that the public interest will be
7 served by the implementation of the PPP Project covered thereby, and immediately
8 upon application by the Private Proponent, the regulator shall automatically grant in
9 favor of the Private Proponent a franchise to operate the facility and collect the tolls,
10 fares, fees, rentals, and other charges stipulated under the PPP contract.

11 The collection of tolls, fares, fees, rentals, and other charges in PPP Projects
12 undertaken through this Act shall be regulated in accordance with the principles of
13 fairness, transparency, predictability, and protecting public interest. The initial tolls,
14 fares, fees, rentals, and other charges and adjustments thereof shall be subject to the
15 approval of the appropriate regulator prior to the bidding of the project and shall be
16 included in the draft contract that will be circulated to all bidders prior to the bid
17 submission date to be set by the Implementing Agency: *Provided*, That if the regulator
18 does not render a decision on the initial tolls, fares, fees, rentals, and other charges
19 and adjustments thereof within a period of sixty (60) calendar days from its receipt of
20 the proposed initial tolls, fares, fees, rentals, and other charges and adjustments
21 thereof, and the proposed parameters, terms, and conditions of the project, the initial
22 tolls, fares, fees, rentals, and other charges and adjustments thereof shall be deemed
23 approved by the regulator.

24 The regulator shall uphold the approved initial tolls, fares, fees, rentals, and
25 other charges and adjustments thereof during the implementation of the PPP Project.
26 The regulator may review such adjustments in cases of extraordinary circumstances
27 as defined in the PPP contract, or periodically, when stipulated in the PPP contract.

28 In cases where the Implementing Agency fails to implement the initial tolls,
29 fares, fees, rentals, and other charges and adjustments thereof as stipulated in the
30 PPP contract, the Private Proponent shall be allowed to recover the difference through
31 measures consistent with the PPP contract and applicable laws, rules, and regulations.

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1 In the absence of an appropriate regulator, the initial tolls, fares, fees, rentals,
2 and other charges and adjustments thereof shall be approved by the Approving Body.

3 The Implementing Agency and the PPP Center shall post in their respective
4 websites the approved initial tolls, fares, fees, rentals, and other charges and
5 adjustments thereof in a PPP Project.

6 *Sec. 14. Mandatory Inclusion of Dispute Avoidance and Alternative Dispute*
7 *Resolution Mechanisms in PPP Contracts.* – All PPP contracts shall include provisions
8 on the use of dispute avoidance and Alternative Dispute Resolution (ADR)
9 mechanisms. The contracting parties shall be given complete freedom to choose which
10 ADR mechanisms and venue shall govern their dispute, as well as the rules or
11 procedures to be followed involving the same.

12 *Sec. 15. Adoption of Contract Management and Risk Mitigation Plans in PPP*
13 *Projects.* – In order to manage the fiscal risks arising from PPP Projects, strengthen
14 the credibility of the PPP program and Projects among the private sector, and to
15 ensure the timely compliance with the contractual obligations of Implementing
16 Agencies, PPP Projects undertaken through this Act shall require the adoption of
17 contract management and risk mitigation plans. Such plans shall include the agreed
18 project execution plan, all risks assumed by the government under the contract, risks
19 assumed by the Implementing Agency, risk mitigating measures, estimated costs to
20 be incurred, target timeline to have each measure in place, and the appropriate action
21 plan by the Implementing Agency to manage each type of risk. All plans shall be kept
22 up-to-date and be submitted to the PPP Center for monitoring.

23 *Sec. 16. Project Supervision and Monitoring.* – Every PPP Project shall be
24 implemented in accordance with the project terms as approved by the appropriate
25 Approving Body, as well as the signed PPP contract. The coverage of the project terms
26 and the minimum required provisions in a PPP contract shall be set forth in the IRR of
27 this Act. The Implementing Agency shall be entitled to exercise sufficient powers of
28 supervision, monitoring, and control over the implementation of each PPP contract it
29 has entered into.

30 (a) Supervision - The Implementing Agency shall be responsible for the overall
31 supervision of the PPP Project and for submission of periodic monitoring

1 reports, executed under oath, to the appropriate oversight agencies. The
2 details and procedures shall be set forth in the IRR of this Act.

3 (b) Monitoring - The PPP Governing Board shall set the framework for
4 monitoring the compliance of the parties to PPP contracts, report the
5 progress of PPP projects and their expected benefits and outcomes, and
6 determine the appropriate penalties for the non-compliance of parties to the
7 set reportorial requirements.

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

18 *Sec. 17. Investment Incentives.* – PPP Projects undertaken through this Act
19 shall be entitled to various incentives under applicable laws and existing policies of the
20 government.

21 *Sec. 18. Investment Recovery Scheme.* – In undertaking PPP Projects, the
22 Private Proponent shall be allowed to recover its investments and earn reasonable
23 profit through any of the following schemes or a combination thereof:

24 (a) Revenue-based is a scheme where the Private Proponent is authorized to
25 charge and collect, in whole or in part, from the public reasonable tolls,
26 fares, fees, rentals, and other charges subject to appropriate regulation in
27 accordance with Section 19 of this Act. Where applicable, the Private
28 Proponent may likewise be repaid in the form of a share in the revenue of
29 the project; and

30 (b) Availability-based is a scheme where the Implementing Agency commits to
31 make predetermined payments, which do not take the form of charges paid
32 by the users of the works or of the service, but of regular payments by the

1 Implementing Agency in exchange of delivering an asset or service in
2 accordance with the contract.

3 Other non-monetary payments, such as commercial development rights, or the
4 grant of a portion or percentage of the reclaimed land, subject to the constitutional
5 requirements on land ownership, may also be allowed to supplement the foregoing
6 schemes: *Provided*, That such non-monetary payments shall be subject to fair
7 valuation.

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

11 *Sec. 19. Variation, Expansion, or Extension of an Existing PPP Project. – A*
12 *contract variation or extension, or an expansion or extension of an existing PPP Project*
13 *may be approved by the Head of the Implementing Agency: *Provided*, That:*

14 (a) There is no increase in the agreed tolls, fares, fees, rentals, and other charges
15 or a decrease in the Implementing Agency's revenue or profit share derived
16 from the project, except as may be allowed under a formula approved by the
17 relevant regulator or Approving Body, as the case may be.

18 (b) There is no decrease in the performance standards, or change in the
19 contractual arrangement or extension in the contract term; or

20 (c) There is no additional Government Undertaking, or increase in the financial
21 exposure of the government under the project.

22 Upon due diligence and recommendation of the Head of the Implementing
23 Agency, contract variations not covered by the above shall undergo approval by the
24 Approving Body in terms of the impacts on Government Undertakings, performance
25 standards, and service charges.

26 The Approving Body may set, as part of the approval of the project, a cap on
27 the allowable variation for items (b) and (c) herein during the entire contract.

28 In case of contract variation, any extension of the contract term shall not be a
29 substitute to compensate the Private Proponent without the written approval of the
30 Approving Body. In the case of any government-approved variation, the performance
31 security shall be proportionately increased.

1 Failure to secure clearance or approval of the Head of the Implementing
2 Agency, as provided in this Section, shall render the contract variation void. No
3 variation shall be implemented before the variation is approved.

4 The provisions of this Section shall also apply prospectively to all existing
5 franchises and concessions granted for the financing, construction, operation, and
6 maintenance of infrastructure facilities under previous laws and decrees.

7 Application for contract variation or extension, or expansion or extension of an
8 existing PPP Project shall not impair the substantive rights of the Private Proponent,
9 and shall be governed by existing laws, decrees, orders, rules and regulations at the
10 time of application.

11 *Sec. 20. Divestment.* – Subject to the approval of the Head of the Implementing
12 Agency, a Private Proponent may divest its ownership, rights, or interest in a PPP
13 Project: Provided, That the divestiture shall be after a holding or lock-in period as
14 indicated in the PPP contract: Provided further, That the new Private Proponent has
15 equal or better qualifications as with the previous Private Proponent.

16 The Implementing Agency may divest its ownership, rights, or interest in a
17 project: Provided, that projects which involve full or partial divestment or transfer of
18 ownership of government assets or properties shall be subject to approval of the
19 appropriate Approving Body and applicable laws, decrees, orders, rules and
20 regulations.

21 *Sec. 21. Contract Termination.* – All PPP contracts shall define all events that
22 may lead to its termination, including but not limited to, either party event of default,
23 force majeure and other no-fault termination events, and other termination events, as
24 may be agreed upon by the parties to the PPP contract.

25 For such events that may lead to contract termination, the contract shall
26 provide remedies, curing periods, lender step-in rights, and written notice
27 requirements agreed upon by both parties. The contract shall likewise provide that
28 termination shall take place only upon failure to remedy or cure the default in
29 accordance with the contract.

30 For avoidance of doubt, the PPP Project shall not be terminated for an event of
31 default without exhausting the corresponding remedy or curing period.

1 If a PPP contract is revoked, cancelled, or terminated prior to its completion,
2 either contracting party shall compensate the other party pursuant to terms as defined
3 in the PPP contract. The determination of the amount of compensation shall be in
4 accordance with guidelines to be issued by the PPP Governing Board.

5 *Sec. 22. Wind-up and Transfer Measures.* – All PPP contracts shall provide for
6 wind-up and transfer measures. Such provision shall include, among others, the
7 following:

8 (a) Mechanisms and procedures for the transfer of assets to the Implementing
9 Agency, as may be applicable;

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

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

14 (d) The provision, by the Private Proponent, of a warranty that the PPP Project
15 meets the project technical specifications, agreed system features, and
16 performance standards and services for a certain period as may be defined
17 in the IRR of this Act after the transfer of the PPP Project to the
18 Implementing Agency; and

19 (e) In case of JV arrangements, the compensation to which the Private
20 Proponent may be entitled in case of buy-out and transfer of assets to the
21 Implementing Agency.

22 *Sec. 23. Prohibition on the Issuance of Temporary Restraining Orders,*
23 *Preliminary Injunctions, Preliminary Mandatory Injunctions, and Similar Provisional*
24 *Remedies.* – No temporary restraining order, preliminary injunction, preliminary
25 mandatory injunction, temporary environmental protection order, or similar temporary
26 or provisional reliefs or remedies, shall be issued by any court, except the Supreme
27 Court, against any Implementing Agency or the PPP Center, its officials or employees,
28 or any person or entity, whether public or private acting under the government
29 direction, to restrain, prohibit, or compel the following acts:

30 (a) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;

31 (b) Awarding of any PPP contract;

- 1 (c) Acquisition, clearance, development of the right-of-way, site or location of
- 2 any PPP Project;
- 3 (d) Construction, operation and maintenance of any PPP Project;
- 4 (e) Commencement, execution, implementation, termination or rescission of
- 5 any PPP contract; and
- 6 (f) Undertaking or authorization of any other lawful activity necessary for such
- 7 PPP Project or contract.

8 This prohibition shall apply in all cases, disputes or controversies instituted by
9 any person, including, cases filed by bidders or those claiming to have rights through
10 such bidders. This prohibition shall not apply when the matter is of extreme urgency
11 involving a constitutional issue, such that unless a temporary restraining order is
12 issued, grave injustice and irreparable injury will arise. The applicant shall file a bond,
13 in an amount to be fixed by the court. The bond shall accrue in favor of the
14 government if the court should finally decide that the applicant was not entitled to the
15 relief sought.

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

21 Any temporary restraining order, preliminary injunction, preliminary mandatory
22 injunction, temporary environmental protection order, or similar temporary or
23 provisional reliefs or remedies issued in violation of this Section is void and of no force
24 and effect.

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

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

- 1 (a) Assist Implementing Agencies in identifying, prioritizing, developing, and
2 maintaining a pipeline of PPP Projects;
- 3 (b) Provide project advisory services and technical assistance to Implementing
4 Agencies, Approving Bodies, and other oversight agencies in all PPP-related
5 matters, and act as a procurement agent upon the request of the
6 Implementing Agency;
- 7 (c) Facilitate the appraisal and approval of PPP Projects by the NEDA Board and
8 the NEDA Board - ICC;
- 9 (d) Develop the capacities of Implementing Agencies, Approving Bodies, PPP
10 units referred to in Section 28 of this Act, and other relevant stakeholders
11 on PPPs;
- 12 (e) Manage and administer the Project Development and Monitoring Facility
13 (PDMF) as provided in Section 26 of this Act;
- 14 (f) Recommend plans, policies, and implementation guidelines related to PPP,
15 in consultation with appropriate oversight committees or agencies,
16 Implementing Agencies, private sector, and other relevant stakeholders;
- 17 (g) Ensure sustainability of the implemented PPP program and projects through
18 monitoring, documenting, and sharing the lessons learned and best
19 practices to Implementing Agencies, Approving Bodies, oversight
20 committees or agencies, and other relevant stakeholders;
- 21 (h) Provide regular monitoring and status reports on the implementation of all
22 PPP programs and projects entered into by Implementing Agencies,
23 including potential public interest concerns and violations of the PPP Act, to
24 the Office of the President, the Congress of the Philippines, relevant
25 oversight committees and agencies, and publish the same in the official
26 website of the PPP Center unless otherwise prohibited by existing laws,
27 rules, and regulations;
- 28 (i) Promote and market PPP programs and projects, in collaboration with other
29 government investment promotion agencies;
- 30 (j) Review PPP contracts pursuant to the IRR of this Act;
- 31 (k) Issue non-policy matter opinions relating to PPPs;

- 1 (l) Draft policy matter opinions for approval by the PPP Governing Board in
2 response to requests by government agencies and private entities;
- 3 (m) Serve as the central repository of all PPP Project documents, including
4 all executed PPP contracts and any subsequent amendment or supplement
5 thereto, including settlement agreements, entered into by Implementing
6 Agencies;
- 7 (n) Act as Secretariat to the PDMF Committee and the PPP Governing Board;
- 8 (o) Perform such other functions as may be necessary to achieve the objectives
9 and purposes of this Act.

10 The PPP Center may receive contributions, grants, and/or other funds from,
11 among others, government agencies and corporations, LGUs, local and foreign donors,
12 development partners, and private sector/institutions subject to applicable laws, rules
13 and regulations.

14 The PPP Center shall report directly to the PPP Governing Board and shall be
15 attached to the NEDA for purposes of policy and program coordination.

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

- 20 (a) Undertake the day-to-day management and supervise the operations of the
21 PPP Center;
- 22 (b) Recommend to the PPP Governing Board such policies and measures which
23 are deemed necessary for the effective exercise and discharge of the powers
24 and functions of the PPP Center;
- 25 (c) Sit as a member of the PPP Governing Board, INFRACOM - Technical Board,
26 and NEDA Board - ICC - Technical Board, and other inter-agency bodies in
27 cases where PPPs are concerned; and
- 28 (d) Perform such other functions as may be assigned by the PPP Governing
29 Board

30 *Sec. 25. PPP Governing Board.* – The PPP Governing Board, created under
31 Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is
32 hereby institutionalized. It shall be the overall policy-making body for all PPP-related

1 matters, including the PDMF. It shall be responsible for setting the strategic direction
2 of PPP programs and projects and in creating an enabling policy and institutional
3 environment for PPP.

4 The Board shall be composed of the following:

5 (a) The Secretary of Socioeconomic Planning as Chairperson;

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

7 (c) The Secretary of Budget and Management;

8 (d) The Secretary of Justice;

9 (e) The Secretary of Trade and Industry;

10 (f) The Secretary of the Interior and Local Government;

11 (g) The Secretary of Environment and Natural Resources;

12 (h) The Executive Secretary;

13 (i) The Executive Director of the PPP Center; and

14 (j) One (1) private sector representative from the infrastructure sector to be
15 appointed by the PPP Governing Board.

16 The principal members of the Board may designate their respective alternates,
17 who shall in no case be lower than Assistant Secretary, and whose acts shall be
18 considered the acts of their principals.

19 The presence of the Chairperson and five (5) other members of the Board shall
20 constitute a quorum and a majority vote of the members present shall be necessary
21 for the adoption of any issuance, order, resolution, decision, or other act of the Board
22 in the exercise of its functions. The Board shall act as a collegial body.

23 All issuances, orders, resolutions, decision, or other acts of the Board shall be
24 binding, unless otherwise stated by the Board.

25 *Sec. 26. Project Development and Monitoring Facility (PDMF).* – The *Project*
26 *Development and Monitoring Facility (PDMF)* referred to under EO No. 8, series of
27 2010, as amended by EO No. 136, series of 2013, is hereby institutionalized. The
28 PDMF shall be used for the procurement of advisory and support services related to
29 the preparation, structuring, evaluation, procurement, probity management, financial
30 close, and monitoring of implementation of PPP Projects.

31 The PDMF may be funded through the general appropriations act, official
32 development assistance, or other sources, subject to applicable laws, rules, and

1 regulations. Subject to the provisions of the General Appropriations Act and relevant
2 accounting and auditing rules and regulations, Implementing Agencies are hereby
3 authorized to reallocate funds their funds for purposes of the PDMF.

4 The PDMF shall continue to be managed and administered by the PPP Center
5 as a revolving fund. In order to sustain the PDMF, the PPP Center may recover
6 amounts disbursed and receive fees in accordance with the guidelines to be approved
7 by the PPP Governing Board. Such amount shall be retained and authorized to be used
8 by the PPP Center for the purposes indicated herein.

9 The PDMF Committee is hereby institutionalized which shall approve
10 applications for PDMF support submitted by the Implementing Agencies.

11 The PDMF Committee shall be composed of one (1) representative, who shall
12 in no case be lower than Assistant Secretary, from the following agencies: NEDA as
13 Chairperson, DOF as Vice Chairperson, DBM, and PPP Center. The PPP Center shall
14 continue to serve as the Secretariat for the PDMF Committee.

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

18 *Sec. 27. Creation of a Risk Management Fund.* – To ensure fiscal sustainability
19 and negotiate better financing terms of PPP Projects, there is hereby created a PPP
20 Risk Management Fund to be used for the payment of contingent liabilities arising
21 from PPPs in accordance with its contract terms. The PPP Risk Management Fund shall
22 be part of the Unprogrammed Appropriations of the annual budget.

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

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

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

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

5 *Sec. 28. Establishment of a PPP Unit.* – The Head of the Implementing Agency
6 may establish a PPP unit, an ad hoc body, or assign responsibility to an appropriate
7 unit to act as its PPP unit, which shall plan, oversee, and monitor PPP Projects of the
8 Implementing Agency.

9 Such unit shall be headed by a senior official and include as members, among
10 others, technical, finance, and legal personnel who are knowledgeable on PPPs.

11 Such unit shall provide reports to the Head of the Implementing Agency and
12 the PPP Center and shall comply with other reporting and monitoring processes and
13 procedures as may be required by the PPP Center, consistent with this Act.
14 Furthermore, the PPP Center shall provide such unit technical assistance and capacity
15 development necessary for the performance of its roles and functions.

16 *Sec. 29. Safekeeping and Public Disclosure of Contracts.* – Copies of all PPP
17 contracts executed under this Act shall be considered and appropriately kept safe and
18 preserved as public documents. The Implementing Agency and the PPP Center shall
19 publicly make available copies of PPP contracts through their respective websites,
20 unless otherwise prohibited by existing laws, rules and regulations and those
21 provisions in the contract which are proprietary, or may pose threats to national
22 security or public safety, the procedures for the disclosure of such shall be consistent
23 with applicable policies, laws, decrees, orders, rules and regulations.

24 *Sec. 30. Miscellaneous Provisions.* –

25 (a) Independent Consultants - An independent consultant, either individuals,
26 partnerships, or corporations, shall be procured by the Implementing
27 Agency to provide independent advice to the Implementing Agency and
28 Private Proponent or its Contractor for the design and construction of the
29 PPP Project, and monitoring of the performance of the contracting parties
30 during such phases of the PPP Project. As may be necessary, an
31 independent consultant may also be procured during the operations and
32 maintenance phase of the PPP Project.

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Costs of procurement of an independent consultant shall be borne equally by the Implementing Agency and the Private Proponent. Such costs borne by the Implementing Agency shall not be considered as a Subsidy.

(b) Conflict of Interest - All relevant parties shall, at all times, avoid conflicts of interest in the interpretation and implementation of this Act. Conflict of interest, as defined in Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. which refers to any act or omission tending to oppose or disrupt the faithful performance of one's duty or mandate, shall include personal, pecuniary, and regulatory conflicts of interests.

No Implementing Agency shall implement a PPP Project that it regulates: *Provided*, That any regulatory agency or body which shall implement a PPP Project pursuant to its mandate shall adopt a conflict mitigation and management plan.

In case a conflict of interest arises for any public officer or employee, the concerned parties shall inhibit themselves from the performance of their duties in connection to the project. In the case of a PBAC member with a conflict of interest, the concerned member shall resign from their position as PBAC member within thirty (30) calendar days from the time such conflict arises.

(c) Confidentiality of Information - Confidential business information submitted by entities, whether public or private, relevant to any activity being conducted pursuant to this Act as well as any deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copies, or disseminated: *Provided*, That the confidentiality rule shall not apply if the entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency.

- 1 (d) Alternative Sources of Financing - In addition to Private Proponent equity
2 and debt, alternative financial instruments such as Green Financing,
3 corporate or project bonds and securities, and other forms of capital market
4 financing may be allowed for PPP Projects, subject to the approval of
5 relevant regulatory bodies for such instruments under existing laws, rules,
6 and regulations.
- 7 (e) Mitigation of Interconnectivity and Interface Risks - All PPP Projects which
8 will interconnect or interface with a local or national facility, shall be required
9 to submit a Memorandum of Agreement (MOA) containing an
10 interconnection/interface plan agreed upon by all relevant parties. For
11 National PPP Projects, said MOA shall be submitted to the NEDA Board -
12 ICC; while for Local PPP Projects, said MOA shall be submitted to the
13 appropriate Approving Body.
- 14 (f) Private Legal and Medical Assistance - All the PBAC members and other
15 public officials providing services to the PBAC shall be authorized to engage
16 the services of private lawyers, or shall be provided with free legal
17 assistance, where a civil, criminal, or administrative action is filed against
18 them by reason of the performance of their official functions or duties,
19 unless they are finally adjudged in such action or proceeding to be liable for
20 gross negligence or misconduct or grave abuse of discretion. The PBAC
21 members shall also be entitled to medical assistance for injuries incurred in
22 the performance of their functions.
- 23 (g) Preferential Use of Filipino Labor, Domestic Materials, and Locally Produced
24 Goods - For the implementation of infrastructure projects under this Act,
25 Contractors or Facility Operators shall, as far as practicable, use Filipino
26 labor, domestic materials, and locally produced goods in different phases of
27 implementation.
- 28 (h) Land Value Capture Strategies - PPP Project design shall consider adopting
29 land value capture strategies to optimize the financial and economic value
30 of the PPP Project.

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1 *Sec. 31. Accountability in PPP Projects.* – The Head of the Implementing Agency
2 concerned shall at all times be accountable to PPP Projects undertaken through this
3 Act. The Private Proponent shall likewise be held accountable for the works it has
4 delivered and services it has rendered for a PPP Project. All PPP contracts are hereby
5 required to clearly define the scope of each party's accountability under the PPP
6 contract.

7 PPP Projects awarded under this Act shall be subject to the Government
8 Auditing Code of the Philippines and the 2009 Revised Rules of Procedures of the
9 Commission on Audit and any amendments thereto. The COA, in consultation and
10 coordination with the PPP Center, shall adopt and promulgate the necessary
11 framework and guidelines on accounting and auditing PPP Projects, respectively.

12 *Sec. 32. Administrative, Civil, and Penal Sanction.* – Any person, whether
13 private individual or public officer or employee, who commits any of the prohibited
14 acts hereunder proscribed, shall be punished by imprisonment from a minimum of
15 three (3) years to a maximum of six (6) years.

16 The following acts shall be prohibited:

- 17 (a) Downgrading the category of the Project Cost for purposes of evading the
18 required approvals under this Act;
- 19 (b) Representation that the Private Proponent has the necessary capitalization
20 to commence, complete, and implement the PPP Project when the same is
21 false in material respects;
- 22 (c) Falsification or insertion of certain provisions in the execution copy of the
23 contract which are materially and substantially different from the approved
24 final draft contract;
- 25 (d) Any violation of Sections 7, 9, 10, 11, 12, 13, 16, 19, 20, 21, 30(b), and
26 30(c) under this Act; and
- 27 (e) A public officer or employee, whether in connivance with others or acting
28 alone, negligently or by fraud commits a failure to ensure compliance with
29 the project terms as approved by the Approving Body, and the signed PPP
30 contract, by approving, issuing, or confirming any certification, required
31 documents, or deliverables of the Private Proponent, which are non-
32 compliant with existing rules, erroneous, not authentic, or fraudulent.

1 In addition, such acts committed by the Private Proponent and its concerned
2 officers shall cause the rescission of its contract for the said PPP Project without
3 compensation, the termination of the contract, the lapse of any applicable warranty
4 period, and the perpetual disqualification of the Private Proponent from participating
5 in any bidding or other contractual arrangement for any government project. This is
6 without prejudice to any other civil or administrative liability that erring officials or
7 Private Proponents may incur.

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

15 *Sec. 33. Joint Congressional Oversight Committee.* – A Joint Congressional
16 Oversight Committee is hereby created to oversee the implementation of this Act. The
17 Committee shall be composed of five (5) members each from the Senate and House
18 of Representatives to be designated by the Senate President and the Speaker of the
19 House of Representatives, respectively. The Committee shall be jointly chaired by the
20 respective Chairpersons of the House Committee on Public Works and Highways,
21 the House Committee on Appropriations, the Senate Committee on Public Works,
22 and the Senate Committee on Finance.

23 *Sec. 34. Implementing Rules and Regulations (IRR).* – The IRR Committee shall
24 be composed of the members of the PPP Governing Board, except for the private
25 sector representative. The Secretary of Socioeconomic Planning shall serve as its
26 Chairperson, and the PPP Center shall serve as its Secretariat.

27 The principal members of the IRR Committee may designate their respective
28 alternates, whose acts shall be considered the acts of their principals.

29 Within sixty (60) working days from the effectivity of this Act, the IRR
30 Committee shall, in consultation with the Department of Public Works and Highways,
31 Department of Transportation, and other key Implementing Agencies, LGUs, and

1 relevant stakeholders, issue the rules and regulations to implement the provisions of
2 this Act.

3 The IRR Committee may conduct, formulate, and prescribe, after due public
4 hearing and publication, amendments to the IRR, consistent with the provisions of this
5 Act. Amendments to the IRR shall take effect fifteen (15) calendar days after its
6 complete publication in the Official Gazette or in a newspaper of general circulation.

7 *Sec. 35. Transitory Clause.* – The provisions of this Act shall apply to all PPP
8 Projects: *Provided,* That this Act shall not, in any manner, operate to impair vested
9 rights already accruing to a party.

10 New projects and proposed variations already submitted by the Implementing
11 Agency for approval of the appropriate Approving Body, at the time of effectivity of
12 this Act, shall be governed by the legal framework in effect at the time the new project
13 or proposed variation was submitted to the appropriate Approving Body.

14 Upon the effectivity of this Act, JVs and other contractual arrangements for toll
15 road projects or toll facilities with a Private Proponent, including Supplemental Toll
16 Operation Agreement (STOA) and other similar arrangements, pending final approval
17 of the Toll Regulatory Board, shall be subject to the approval process under Section 7
18 of this Act.

19 All unexpended funds of the PPP Center at the end of the fiscal year, as well as
20 unreleased appropriations, and undisbursed funds after the end of the validity period,
21 shall revert to the National Treasury and shall not thereafter be available for
22 expenditure, except by subsequent legislative enactment. The amount necessary to
23 carry out the organizational changes of the PPP Center provided in this Act shall be
24 determined by the PPP Governing Board. Appropriations for succeeding years shall be
25 incorporated in its budget proposals, subject to the existing budgeting rules and
26 regulations.

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

29 *Sec. 36. Separability Clause.* – If any provision of this Act is declared
30 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
31 continue to be in full force and effect.

32 *Sec. 37. Repealing Clause.* – The following are hereby repealed:

- 1 (a) Republic Act No. 6957, as amended by Republic Act No. 7718 (An Act
2 Authorizing the Financing, Construction, Operation and Maintenance of
3 Infrastructure Projects by the Private Sector, and for other purposes);
- 4 (b) Executive Order No. 8, s. 2010, as amended by Executive Order No. 136, s.
5 2013 (Reorganizing and Renaming the Build-Operate-and-Transfer (BOT)
6 Center to the Public-Private Partnership (PPP) Center of the Philippines and
7 Transferring its Attachment from the Department of Trade and Industry to the
8 National Economic and Development Authority and for other purposes);
- 9 (c) Executive Order No. 78, s. 2012 (Mandating the Inclusion of Provisions on the
10 Use of Alternative Dispute Resolution Mechanisms in All Contracts Involving
11 Public-Private Partnership Projects, Build-Operate and Transfer Projects, Joint
12 Venture Agreements Between the Government and Private Entities and those
13 Entered into by Local Government Units);
- 14 (d) Section 8 of Executive Order No. 423, s. 2005 (Repealing Executive Order No.
15 109-A dated September 18, 2003 Prescribing the Rules and Procedures on the
16 Review and Approval of All Government Contracts to Conform with Republic Act
17 No. 9184, otherwise known as "The Government Procurement Reform Act");
- 18 (e) 2023 Revised Guidelines and Procedures for Entering into Joint Venture (JV)
19 Agreements Between Government and Private Entities;
- 20 (f) Section 3(a) of PD No. 1112, s. 1977 (Authorizing the Establishment of Toll
21 Facilities on Public Improvements, Creating a Board for the Regulation Thereof
22 and for other purposes);
- 23 (g) Second paragraph of Section 1 and Section 2 of PD No. 1894, s. 1983
24 (Amending the Franchise of the Philippine National Construction Corporation to
25 Construct, Maintain and Operate Toll Facilities in the North Luzon and South
26 Luzon Expressways to include the Metro Manila Expressway to serve as an
27 Additional Artery in the Transportation of Trade and Commerce in the Metro
28 Manila Area);
- 29 (h) PPP codes or JV ordinances of LGUs; and
30 (i) JV guidelines issued by GOCCs and other government agencies;

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1 Presidential Decree No. 1113, s. 1977 (Granting the Construction and
2 Development Corporation of the Philippines a Franchise to Operate, Construct and
3 Maintain Toll Facilities in the North and South Luzon Toll Expressways and for other
4 purposes) is also hereby repealed and declared to have expired thirty (30) years from
5 May 1, 1977.

6 All laws, decrees, orders, rules and regulations, and all other related national
7 and GOCC issuances, and local PPP or JV codes and ordinances, or parts thereof
8 inconsistent with or contrary to this Act are hereby repealed or amended accordingly

9 Upon effectivity of this Act, no other JV guidelines, PPP guidelines, codes, or
10 ordinances, whatsoever may be used by any government entity in entering into PPPs,
11 except those that are issued in accordance with this Act and its IRR.

12 Sec. 38. *Effectivity.* – This Act shall take effect fifteen (15) calendar days after
13 its publication in the Official Gazette or in a newspaper of general circulation.

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15 *Approved,*