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BY REPRESENTATIVES MOMO, SALCEDA, PLEYTO, RECTO, TAMBUNTING, HERRERA, VILLAFUERTE (L.R.), ALVAREZ (J.), AQUINO, BOSITA, CHATTO, CRUZ (A.), CRUZ (R.), DAGOOC, DOMINGO, DUJALI, DY (I.P.), EMANO, FORTES, FRESNEDI, GARCIA (M.A.), GARCIA (V.), GALEOS, LARA, LEE, LOYOLA, LUISTRO, MAGSINO, MARQUEZ, OLASO, PANALIGAN, REGENCIA, RIVERA, REVILLA (R.J.), ROBES, SALI, SALVAME, TAN (J.), TANCHAY, TARRIELA, TULFO (R.W.), UMALI, VILLARICA, YAP (C.), DIMAPORO (M.K.), DIMAPORO (S.A.), DY (F.), MADRONA, MARIÑO, OUANO-DIZON, ROQUE, SALIMBANGON, VALMAYOR, MARAÑON, CAGAS, YU (D.G.), YU (J.V.), TAN-TAMBUT, SINGSON-MEEHAN, CUA, ABALOS, TAN (K.M.), ROMUALDEZ (F.M.) AND DALIPE , PER COMMITTEE REPORT NO. 212

AN ACT
PROVIDING FOR THE ENABLING ENVIRONMENT TO FOSTER THE GROWTH OF PUBLIC-PRIVATE PARTNERSHIPS FOR INFRASTRUCTURE AND OTHER DEVELOPMENT PROJECTS

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

SECTION 1. ***Short Title.*** – This Act shall be known as the "Public-Private Partnership (PPP) Act."

SEC. 2. ***Declaration of Policy.*** – Section 20, Article II, of the Constitution declares that the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments. To this end, the State shall provide an enabling environment for the private sector to mobilize its resources for the purpose of financing, designing, construction, operations, and maintenance of infrastructure and other development projects. As provided for by law, the government shall foster robust private sector participation by providing financial incentives and by reducing costs of doing business.

It is further declared that the State shall protect the public interest by providing affordable, accessible, and efficient public services. In order to achieve better quality of PPP projects at lower costs, the State shall ensure equitable risk allocation in PPP projects that shall yield sufficient value for money, value for people, and value for planet.

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

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

The State recognizes the autonomy of Local Government Units in entering and implementing local PPP projects to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.

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

SEC. 3. *Scope and Application*. – This Act shall apply to all PPP projects undertaken by implementing agencies through PPP contracts with a private proponent, including the contractual arrangements stated under Section 5 of this Act.

This Act shall not cover management contracts, service contracts, divestments or dispositions, corporatization, incorporation of subsidiaries with private sector equity, onerous donations, gratuitous donations, and other contractual arrangements that do not demonstrate the necessary characteristics or elements of a PPP as provided for in Section 5 of this Act. In such cases, the implementing agencies shall implement the aforementioned arrangements in accordance with the provisions of other applicable laws.

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

(a) **Approving body** - refers to an entity authorized to approve PPP projects, in accordance with Section 7 of this Act;

(b) **Availability payments** - refer to predetermined payments by the implementing agency to the private proponent in exchange of delivering an asset or service in accordance with the contract. Availability payments shall not be construed as government undertakings, subsidy, or government contribution;

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

(d) **Contingent liability** - refers to an obligation that may or may not arise from events specified in a PPP contract, the occurrence, timing, and amount of which are uncertain. These events include *force majeure,* breach of government warranties, and material adverse government action, among others;

(e) **Contractor** - refers to any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the private proponent, and which shall undertake the construction or supply of equipment or services for PPP projects;

(f) **Facility operator** - refers to an entity with legal personality authorized under existing laws, which may or may not be the private proponent, that shall be responsible for operating and maintaining a facility, including but not limited to the collection of tolls, fares, fees, rentals or charges from facility users;

(g) **Government undertaking** - refers to any form of contribution or support, which the government may extend to a private proponent for the implementation of PPP projects, as provided under this Act;

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

(i) **Guarantee on demand** - refers to an agreement whereby the implementing agency guarantees a minimum amount of users, consumers, traffic, or other similar assumptions for the PPP project;

(j) **Guarantee on loan repayment** - refers to an agreement whereby the implementing agency guarantees to assume responsibility for the repayment of debt directly incurred by the private proponent in implementing the PPP project in case of a loan default;

(k) **Guarantee on private sector return** - refers to an agreement whereby the implementing agency guarantees to provide a predetermined rate of return on the investment of the private proponent. This shall not cover termination payments arising from government events of default;

(l) **Implementing agency** - refers to a Department, Bureau, Office, instrumentality, Commission, state university and college (SUC), local university and college (LUC), local government unit (LGU), or government-owned and controlled corporation (GOCC) as defined in Republic Act No. 10149 otherwise known as the "GOCC Governance Act of 2011", including government instrumentality with corporate powers (GICP), government corporate entity (GCE), and government financial institution (GFI), water district and economic zone authority which is hereby authorized to undertake PPP projects with a private proponent in accordance with its mandate or charter and the provisions of this Act;

(m) **Joint Venture** - refers to a 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 investment activity to deliver an infrastructure or development project typically provided by the public sector, subject to Section 11 of this Act;

(n) **Material adverse government action (MAGA)** - refers to any act of the government which the private proponent had no knowledge of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP contract, and that occurs after the effectivity of the contract, other than an act which is authorized or permitted under the PPP contract, which (1) specifically discriminates against the sector, industry, or project, and (2) has a significant negative effect on the ability of the private proponent to comply with any of its obligations under the approved PPP contract. MAGA includes regulatory risks;

(o) **Original proponent** - refers to the private proponent which submitted an unsolicited proposal that has been accepted, has been pre-qualified by the implementing agency, and has been conferred the "original proponent status" (OPS), as mentioned in Section 10 of this Act;

(p) **Private proponent** - refers to the private sector entity which has submitted an unsolicited proposal, or a bid submission in relation to a solicited PPP project, or has a contractual responsibility for the PPP project. The private proponent may be Filipino or foreign-owned, and may engage the services of a foreign contractor or foreign facility operator, subject to the requirements and limitations provided under existing laws, rules, and regulations;

(q) **Project cost** - refers to the total cost to be expended to plan, develop, and construct the project to completion stage, including the cost of feasibility studies, engineering and design, construction, equipment, land and right-of-way, taxes imposed on said cost, and development cost. For operations and maintenance PPP projects, the project cost refers to the present value of the costs in delivering the contracted service, including any reinvestment requirements as provided in the approved contract;

(r) **Solicited proposal** - refers to a submission by the private proponent to bid for a PPP project through open, fair, transparent, and competitive public bidding initiated by the implementing agency, subject to Section 9 of this Act;

(s) **Subsidy** - refers to an amount which the implementing agency may use to: (i) defray, pay for, or shoulder a portion of the project cost or the expenses and costs in operating or maintaining the project; (ii) bear a portion of capital expenses associated with the establishment of an infrastructure or development project, or any partial financing of the project or component thereof; (iii) contribute any property or assets to the project; (iv) in the case of LGUs, waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and (v) waive charges or fees relative to business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the private proponent, contractor, or facility operator for such payment, contribution, or support: *Provided,* That subsidy falling under items (i) and (ii) herein shall not exceed fifty percent (50%) of the total project cost;

(t) **Termination payment** - refers to the amount payable by the government or the private proponent on the occurrence of an event or series of events provided for in the PPP contract that results in the termination of said contract;

(u) **Unsolicited proposal** - refers to a project proposal submitted by a private proponent not in response to a formal solicitation or request issued by the implementing agency, subject to Section 10 of this Act; and

(v) **Viability gap funding (VGF)** - refers to a type of subsidy in the form of a financial support that the government may provide to a revenue-based PPP project with the objective of making fees affordable, while improving the commercial attractiveness of the project, excluding costs of right-of-way, resettlement, and real estate taxes.

SEC. 5. ***Public-Private Partnership (PPP).*** – A PPP is a contractual arrangement between the implementing agency and the private proponent for the financing, designing, constructing, operating and maintaining, or any combination thereof, of infrastructure or development projects which are typically provided for by the public sector, where each party shares in the associated risks. PPP projects may also be financed partly from direct government appropriations or from official development assistance (ODA) of foreign governments or institutions.

PPP projects may be undertaken through contractual arrangements, including the following:

(a) **Build-Lease-Transfer (BLT)** - refers to a contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the implementing agency concerned on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the implementing agency concerned.

(b) **Build-Own-and-Operate (BOO)** - refers to a contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the project proponent is allowed to recover its total investment, operating and maintenance costs and a reasonable return thereon by collecting tolls, fares, fees, rentals or charges from facility users: *Provided,* That all such projects, upon recommendation of the Investment Coordination Committee (ICC) of the National Economic and Development Authority (NEDA), shall be approved by the President of the Philippines. Under this arrangement, the project proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator.

(c) **Build-Operate-and-Transfer (BOT)** - refers to a contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fares, fees, rentals or charges not exceeding the rates proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the implementing agency concerned at the end of a fixed term that shall not exceed fifty (50) years: *Provided,* That in the case of an infrastructure or development facility whose operation requires a public utility franchise, the project proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned at least sixty percent (60%) by Filipinos. This build-operate-and-transfer contractual arrangement shall include a supply-and-operate scheme which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

(d) **Build-and-Transfer (BT)** - refers to a contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the implementing agency concerned, which shall pay the project proponent on an agreed schedule its total investment expended on the project, and a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development projects, including critical facilities which, for security or strategic reasons, must be operated directly by the government.

(e) **Build-Transfer-and-Operate (BTO)** - refers to a contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to a private entity such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity however operates the facility on behalf of the implementing agency under an agreement.

(f) **Contract-Add-and-Operate (CAO)** - refers to a contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided for by the project proponent.

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

(h) **Joint Venture (JV)** — refers to a contractual arrangement as defined in Section 4 of this Act.

(i) **Lease Agreements** - refers to a contractual arrangement with the private proponent for the rental of a government property for the implementation of a PPP project or a component thereof.

(j) **Operate-and-Maintain (OM)** - refers to a contractual arrangement whereby an existing facility is turned over to the project proponent to operate and maintain for a franchise, at the expiry of which the facility is reverted to the implementing agency.

(k) **Rehabilitate-Own-and-Operate (ROO)** - refers to a contractual arrangement whereby an existing facility is turned over to the project proponent to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility.

(l) **Rehabilitate-Operate-and-Transfer (ROT)** - refers to a contractual arrangement whereby an existing facility is turned over to the project proponent to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting, and consuming it within the host country.

(m) Such other variations as may be approved by the appropriate approving body.

Implementing agencies, in accordance with their respective mandates or charters, are hereby authorized to undertake PPP projects with a private proponent in accordance with the provisions of this Act.

SEC. 6. ***Identification of PPP Projects.*** – Implementing agencies shall include in their development plans, strategies, and investment programs those PPP projects that they shall undertake. In identifying such projects, the implementing agencies shall be guided by the following principles: effectiveness in meeting government objectives, appropriateness of the chosen procurement modality and source of funding, value for money, accountability and transparency, consumer rights, affordability, and public access, safety, and security. All PPP projects shall be consistent and responsive to national, local, and sectoral development and investment plans.

The implementing agencies shall submit their list of PPP projects or any update thereto to the appropriate oversight agencies, including the National Economic and Development Authority (NEDA), Regional Development Councils (RDCs), and the PPP Center, for information and in accordance with existing rules, regulations, and guidelines. Each proposed PPP project shall be subject to the approval of the appropriate approving body.

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

SEC. 7. ***Approval of PPP Projects.*** –

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

(1) **PPP projects undertaken by the National Government.** – These projects shall be approved as follows:

(i) Projects which cost above Five billion pesos (PhP 5,000,000,000.00) shall be submitted to the NEDA Board for approval, upon favorable recommendation of the Investment Coordination Committee of the NEDA (ICC-NEDA);

(ii) Projects with cost ranging from Three billion pesos (PhP 3,000,000,000.00) to Five billion pesos (PhP 5,000,000,000.00) shall be submitted to the ICC-NEDA for approval;

(iii) Projects which cost below Three billion pesos (PhP 3,000,000,000.00) shall be submitted to the following, as applicable, for approval:

a. To the head of the department or agency to which the implementing agency is attached to; or

b. To the respective board of the implementing agency, in case an implementing agency has a governing board. If an implementing agency has a governing board and is likewise an attached agency, this rule shall apply; or

c. To the head of the implementing agency, in case the implementing agency has no governing board or is not an attached agency.

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

(2) **PPP Projects undertaken by the LGUs or LUCs.** - Regardless of project cost, these projects shall be approved by the local *Sanggunians* in the case of LGUs, or by the Boards in the case of LUCs. Prior to approval, projects implemented by LGUs shall be confirmed by the respective local development council.

Proposed government undertakings using national government funds for PPP projects shall be submitted to the ICC-NEDA for approval, upon review and endorsement by the respective RDCs. Such government undertakings may include the following items to be provided for by the National Government to a PPP project undertaken by LGUs or LUCs: (i) guarantees on demand; (ii) guarantees on private sector return; (iii) guarantees on loan repayment; (iv) viability gap funding and other forms of subsidy; and (v) payment of contingent liability, including termination payments. Permits, clearances, licenses or endorsements from national government agencies required for PPP projects under laws, rules, and regulations, shall not be considered as government undertakings by the national government for PPP projects.

The ICC-NEDA shall render its decision on such requested government undertakings within sixty (60) days upon receipt of such request.

PPP projects undertaken by LGUs or LUCs affecting national development or master plans and national projects shall secure the endorsement of the national government through the respective RDCs, prior to approval by the local *Sanggunians* in the case of LGUs, or by the Boards in the case of LUCs. Such endorsement of the RDC shall be processed in the most expeditious manner.

A PPP project covering two or more LGUs may be implemented by the national government, subject to the approval process for national PPP projects; or by the next higher level of LGU, subject to the approval process for PPP projects, or by the LGUs concerned.

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

(b) The approving body shall assess all PPP projects based on its overall feasibility, in accordance with the principle of protecting public interest through the provision of affordable, accessible, and efficient public services. All PPP projects submitted to the approving body shall include proposed indicators to determine their benefits and outcomes, which shall be used in the monitoring and evaluation of PPP projects during implementation. To ensure that all risks associated with PPP projects are managed and mitigated accordingly, all PPP contracts to be entered into by the implementing agency shall adhere to the principles stipulated under the Generic Preferred Risk Allocation Matrix (GPRAM) issued by the ICC-NEDA.

(c) The appropriate approving body shall notify and advise, in writing, the implementing agency of its receipt and assessment of the completeness, in form and in substance, of the PPP project proposal. Upon complete submission of the requirements by the implementing agency, the appropriate approving body shall render its decision on the project within a period of ninety (90) days. The implementing agency shall be duly notified in writing of the decision of the approving body. The failure of the appropriate approving body to render its decision on the project within the said period of ninety (90) days from the complete submission of requirements, shall be deemed an approval thereof, and the implementing agency concerned may proceed with the procurement of the PPP project, without prejudice to any liability that the erring or negligent officials or employees may incur under existing laws.

(d) In order to facilitate a comprehensive and timely review of PPP projects, the ICC-NEDA, in the case of national PPP projects, and the PPP Governing Board, in the case of PPP projects undertaken by LGUs or LUCs, shall formulate guidelines, forms, and templates that shall be used by the implementing agency and the approving body in reviewing and approving the PPP project. The ICC-NEDA shall formulate guidelines on the approval of government undertakings using national government funds for PPP projects undertaken by LGUs or LUCs.

(e) The decision of the approving body to approve and implement the project under any of the contractual arrangements or variations thereof shall be final and executory unless the implementing agency can provide sufficient justifiable reason to convert the PPP project to another project under a different procurement modality.

SEC. 8. ***PPP Pre-qualification, Bids and Awards Committee.*** – The head of the implementing agency undertaking PPP projects shall create a PPP Pre-qualification, Bids and Awards Committee (PBAC), which shall be responsible for all aspects of pre-bidding and bidding process in solicited proposals, or the comparative challenge process in unsolicited proposals.

SEC. 9. ***Solicited Proposals.*** – Solicited proposals refer to submissions by the private proponent to bid for PPP projects through open, fair, transparent, and competitive public bidding initiated by the implementing agency. Government undertakings are allowed, subject to the approval of the approving body.

The public bidding may be conducted in a single-stage or two-stage bidding process, either manually or electronically.

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

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

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.

Any change in control of the private proponent or composition of the consortium shall be allowed upon approval of the implementing agency: *Provided,* That the private proponent or consortium has equal or better qualifications.

The PBAC shall declare failure of bidding in case of any of the following:

(1) If no bids are received;

(2) If there are no complying bids; or

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

The head of the implementing agency, upon the recommendation of the PBAC, may also declare a failure of bidding if, after advertisement, only one bidder applied for and met the pre-qualification requirements, unless otherwise provided in this Act.

Without prejudice to paragraph (a) of this Section, the implementing agency may consider, on a negotiated basis, a single complying and responsive bid in case of any of the following:

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

(2) If, after advertisement, only one bidder applied for and met the pre-qualification requirements: *Provided*, That such was allowed by the head of the implementing agency, upon recommendation of the PBAC;

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

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

The scope of negotiation between the implementing agency and the single complying and responsive bidder shall be limited to the financial proposal of the bidder and in compliance with the reasonable rate of return prescribed by the appropriate body.

SEC. 10. ***Unsolicited Proposals***. –

(a) **General.** - Unsolicited proposals refer to project proposals submitted by a private proponent not in response to a formal solicitation or request issued by the implementing agency.

The implementing agency may accept, reject an unsolicited proposal or convert the same into a solicited proposal, subject to the evaluation of eligibility and merits of the project, and other conditions set forth in this Section.

(b) **Limitations.** - Unsolicited proposals may be allowed for projects in the list of PPP projects, subject to the procedures and conditions set forth in this Section. In case the implementing agency has already incurred any development cost for the PPP project, such as the conduct of feasibility study, business case, and surveys, among others, for the last three (3) years, the private proponent shall undertake to reimburse the implementing agency of such documented development costs notwithstanding whether it is funded through government appropriations, grants, and other sources. Reimbursable development costs for such proposal and the procedures for such reimbursement shall be determined by the implementing agency.

An unsolicited proposal shall not contain any of the following government undertakings:

(1) Viability gap funding and other forms of subsidy;

(2) Payment of right-of-way (ROW) related costs;

(3) Performance undertaking;

(4) Exemption from any taxes as required by laws, except local taxes imposed by local government units;

(5) Guarantee on demand;

(6) Guarantee on loan repayment;

(7) Guarantee on private sector return;

(8) Government equity; and

(9) Contribution of assets, properties, and rights.

As an exception, items (2) and (9) herein may be allowed if the government receives appropriate compensation, which shall in no way be lower than the value of the ROW-related costs, assets, properties, and rights contributed. In the case of joint venture arrangements, items (8) and (9) may be allowed.

(c) **Special requirements.**

(1) Within three (3) working days from receipt of the unsolicited proposal, the implementing agency shall inform the PPP Center in writing of such receipt and shall furnish it with a copy of the proposal. The implementing agency and the PPP Center shall likewise publicly disclose such receipt by posting information in their respective websites.

(2) An unsolicited proposal involving ROW acquisition of a property, whether owned or not owned by the original proponent, may be considered: *Provided,* That the submission includes a ROW and resettlement plan and such other documents that may be required by the implementing agency or the appropriate approving body: *Provided, further,* That in no case shall the implementing agency be obliged to make an advance payment for such ROW acquisition and related costs.

(3) Any change in control of the original proponent or composition of the consortium shall be allowed: *Provided,* That the private proponent or consortium has equal or better qualifications.

(d) **Treatment of more than one unsolicited proposal for the same or similar project.** - In cases where the implementing agency receives more than one unsolicited proposal involving the same or similar project prior to acceptance of the proposal and granting of OPS, the implementing agency may choose among the submissions the best and most advantageous proposal for the government and the public, pursuant to the rules set forth in the rules and regulations to be issued to implement the provisions of this Act. The chosen proposal shall be accepted pursuant to subsection (g) of this Section and shall be subject to the approval process in Section 7 of this Act. Otherwise, the implementing agency may reject all such proposals, or bid out the project as a solicited proposal.

The implementing agency may seek the assistance of the PPP Center in the assessment, evaluation, and review of unsolicited proposals.

(e) **Rejection of an unsolicited proposal.** - The implementing agency shall have the right to automatically reject the unsolicited proposal upon receipt thereof, or formally reject it after evaluation. If the implementing agency fails to act on an unsolicited proposal within ninety (90) days upon receipt, the project proposal shall be deemed accepted and shall be subject to the approval process in Section 7 of this Act.

(f) **Conversion of an unsolicited proposal.** - The implementing agency may be allowed to convert an unsolicited proposal to a solicited proposal. If the implementing agency converts an unsolicited proposal to a solicited proposal, the implementing agency and the private proponent shall agree on the terms and conditions of such conversion: *Provided,* That the private proponent holds a valid OPS granted by the implementing agency and such terms and conditions are consistent with applicable laws, rules, and regulations.

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

(g) **Acceptance of an unsolicited proposal.** - The implementing agency shall have the right to set conditions and requirements on the project's structure, scope, and other relevant details, which the private proponent must comply with before its proposal can be accepted on a negotiated basis. If the implementing agency accepts such unsolicited proposal, it shall grant the private proponent who submitted the unsolicited proposal an OPS, which shall be valid for a period not exceeding six (6) months from the acceptance of the unsolicited proposal.

(h) **Comparative challenge.** - The implementing agency shall publish, within seven (7) calendar days after granting the OPS, an invitation for the submission of comparative proposals. Within six (6) months, after publication of the invitation, the implementing agency shall accept such comparative proposal.

The comparative challenge shall be conducted, either manually or electronically, by the implementing agency within the period proposed by it and approved by the appropriate approving body, taking into consideration the nature and complexity of the PPP project: *Provided,* That the period shall be reasonable, fair, and upholds competition: *Provided, further*, That the period shall not exceed six (6) months.

Comparative proposals shall be evaluated based on the best-and-final offer method between the top challenger and the original proponent.

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 MAGA.

SEC. 11. ***Joint Ventures.*** -- Joint ventures refer to contractual arrangements 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 investment activity. The investment activity of a joint venture 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 have the right to direct and govern the policies in connection therewith, with the intention to share both profits, risks and losses subject to agreement by the parties. A joint venture may be undertaken through a contract or by creating a joint venture company: *Provided,* That the following shall be observed:

(a) The formation of a joint venture company shall be in accordance with the legal mandate of the implementing agency and provisions of Republic Act 11232 otherwise known as the "Revised Corporation Code of the Philippines" and other applicable laws, rules, and regulations: *Provided,* That the equity contribution, which shall include contribution of assets, properties, and rights, and other allowable government undertakings or subsidy, of the government in a joint venture arrangement shall in no case exceed fifty percent (50%) of the project cost in the case of a contractual joint venture, or fifty percent (50%) of the outstanding capital stock of the joint venture company, subject to applicable laws, rules, and regulations. All equity contribution of the government and the private proponent shall be subject to fair valuation.

(b) The formation of the joint venture between the implementing agency and private proponent shall not prevent the parties from entering into other joint venture agreements or from profitably entering into other business ventures or markets: *Provided,* That such other ventures shall not compete with the joint venture between the parties.

(c) The cost of producing the particular product, conducting the activity, or performance of service shall be efficient towards earning potential profits for the implementing agency and the private proponent.

(d) The interests of the implementing agency and private proponent in and to any profits, losses, assets acquired, constructed, and otherwise derived in connection with the joint venture shall be proportionate to their respective contributions to the joint venture: *Provided,* That the implementing agency's share in any profits shall not be less than the proportion of its contribution to the joint venture.

(e) The parties may agree to a higher percentage of profit or lower percentage of losses for the government as compared to the actual percentage of government contribution in the joint venture. The implementing agency may accept any other more favorable terms as may be agreed upon with the private proponent in the joint venture agreement.

(f) At the end of the joint venture agreement, all properties covered by such agreement shall revert to the implementing agency. In cases where the government deems that divestment from the joint venture is in the best interest of the public, joint venture agreements may allow the private sector to take over the undertaking of the projects in its entirety. Such takeover shall be subject to the approval of the Privatization Council and in accordance with the requirements and procedure provided for in Executive Order No. 323, "Constituting the Privatization Council", series of 2000.

(g) All joint venture agreements, whether through a contractual joint venture or a joint venture company, shall be approved by the appropriate approving body pursuant to Section 7 of this Act. Furthermore, the selection process for a solicited and an unsolicited joint venture shall be in accordance with Sections 9 and 10 of this Act. All other rules provided for under this Act, such as on regulation of tolls, fares, fees, rentals and other charges, divestment, variation, expansion, or extension of a joint venture, project monitoring and supervision, shall be applicable to all joint venture arrangements.

(h) Formation of joint venture between the implementing agency and private proponent shall not change the nature or alter the mandate of the implementing agency entering into such joint venture. Subject to Section 18 or as expressly permitted under this Act, the original scope of the implementing agency's governmental responsibility shall not be diminished and shall not be a reason to avoid compliance of existing laws, rules, or regulations. A joint venture shall not serve as a vehicle to create new GOCCs.

SEC. 12. ***Protest Mechanism.*** – In all stages of the procurement process, the protest mechanism for national and local PPP projects shall be provided for in the rules and regulations to be promulgated to implement the provisions of this Act: *Provided,* That such protests shall be resolved in the most expeditious manner.

Unless otherwise provided for in this Act, in no case shall a motion for reconsideration or an appeal from any decision by the PBAC, head of implementing agency, or department secretary stay or delay the bidding process. No award shall however be made until a decision on any pending appeal is rendered or deemed denied.

SEC. 13. ***Mandatory Inclusion of Dispute Avoidance and Alternative Dispute Resolution Mechanisms in PPP Contracts.*** – All PPP contracts shall include provisions on the use of dispute avoidance and alternative dispute resolution (ADR) mechanisms. The contracting parties shall be given complete freedom to choose which ADR mechanisms and venue shall govern their dispute, as well as the rules or procedures to be followed involving the same.

SEC. 14. ***Adoption of Contract Management and Risk Mitigation Plans in PPP Projects.*** – In order to manage the fiscal risks arising from PPP projects, strengthen the credibility of the PPP program and projects among the private sector, and to ensure the timely compliance with the contractual obligations of implementing agencies, PPP projects undertaken through this Act shall require the adoption of contract management and risk mitigation plans. Such plans shall include the agreed project execution plan, the risks assumed by the government under the contract, risks assumed by the private proponent, risk mitigating measures, estimated costs to be incurred, target timeline to have each measure in place, and the appropriate action plan by the implementing agency to manage each type of risk. All plans shall be kept up-to-date and be submitted to the PPP Center for monitoring.

SEC. 15. *Project Supervision and Monitoring.* – Every PPP project shall be implemented in accordance with the project terms as approved by the appropriate approving body, as well as the signed PPP contract. The implementing agency shall be entitled to exercise sufficient powers of supervision, monitoring, and control over the implementation of each PPP contract it has entered into.

(a) **Supervision**. The implementing agency shall be responsible for the overall supervision of the PPP project and for submission of periodic monitoring reports, executed under oath, to the appropriate oversight agencies.

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

The PPP Center shall be responsible for the coordination and monitoring of PPP projects. For this purpose, the implementing agency shall submit to the PPP Center all executed PPP contracts, information on the status of projects implemented by, as well as copies of all unsolicited proposals and related documents received by the implementing agency, and loan or financing documents of the private proponent for the PPP project. At the end of every calendar year, the PPP Center shall submit a report to the President of the Philippines and to the Congress of the Philippines, particularly to the Senate President and the Speaker of the House of Representatives, and the Chairpersons of the Committee on Public Works and Highways, on the progress of all PPP projects.

SEC. 16. *Investment Incentives.* – PPP projects undertaken through this Act shall be entitled to various incentives under applicable laws and existing policies of the government.

SEC. 17. ***Investment Recovery Scheme.*** – In undertaking PPP projects, the private proponent shall be allowed to recover its investments and earn reasonable profit through any of the following schemes or a combination thereof:

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

(b) **Availability-based** - refers to a scheme where the implementing agency commits to make predetermined payments, which do not take the form of charges paid by the users of the works or service, but of regular payments by the implementing agency in exchange of delivering an asset or service in accordance with the contract.

Other non-monetary payments, such as commercial development rights, or the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements on land ownership, may also be allowed to supplement the foregoing schemes: *Provided,* That such non-monetary payments are subject to fair valuation as determined by appropriate government agency.

SEC. 18. ***Issuance of Franchise and Regulation of Tolls, Fares, Fees, Rentals and Other Charges.*** – Once a PPP contract is executed by the private proponent and the implementing agency, a presumption arises that the public interest will be served by the implementation of the PPP project covered thereby, and immediately upon application by the private proponent, the regulator shall automatically grant in favor of the private proponent a franchise to operate and maintain the facility including the collection of tolls, fares, fees, rentals, and other charges. The collection of tolls, fares, fees, rentals, and other charges in PPP projects undertaken through this Act shall be regulated in accordance with the principles of fairness, transparency, predictability, and protecting public interest. The initial tolls, fares, fees, rentals, and other charges and adjustments thereof shall be subject to the approval of the appropriate regulator prior to the bidding of the project and shall be included in the draft contract that will be circulated to all bidders prior to the bid submission date to be set by the implementing agency: *Provided,* That if the regulator does not render a decision on the initial tolls, fares, fees, rentals, and other charges and adjustments thereof within a period of sixty (60) days from its receipt of the proposed initial tolls, fares, fees, rentals, and other charges and adjustments thereof, and the proposed parameters, terms, and conditions of the project, the initial tolls, fares, fees, rentals, and other charges and adjustments thereof shall be deemed approved by the regulator.

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

In cases where the implementing agency fails to implement the initial rates for tolls, fares, fees, rentals, and other charges and adjustments thereof as stipulated in the PPP contract, the private proponent shall be allowed to recover the difference through measures consistent with the PPP contract and applicable laws, rules, and regulations.

In the absence of an appropriate regulator, the initial tolls, fares, fees, rentals, and other charges and adjustments thereof shall be approved by the approving body.

The implementing agency and the PPP Center shall post in their respective websites the approved initial tolls, fares, fees, rentals, and other charges and adjustments of a PPP project.

SEC 19. ***Contract Variation.*** – A contract variation may be approved by the head of the implementing agency: *Provided,* That:

(a) There is no increase in the agreed tolls, fares, fees, rentals and other charges or a decrease in the implementing agency's revenue or profit share derived from the project, except as may be allowed under a formula approved by the relevant regulator or the approving body, as the case may be.

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

(c) There is no additional government undertaking, or increase in the financial exposure of the government under the project.

Upon due diligence and recommendation of the head of the implementing agency, contract variations not covered by the above shall undergo approval by the approving body in terms of the impact on government undertakings, performance standards, and service charges.

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

In case of contract variation, any extension of the contract term shall not be a substitute to compensate the private proponent, without the written approval of the approving body. In the case of any government-approved variation, the performance security shall be proportionately increased.

Failure to secure clearance or approval of the head of the implementing agency, as provided in this Section, shall render the contract variation void. No variation shall be implemented before the variation is approved.

Any pending application for contract variation of an existing PPP project, that has not yet been approved prior to the effectivity of this Act shall be governed by this Act.

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

SEC. 20. ***Divestment.*** – Subject to the approval of the head of the implementing agency, a private proponent may divest its ownership, rights, or interest in a PPP project: ***Provided,*** That the divestment shall be after a holding or lock-in period as indicated in the PPP contract: *Provided, further,* That the new private proponent has equal or better qualifications as with the previous private proponent.

The implementing agency may divest its ownership, rights, or interest in a project: *Provided,* That projects which involve full or partial divestment or transfer of ownership of government assets or properties shall be subject to approval of the appropriate approving body and applicable laws, decrees, orders, rules and regulations.

SEC. 21. ***Contract Termination.*** – All PPP contracts shall define all events that may lead to its termination, including either party event of default, *force majeure* and other no-fault termination events, and other termination events, as may be agreed upon by the parties to the PPP contract.

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

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

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

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

(a) Mechanisms and procedures for the transfer of assets to the implementing agency, as may be applicable;

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

(c) The training of the personnel of the implementing agency or of a successor in the operation and maintenance of the PPP project;

(d) The provision, by the private proponent, of a warranty that the PPP project meets the project technical specifications, agreed system features, and performance standards and services for a certain period, as defined in the PPP contract after the transfer of the PPP project to the implementing agency; and

(e) In case of joint venture arrangements, the compensation to which the private proponent may be entitled in case of buy-out and transfer of assets to the implementing agency.

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

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

(b) Awarding of any PPP contract;

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

(d) Construction, operation and maintenance of any PPP project;

(e) Commencement, execution, implementation, termination or rescission of any PPP contract; and

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

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

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

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

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

The PPP Center shall have the following powers and functions:

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

(b) Provide project advisory services and technical assistance to implementing agencies, approving bodies, and other oversight agencies in all PPP-related matters, and act as a procurement agent upon the request of the implementing agency;

(c) Facilitate the appraisal and approval of PPP projects by the ICC-NEDA and the NEDA Board;

(d) Develop the capacities of implementing agencies, approving bodies, PPP units referred to in Section 29 of this Act, and other relevant stakeholders on PPPs;

(e) Manage and administer the Project Development and Monitoring Facility (PDMF) as provided for in Section 26 of this Act;

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

(g) Ensure sustainability of the implemented PPP program and projects through monitoring, documenting, and sharing the lessons learned and best practices to implementing agencies, approving bodies, oversight committees or agencies, and other relevant stakeholders;

(h) Provide regular monitoring and status reports on the implementation of all PPP programs and projects entered into by implementing agencies, including potential public interest concerns and violations of the PPP Act, to the Office of the President, the Congress of the Philippines, relevant oversight committees and agencies, and publish the same in the official website of the PPP Center unless otherwise prohibited by existing laws, rules, and regulations;

(i) Promote and market PPP programs and projects, in collaboration with other government investment promotion agencies;

(j) Review PPP contracts;

(k) Issue non-policy matter opinions relating to PPPs;

(l) Draft policy matter opinions for approval by the PPP Governing Board in response to requests by government agencies and private entities;

(m) Serve as the central repository of all PPP project documents, including all executed PPP contracts and any subsequent amendment or supplement thereto, including settlement agreements, entered into by implementing agencies;

(n) Act as Secretariat to the PDMF Committee and the PPP Governing Board; and

(o) Perform such other functions as may be necessary to achieve the objectives and purposes of this Act.

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

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

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

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

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

(c) Sit as a member of the PPP Governing Board, INFRACOM - Technical Board, and ICC-NEDA - Technical Board, and other inter-agency bodies in cases where PPPs are concerned; and

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

SEC. 25. ***PPP Governing Board.*** – The PPP Governing Board, created under Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is hereby institutionalized. It shall be the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of PPP programs and projects and in creating an enabling policy and institutional environment for PPP.

The Board shall be composed of the following:

(a) Secretary of Socioeconomic Planning as Chairperson;

(b) Secretary of Finance as Vice-Chairperson;

(c) Secretary of Budget and Management;

(d) Secretary of Justice;

(e) Secretary of Trade and Industry;

(f) Secretary of the Interior and Local Government;

(g) Secretary of Environment and Natural Resources;

(h) Executive Secretary;

(i) Executive Director of the PPP Center; and

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

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

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

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

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

The PDMF Committee is hereby institutionalized which shall approve applications for PDMF support submitted by the implementing agencies.

The PDMF Committee shall be composed of the representatives of the following Departments:

a) Representative of the NEDA as Chairperson;

b) Representative of the DOF as Vice Chairperson;

c) Representative of the DBM as Member; and

d) Representative of the PPP Center as Member.

Provided, That the respective representatives shall at least be an Assistant Secretary of the Department. The PPP Center shall continue to act as Secretariat of the PDMF Committee.

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

SEC. 27. ***Establishment of a PPP Unit.*** – The head of the implementing agency may establish a PPP unit, an ad hoc body, or assign responsibility to an appropriate unit to act as its PPP unit, which shall plan, oversee, and monitor PPP projects of the implementing agency.

A PPP unit shall be headed by a senior official and include as members personnel with technical, financial, and legal competencies who are knowledgeable on PPP management and operations.

The PPP unit shall provide reports to the head of the agency and the PPP Center and shall comply with other reporting and monitoring processes and procedures as may be required by the PPP Center, consistent with this Act. Furthermore, the PPP Center shall provide the necessary technical and capacity development assistance to PPP Unit personnel to enhance the performance of their role and functions.

SEC. 28. ***Safekeeping and Public Disclosure of Contracts.*** – Copies of all PPP contracts executed under this Act shall be considered and appropriately kept safe and preserved as public documents. The implementing agency and the PPP Center shall publicly make available copies of PPP contracts through their respective websites, unless otherwise prohibited by existing laws, rules and regulations and those provisions in the contract which are proprietary, or may pose threats to national security or public safety, the procedures for the disclosure of such shall be consistent with applicable policies, laws, decrees, orders, rules and regulations.

SEC. 29. ***Miscellaneous Provisions.*** –

(a) **Independent consultants**. - Independent consultants, either individuals, partnerships, or corporations, may be procured by the implementing agency to provide independent advice to the implementing agency and private proponent or its contractor for the design and construction of the PPP project, and monitoring of the performance of the contracting parties during such phases of the PPP project. As may be necessary, an independent consultant may also be procured during the operations and maintenance phase of the PPP project.

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, refers to any act or omission tending to oppose or disrupt the faithful performance of one's duty or mandate, including 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.

(d) **Alternative sources of financing.** - In addition to private proponent equity and debt, alternative financial instruments such as Green Financing, corporate or project bonds and securities, and other forms of capital market financing may be allowed for PPP projects, subject to the approval of relevant regulatory bodies for such instruments under existing laws, rules, and regulations.

(e) **Mitigation of interconnectivity and interface risks.** - All PPP projects which shall interconnect or interface with a local or national facility, shall be required to submit a Memorandum of Agreement (MOA) containing an interface plan agreed upon by all relevant parties. The MOAs for PPP projects to be undertaken by the National Government shall be submitted to the ICC-NEDA and the PPP Center, while those on PPP projects to be undertaken by the LGUs and LUCs, shall be submitted to the appropriate approving body and the PPP Center.

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

(g) **Preferential use of Filipino labor, domestic Materials, and locally produced goods.** - For the implementation of infrastructure projects under this Act, contractors or facility operators shall, as far as practicable, use Filipino labor, domestic materials, and locally produced goods in different phases of implementation.

(h) **Land value capture strategies.** – The design of PPP projects shall adopt land value capture strategies to optimize the financial and economic value of the PPP project.

SEC. 30. ***Accountability in PPP Projects.*** – The head of the implementing agency concerned shall at all times be accountable for PPP projects. The private proponent shall likewise be held accountable for the works it has delivered and services it has rendered for a PPP project. All PPP contracts are hereby required to clearly define the scope of each party's accountability under the PPP contract.

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

SEC. 31. ***Administrative, Civil, and Penal Sanctions.*** – Any person, whether private individual or public officer or employee, who commits any of the prohibited acts hereunder proscribed, shall be punished by imprisonment from a minimum of three (3) years to a maximum of six (6) years.

The following acts shall be prohibited:

(a) Downgrading the category of the project cost for purposes of evading the required approvals under this Act;

(b) Representation that the private proponent has the necessary capitalization to commence, complete, and implement the PPP project when the same is false in material respects;

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

(d) Negligence or fraud by a public officer or employee in the failure to ensure compliance with the approved terms and conditions of a project as defined in the contract, whether committed alone or in connivance with others;

(e) Approving, issuing, or confirming any certification, required documents, or deliverables of the private proponent which are non-compliant with existing rules, are erroneous, inauthentic, or fraudulent.

In addition, such acts committed by the private proponent and its concerned officers shall cause the rescission of its contract for the said PPP project without compensation, the termination of the contract, the lapse of any applicable warranty period, and the perpetual disqualification of the private proponent from participating in any public bidding or from being a party to other contractual arrangements for any government project. This is without prejudice to any other civil or administrative liability that erring officials or private proponents may incur.

The liability of the public officer or employee or former public officer or employee for any violation of the prohibitions under this Act shall survive the resignation or retirement of said public officer or employee, and shall include the prohibition for the erring officer to hold public office, either as an elected, or an appointed government official on any local or national position, or to act as a consultant for the Philippine Government.

SEC. 32. ***Joint Congressional Oversight Committee.*** – A Joint Congressional Oversight Committee is hereby created to oversee the implementation of this Act. The

Committee shall be composed of five (5) members each from the Senate and House of Representatives to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The Committee shall be jointly chaired by the respective Chairpersons of the House Committee on Public Works and Highways, the House Committee on Appropriations, the Senate Committee on Public Works, and the Senate Committee on Finance.

SEC. 33. ***Implementing Rules and Regulations (IRR)***. – Within sixty (60) days from the effectivity of this Act, the PPP Governing Board shall, in coordination with Department of Public Works and Highways, Department of Transportation, and other key implementing agencies, LGUs, and relevant stakeholders, issue rules and regulations to ensure the efficient implementation of the provisions of this Act within sixty (60) days upon the effectivity of this Act. The PPP Center shall serve as its Secretariat. As the necessity arises, the PPP Governing Board may amend such rules and regulation.

In connection thereto, the PPP Governing Board shall create a Committee to draft such rules and regulations for submission to the PPP Governing Board. The principal members of the Committee may designate their respective alternates, whose acts shall be considered the acts of their principals.

The PPP Governing Board may conduct, formulate, and prescribe, after due public hearing and publication, amendments to the rules and regulations, consistent with the provisions of this Act.

SEC. 34. ***Transitory Clause***. – The provisions of this Act shall apply to all PPP projects: *Provided,* That this Act shall not, in any manner, operate to impair vested rights already accruing to a party.

New projects and proposed variations already submitted by the implementing agency for approval of the appropriate approving body, at the time of effectivity of this Act, shall be governed by the legal framework in effect at the time the new project or proposed variation was submitted to the appropriate approving body.

Upon the effectivity of this Act, joint ventures and other contractual arrangements for toll road projects or toll facilities with a private proponent, including Supplemental Toll Operation Agreement (STOA) and other similar arrangements, to be submitted to, or pending final approval of the Toll Regulatory Board, shall be subject to the approval process under Section 7 of this Act.

All unexpended funds of the PPP Center at the end of the fiscal year, as well as unreleased appropriations, and undisbursed funds after the end of the validity period, shall revert to the National Treasury and shall not thereafter be available for expenditure, except by subsequent legislative enactment. The amount necessary to carry out the organizational changes of the PPP Center provided for in this Act shall be determined by the PPP Governing Board.

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

SEC. 35. ***Separability Clause.*** – If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

SEC. 36. ***Repealing Clause.*** – Republic Act No. 6957, as amended by Republic Act No. 7718 (An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other purposes) is hereby repealed.

The second paragraph of Section 1 of Presidential Decree No. 1894, granting the Philippine National Construction Corporation the right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon

Expressway or Metro Manila Expressway or to divert the original route and change the original end-points of the North Luzon Expressway or South Luzon Expressway as may be approved by the Toll Regulatory Board is hereby repealed.

All laws, decrees, orders, rules and regulations, and all other related national and GOCC issuances, and PPP or joint venture codes and ordinances, or parts thereof inconsistent with or contrary to this Act are hereby amended accordingly.

SEC. 37. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,