

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

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SENATE

RECEIVED BY

S.B. No. 765

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Introduced by Senator SONNY ANGARA

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**AN ACT**  
**PROMOTING AND AUTHORIZING PUBLIC – PRIVATE PARTNERSHIPS FOR**  
**THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF**  
**INFRASTRUCTURE FACILITIES, APPROPRIATING FUNDS THEREFOR, AND**  
**FOR OTHER PURPOSES**

EXPLANATORY NOTE

With the Marcos administration's vow to continue infrastructure spending through the "Build, Build, Build" Program, it is appropriate to refile this bill to support the implementation of various infrastructure projects throughout the country.

Government has traditionally been in charge of providing and financing infrastructure development throughout the country. However, investment requirements have exceeded the capacities of the government, prompting the public sector to enable private participation in infrastructure development and include utilities, transportation, property development, and information technology, through contractual arrangements such as build-operate-transfer (BOT).

Reforms to the BOT framework are necessary to better address the needs and qualms of investors while ensuring the best value-for-money outcomes for the government, as well as the best interest of the user community. After nearly three decades since the passage of the BOT Law, the concept of BOT has evolved into what we now know as public-private partnerships (PPP). Moreover, through years of experience in project implementation, the government has broadened and deepened its understanding of structuring PPP deals and managing PPP contracts. For the country to usher in a "Golden Age of Infrastructure" and maximize economic gains,

the private sector must be encouraged to make investments through a modernized and enhanced PPP law.

In line with the Philippine Development Plan 2017-2022 and the thrust and priorities of the current administration, this bill seeks to enhance and reinforce the PPP Program with the goal of accelerating infrastructure development. Specifically, it seeks to create an enabling environment for PPPs where rules are fair, clear, and equally applied to all. Pertinent government regulations will also be rationalized and benchmarked against international standards and best practices.

Under the measure, the coverage of PPPs will be expanded to include joint ventures, and operation and maintenance contracts. It also aims to protect public interest by ensuring fair and reasonable pricing and timely delivery of quality infrastructure, goods and services, as well as by requiring full public disclosure of all PPP transactions.

This bill shall also empower Local Government Units (LGUs) by providing them the power to approve local PPP projects and requiring them to only elevate the projects for Investment Coordination Committee (ICC) approval upon reaching threshold amounts or when needing any national government participation.

With the framework proposed under this bill, we can attract more PPPs to help the government speed up the delivery of public infrastructure and improve the related services to boost the growth of the Philippine economy.

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



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

1 SECTION. 1. *Short Title.* – This Act shall be known as the “Public-Private  
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, constructing, operating and  
8 maintaining development programs and projects traditionally undertaken by the  
9 government. As provided by law, the government shall foster robust private sector  
10 participation by providing financial 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 take into account that all PPP Projects yield sufficient value for money,  
15 value for people, and value for planet.

16 The State shall pursue a policy of maintaining a reasonable balance on financing  
17 of infrastructure and other development projects through all means available that will

1 most effectively meet the objectives of the government. These may include  
2 appropriations, official development assistance, and PPPs, as well as combinations  
3 thereof. The government shall determine the appropriate financing by considering  
4 budget availability, timelines, stakeholder commitments, and market capacity.

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

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

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

16 *Sec. 4. Definition of Terms.* – The following terms used in this Act shall have  
17 the meanings stated below:

18 (a) *Approving Body* – refers to an entity authorized to approve PPP projects  
19 in accordance with Section 7 of this Act;

20 (b) *Construction* – refers to new construction, rehabilitation, improvement,  
21 expansion, alteration, and related works and activities including the  
22 necessary supply and installation of equipment, materials, labor and  
23 services, and related items;

24 (c) *Contractor* – refers to any entity allowed under Philippine laws, which  
25 may or may not be the Private Proponent, and which shall undertake  
26 the actual construction or supply of equipment or services for PPP  
27 Projects;

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

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

1 government financial institutions (GFIs), which is authorized to  
2 undertake PPP Projects;

3 (m) *Joint Venture (JV)* – refers to a contractual arrangement whereby both  
4 the Implementing Agency and the Private Proponent contribute to pool  
5 resources comprising of capital, services, or assets (including  
6 equipment, land or intellectual property) to jointly undertake a specific  
7 investment activity. The investment activity shall be for the purpose of  
8 accomplishing a specific goal with the end view of facilitating private  
9 sector initiative in a particular industry or sector, and eventually  
10 transfer the activity to either the private sector under competitive  
11 market conditions or to the government. The JV involves a community  
12 or pooling of interests in the performance of the investment activity,  
13 and each party shall have the right to direct and govern the policies in  
14 connection therewith with the intention to share both profits, and risks  
15 and losses subject to agreement by the parties. A JV may be  
16 undertaken through a contract or by creating a JV entity;

17 (n) *Local PPP Project* – refers to a PPP Project that shall be undertaken by  
18 LGUs, and local universities and colleges (LUCs) as defined in RA 10931;

19 (o) *National PPP Project* – refers to a PPP Project that shall be undertaken  
20 by the national government, GOCCs including water districts, GICPs,  
21 GCEs, GFIs, and SUCs as defined in RA 10931;

22 (p) *Operation and Maintenance* – refers to activities necessary and  
23 incidental to preserve or restore the operational status of an asset or  
24 system based on specified performance indicators;

25 (q) *Original Proponent* – refers to the Private Proponent which submitted  
26 an unsolicited proposal which has been accepted and pre-qualified by  
27 the Implementing Agency, and has been conferred the "Original  
28 Proponent" status, as mentioned in Section 10 of this Act;

29 (r) *PPP Project* – refers to infrastructure or development programs,  
30 projects, activities, facilities, and related services normally financed and  
31 undertaken by the public sector, but which shall now be wholly or partly

1           financed, designed, built, operated and maintained by the private  
2           sector;

3           (s) *Private Proponent* – refers to the private sector entity which shall either  
4           have submitted an unsolicited proposal, or a bid submission in relation  
5           to a solicited PPP Project, and/or have a contractual responsibility for  
6           the PPP Project. The Private Proponent may be Filipino or foreign-  
7           owned, and may engage the services of a foreign Contractor or foreign  
8           Facility Operator, subject to requirements and limitations provided  
9           under the Philippine Constitution;

10          (t) *Project Cost* – refers to the estimated cost of the PPP Project. The  
11          guidelines in determining the Project Cost shall be prescribed in the IRR  
12          of this Act;

13          (u) *Subsidy* – refers to an agreement whereby the Implementing Agency  
14          will: (a) defray, pay for, or shoulder a portion of the Project Cost or the  
15          expenses and costs in operating or maintaining the project; (b)  
16          contribute any property or assets to the project; (c) waive or grant  
17          special rates on real property taxes on the project during the term of  
18          the contractual arrangement; and/or (d) waive charges or fees relative  
19          to business permits or licenses that are to be obtained for the  
20          construction of the project, all without receiving payment or value from  
21          the Private Proponent and/or Facility Operator for such payment,  
22          contribution, or support. Provided, That under no circumstance shall the  
23          total subsidy exceed fifty percent (50%) of the total Project Cost;

24          (v) *Termination Payment* – refers to the amount payable by the  
25          government or the Private Proponent on the occurrence of an event or  
26          series of events provided for in the PPP contract that results in the  
27          termination of said contract;

28          (w) *Viability Gap Funding (VGF)* – refers to a type of Subsidy in the form  
29          of a financial support that the government may provide to a revenue-  
30          based PPP Project with the objective of making fees affordable, while  
31          improving the commercial attractiveness of the project, excluding costs  
32          of right-of-way, resettlement, and real estate taxes.

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

8            *Sec. 6. Identification of PPP Projects.* – Implementing Agencies shall include in  
9 their development plans, strategies, and investment programs those priority PPP  
10 Projects that they want to undertake. In identifying those projects, the Implementing  
11 Agencies shall be guided by the following principles: effectiveness in meeting  
12 government objectives, appropriateness of the chosen procurement modality and  
13 source of funding, value for money, accountability and transparency, consumer rights,  
14 affordability, public access, safety, and security. Priority projects shall be consistent  
15 with the national and local development and Investment plans.

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

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

22            *Sec. 7. Approval of PPP Projects.* – (a) The approval of PPP projects under this  
23 Act and its IRR shall be in accordance with the following:

24            1. *National PPP Projects* – National PPP Projects shall be approved as  
25 follows:

- 26            i. Projects costing five billion pesos (P5,000,000,000.00) and  
27 below, shall be submitted to the Investment Coordination  
28 Committee of the National Economic and Development Authority  
29 (ICC-NEDA) for approval;
- 30            ii. Projects costing above five billion pesos (P5,000,000,000.00)  
31 shall be submitted to the NEDA Board for approval, upon  
32 favorable recommendation by the ICC-NEDA.

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

3           2. *Local PPP Projects* – Local PPP Projects shall be approved by the local  
4 Sanggunians, regardless of the Project Cost, Provided, that Local PPP Projects  
5 involving Government Undertakings using national government funds shall require the  
6 approval of the ICC-NEDA. National Government Undertakings shall include, among  
7 others, the following items to be provided by the national government to a Local PPP  
8 Project: (i) Guarantees on Demand, (ii) Guarantees on Private Sector Return, (iii)  
9 Guarantees on Loan Repayment; (iv) Viability Gap Funding and other forms of  
10 Subsidy; (v) payment of Contingent Liability, including Termination Payments.

11           Provided, Further, That, permits, clearances, licenses or endorsements from  
12 national government agencies required for Local PPP Projects under laws, rules, and  
13 regulations, shall not be considered as Government Undertakings by the national  
14 government for Local PPP Projects.

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

22           (b) The appropriate Approving Body shall notify and advise, in writing, the  
23 Implementing Agency of its receipt and assessment of the  
24 completeness, in form and in substance, of the PPP Project proposal.  
25 Upon complete submission of the requirements by the Implementing  
26 Agency, the appropriate Approving Body shall render its decision on the  
27 project within forty (40) working days therefrom. The Implementing  
28 Agency shall be duly notified in writing of the decision of the Approving  
29 Body on or before the end of the 40-day period. The failure of the  
30 appropriate Approving Body to render its decision on the project within  
31 the specified period shall be deemed an approval thereof and the  
32 concerned Implementing Agency may proceed with the procurement of

1 the PPP Project, without prejudice to any liability that the erring or  
2 negligent officials or employees may incur under existing laws.

3 In cases of Local PPP Projects requiring national government  
4 undertakings, the ICC-NEDA shall be given twenty (20) working days  
5 from the receipt of the proposal for the Local PPP Project to render its  
6 decision on the requested government undertaking. In the event of  
7 disapproval of the requested government undertaking, the  
8 Implementing Agency has the right to resubmit the request for approval  
9 of the national government undertaking in accordance with the  
10 provisions of the IRR of this Act. The disapproval of the requested  
11 government undertaking shall not be construed as a disapproval of the  
12 Local PPP Project.

13 (c) In order to facilitate a comprehensive and timely review of the PPP  
14 Project, the PPP Center, in coordination with the ICC-NEDA, shall  
15 formulate forms and templates that shall be used by the Implementing  
16 Agency and the Approving Body In reviewing and approving the PPP  
17 Project, as well as the national government undertaking involved in local  
18 PPP Projects.

19 (d) The decision of the appropriate Approving Body to approve and  
20 implement the project under any of the contractual arrangements or  
21 variations thereof under this Act shall be final and executory, unless the  
22 Implementing Agency can provide sufficient justifiable reason to convert  
23 the PPP Project to another project under a different procurement  
24 modality.

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

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

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

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

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

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

23            (c) *Failure of Bidding.* The Implementing Agency shall declare failure of bidding  
24 in case of any of the following: (1) If no bids are received; or (2) If there are no  
25 complying bids.

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

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

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

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

6 (2) If, after advertisement, only one bidder applied for and met the pre-  
7 qualification requirements, provided such was allowed by the ICC-  
8 NEDA or the local Sanggunian, whichever is applicable;

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

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

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

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

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

25 (b) *Limitations.* Unsolicited proposals may be considered for projects that are  
26 not in the priority list and projects that are in the priority list. Provided, That in case  
27 the Implementing Agency has already incurred any development cost for the priority  
28 project, such as the conduct of feasibility study, business case, and surveys, among  
29 others, for the last five (5) years, the Private Proponent must undertake to reimburse  
30 the Implementing Agency of such documented development costs. Reimbursable  
31 development costs for a specific priority project shall be determined by the  
32 Implementing Agency.

1            Provided, further, That any unsolicited proposal shall not contain any of the  
2 following Government Undertakings:

- 3            (i)    Viability Gap Funding and other forms of Subsidy;
- 4            (ii)    Payment of Right-of-Way related costs;
- 5            (iii)    Performance undertaking;
- 6            (iv)    Exemption from any taxes as required by laws, except local taxes imposed  
7            by local government units;
- 8            (v)    Guarantee on Demand;
- 9            (vi)    Guarantee on Loan Repayment;
- 10          (vii)    Guarantee on Private Sector Return;
- 11          (viii)    Government equity except in JV arrangements; and
- 12          (ix)    Contribution of assets, properties, and rights except in JV arrangements.

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

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

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

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

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

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

7 (d) *Rejection of an Unsolicited Proposal.* The Implementing Agency shall have  
8 the right to automatically reject the unsolicited proposal upon receipt thereof, or  
9 formally reject it after evaluation. If the Implementing Agency fails to act on an  
10 unsolicited proposal within sixty (60) working days from receipt thereof, the project  
11 proposal shall be deemed rejected, without prejudice to any liability that the erring or  
12 negligent officials or employees may incur under existing laws. In cases of automatic  
13 rejection and rejection resulting from inaction, the paid administrative fee shall be  
14 returned to the appropriate Private Proponent, and shall be without prejudice to the  
15 right of the Private Proponents to resubmit their proposals until such time that the  
16 proposal has been formally rejected by the Implementing Agency, in which case, the  
17 administrative fee shall not be returned. A formal rejection is a written rejection notice  
18 to the Private Proponent stating the reason/s why the submitted proposal was  
19 rejected.

20 (e) *Conversion of an Unsolicited Proposal.* The Implementing Agency may be  
21 allowed to convert an unsolicited proposal to a solicited proposal, subject to the  
22 conditions set forth in the IRR of this Act. If the Implementing Agency converts an  
23 unsolicited proposal and uses it as basis for public bidding, the Private Proponent shall  
24 be reimbursed of the cost incurred in the preparation of the proposal, such as the cost  
25 of any feasibility study undertaken: Provided, That such reimbursement shall be in an  
26 amount not exceeding six percent (6%) of the total Project Cost, excluding the cost  
27 of right-of-way acquisition: Provided, further, that reimbursement shall be paid in full  
28 by the winning bidder as a requirement for the award of the contract, or by the  
29 Implementing Agency in case of two consecutive failures of bidding. In the event the  
30 original Private Proponent wins the solicited bid, it shall return to the Implementing  
31 Agency the reimbursed amount. The PPP Governing Board, as referred to in Section  
32 23 of this Act, may adjust such reimbursement amount as the need arises.

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

7 (g) *Comparative Challenge.* The Implementing Agency shall publish an  
8 invitation for the submission of comparative proposals. The comparative challenge  
9 shall be conducted either manually or electronically, by the Implementing Agency  
10 within the period proposed by it and approved by the appropriate Approving Body,  
11 taking into consideration the nature and complexity of the PPP Project; Provided, that  
12 the period shall start from the date of last publication of the invitation for the  
13 submission of comparative proposals and shall be reasonable, fair, and upholds the  
14 competitive nature of public bidding. Comparative proposals shall be evaluated based  
15 on the best-and-final offer method and the bid bonus system, the procedure of which  
16 shall be discussed in the IRR. If no other proposal is received after the challenge  
17 period, the PPP contract shall be awarded to the Original Proponent.

18 Sec. 11. *Protest Mechanism.* – In all stages of the procurement process, 14 the  
19 following protest protocol shall be strictly followed:

20 (a) In case of National PPP Projects:

- 21 i. Decisions of the PBAC may be questioned by filing a motion  
22 for reconsideration within fifteen (15) working days from  
23 receipt thereof. The PBAC shall act on the motion and render  
24 a decision within thirty (30) calendar days, otherwise it shall  
25 be deemed denied.
- 26 ii. The decision of the PBAC on the motion for reconsideration in  
27 the immediately preceding paragraph may be further  
28 questioned by filing an appeal to the head of the  
29 Implementing Agency concerned, and paying a non-  
30 refundable appeal fee in an amount equivalent to no less than  
31  $\frac{1}{2}$  of 1% of the Project Cost within fifteen (15) working days  
32 from receipt thereof. The head of the Implementing Agency

1 shall act on the appeal and render a decision within thirty (30)  
2 calendar days, otherwise it shall be deemed denied. The PPP  
3 Governing Board may adjust the appeal fee as the need arises.  
4 If the head of the Implementing Agency in the immediately  
5 preceding paragraph is not a Department Secretary, the  
6 decision of the head of the Implementing Agency may be  
7 further questioned by filing an appeal to the Secretary of the  
8 Department to which the Implementing Agency is attached  
9 within fifteen (15) working days from receipt thereof. The  
10 Department Secretary shall act on the appeal and render a  
11 decision within thirty (30) calendar days, otherwise it shall be  
12 deemed denied.

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

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

- 20 i. Decisions of the PBAC may be questioned by filing a motion  
21 for reconsideration within seven (7) calendar days from  
22 receipt thereof. The PBAC shall act on the motion and render  
23 a decision within thirty (30) calendar days, otherwise it shall  
24 be deemed denied.
- 25 ii. The decision of the PBAC on the motion for reconsideration in  
26 the immediately preceding paragraph may be further  
27 questioned by filing an appeal to the local chief executive or  
28 his authorized representative concerned within seven (7)  
29 calendar days from receipt thereof, and paying a non-  
30 refundable appeal fee in an amount equivalent to no less than  
31  $\frac{1}{2}$  of 1% of the Project Cost.

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

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

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

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

1           (a) *Supervision.* The Implementing Agency shall be responsible for the  
2 overall supervision of the PPP Project and for submission of periodic monitoring  
3 reports, executed under oath, to the appropriate oversight agencies. The approval by  
4 any public officer of any certificate of compliance or certificate of completion that is  
5 submitted by the Private Proponent shall also be made under oath. The liability of the  
6 public officer or former public officer for any criminal act under existing pertinent laws  
7 related to the actions made on such reports and such approvals shall survive the  
8 retirement of the public officer, the termination of the project contract, and the lapse  
9 of the applicable warranty period/s.

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

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

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

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

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

1 (a) Revenue-based – refers to a scheme where the Private Proponent is  
2 authorized to charge and collect, in whole or in part, from the public  
3 reasonable user fees or tariffs subject to appropriate regulation in  
4 accordance with Section 16 of this Act. Where applicable, the Private  
5 Proponent may likewise be repaid in the form of a share in the revenue of  
6 the project; and

7 (b) Availability-based – refers to a scheme where the Implementing Agency  
8 commits to make predetermined payments, which do not take the form of  
9 charges paid by the users of the works or of the service, but of regular  
10 payments by the Implementing Agency based on contractually-defined  
11 performance delivery.

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

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

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

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

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

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

9 The Implementing Agency may divest its ownership, rights, or interest in a  
10 project: Provided, That projects which involve full or partial divestment or transfer of  
11 ownership of government assets or properties shall be subject to approval of the  
12 appropriate Approving Body and applicable laws, decrees, orders, rules and  
13 regulations.

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

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

- 24 (a) Mechanisms and procedures for the transfer of assets to the Implementing  
25 Agency;
- 26 (b) The transfer, of technology required for the operation of the PPP Project,  
27 subject to limitations under existing laws, rules and regulations;
- 28 (c) The training of the personnel of the Implementing Agency or of a successor  
29 in the operation and maintenance of the PPP Project;
- 30 (d) The provision, by the Private Proponent, of a warranty that the PPP Project  
31 meets the project technical specifications, agreed system features, and  
32 performance standards and services for a certain period as may be defined

1 in the IRR of this Act after the transfer of the PPP Project to the  
2 Implementing Agency or to a successor; and

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

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

- 13 (a) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;
- 14 (b) Qualification or disqualification of bidders;
- 15 (c) Awarding of any PPP contract;
- 16 (d) Acceptance of any unsolicited PPP project proposal, even if not acted upon  
17 by the Implementing Agency concerned under Section 10 of this Act;
- 18 (e) Acquisition, clearance, development of the right-of-way, site or location of  
19 any PPP Project;
- 20 (f) Construction, operation and maintenance of any PPP Project;
- 21 (g) Commencement, execution, implementation, termination or rescission of  
22 any PPP contract; and
- 23 (h) Undertaking or authorization of any other lawful activity necessary for such  
24 PPP Project or contract.

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

30 In addition to any civil and criminal liabilities a judge may incur under existing  
31 laws, any judge who shall issue a temporary restraining order, preliminary injunction

1 or preliminary mandatory injunction in violation of this Section, shall suffer the penalty  
2 of suspension of at least sixty (60) days without pay. Any temporary restraining order,  
3 preliminary injunction, or preliminary mandatory injunction issued in violation of this  
4 section is void and of no force and effect.

5 *Sec. 22. PPP Center.* – To achieve the goals of this Act, the PPP Center created  
6 under Executive Order No. 8, series of 2010, as amended by Executive Order 15 No.  
7 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt its  
8 current organizational structure, absorb its existing employees, and upgrade its human  
9 resource component, as may be necessary, subject to evaluation and approval by the  
10 DBM. In order to work towards a more efficient and effective performance of its  
11 mandate, the PPP Center shall have the following powers and functions:

- 12 (a) Assist implementing agencies in identifying, developing, prioritizing and  
13 maintaining a pipeline of PPP projects;
- 14 (b) Provide advisory services, technical assistance, trainings, and capacity  
15 development to Implementing Agencies, Approving Bodies, and other  
16 oversight agencies in all PPP-related matters, and act as a procurement  
17 agent upon the request of the Implementing Agency;
- 18 (c) Manage and administer the Project Development and Monitoring Facility  
19 (PDMF) as provided in Section 24 of this Act;
- 20 (d) Recommend plans, policies, and implementation guidelines related to  
21 PPP, in consultation with appropriate oversight committees or agencies.  
22 Implementing Agencies, private sector and other relevant stakeholders;
- 23 (e) Ensure sustainability of the implemented PPP program and projects  
24 through monitoring, documenting, and sharing the lessons learned and  
25 best practices to Implementing Agencies and appropriate oversight  
26 committees or agencies;
- 27 (f) Provide regular monitoring and status reports on the implementation of  
28 all PPP programs and projects entered into by Implementing Agencies,  
29 including potential public interest concerns and violations of the PPP Act,  
30 to the Office of the President, the Congress of the Philippines, relevant  
31 oversight committees and agencies, and publish the same in the official  
32 website of the PPP Center;

- 1 (g) Promote and market the implemented PPP programs and projects, in  
2 collaboration with other government investment promotion agencies;
- 3 (h) Review PPP contracts and issue advisory opinions relating to PPPs,  
4 including how the PPP Act and its IRR shall be implemented;
- 5 (i) Serve as the central repository of all PPP Project documents, including  
6 all executed PPP contracts and any subsequent amendment or  
7 supplement thereto, including settlement agreements, entered into by  
8 Implementing Agencies;
- 9 (j) Act as Secretariat to the PDMF Committee and the PPP Governing Board;
- 10 (k) Perform such other functions as may be necessary to achieve the  
11 objectives and purposes of this Act.

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

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

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

30 *Sec. 23. 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) Secretary of Socio-economic Planning as Chairperson;

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

7 (c) Secretary of Budget and Management;

8 (d) Secretary of Justice;

9 (e) Secretary of Trade and Industry;

10 (f) Executive Secretary;

11 (g) Secretary of Interior and Local Government

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

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

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

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

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

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

31 (b) The PDMF referred to under EO No. 8, series of 2010, as amended by EO  
32 No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF

1 may be funded through and such amount as may be needed and included in the  
2 general appropriations act, official development assistance, or other sources.

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

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

10 The PDMF Committee shall be composed of: (1) the Secretary of Socio-  
11 Economic Planning as chairperson; (2) the Secretary of Finance, (3) the Secretary of  
12 Budget and Management, and (4) the Executive Director of the PPP Center, as  
13 members. The PPP Center shall serve as the Secretariat for the PDMF Committee.

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

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

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

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

- 26 (a) Concession fees;
- 27 (b) Implementing Agency reimbursements;
- 28 (c) Interest earnings from the PPP Risk Management Fund; and
- 29 (d) National government contributions.

30 National government contributions shall cover only the difference between the  
31 target amount of the PPP Risk Management Fund, as mentioned above, and the

1 current value of the fund. The DOF shall regularly monitor and review the viability of  
2 the PPP Risk Management Fund in relation to the magnitude of PPP Projects  
3 undertaken by Government, and if necessary, recommend the increase in the target  
4 amount of the PPP Risk Management Fund and the reason therefor. All national  
5 government contributions to the PPP Risk Management Fund shall be included in the  
6 proposed DOF budget.

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

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

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

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

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

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

31 *Sec. 26. Establishment of a PPP Unit* – Each concerned Implementing Agency  
32 shall organize a PPP unit headed by a senior official, who shall be responsible for

1 planning, overseeing, and monitoring PPP Projects of the Implementing Agency. In  
2 the case of LGUs undertaking PPP Projects, the local chief executive shall organize  
3 such PPP unit.

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

8 *Sec. 27. Safekeeping and Public Disclosure of Contracts.* – Copies of all PPP  
9 contracts executed under this Act shall be considered and appropriately kept safe and  
10 preserved as public documents. Except those provisions in the contract which are  
11 proprietary, or may pose threats to national security or public safety, the procedures  
12 for the disclosure of such documents shall be consistent with existing policies, laws,  
13 decrees, orders, rules and regulations, including the IRR of this Act. The Implementing  
14 Agency and the PPP Center shall publicly make available copies of PPP contracts  
15 through their respective websites, unless otherwise prohibited by existing laws, rules  
16 and regulations, including national security and public safety concerns.

17 *Sec. 28. Miscellaneous Provisions.* – (a) Mitigation of Interconnectivity and  
18 Interface Risks. All PPP Projects which will interconnect or interface with a local or  
19 national facility, shall be required to submit a Memorandum of Agreement (MOA)  
20 containing an interconnection/interface plan agreed upon by all relevant parties. For  
21 National PPP Projects, said MOA shall be submitted to the ICC-NEDA; while for Local  
22 PPP Projects, said MOA shall be submitted to the local Sanggunian.

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

30 (c) Standardization of Required Endorsements, Permits, and Licenses for PPP  
31 Projects. All relevant government and regulatory agencies, bodies, institutions and  
32 LGUs, shall, in coordination with the PPP Center, adopt standard timelines and

1 requirements for the issuance of relevant endorsements, approvals, and permits for  
2 PPP Projects.

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

10 (e) Exemption from Payment of Transfer Taxes. For all PPP Projects, the  
11 transfer of ownership of the PPP Project to the Implementing Agency shall be exempt  
12 from capital gains tax, documentary stamp tax, donor's tax, and all taxes and fees,  
13 whether from national or local, related to the transfer thereof.

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

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

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

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

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

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

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

31 From time to time, the PPP Governing Board may instruct the PPP Center, in  
32 consultation with the IRR Committee, to conduct, formulate and prescribe, after due

1 public hearing and publication, amendments to the IRR, consistent with the provisions  
2 of this Act.

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

7       The following acts shall be prohibited:

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

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

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

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

17       (e) A public officer or employee, whether in connivance with others or acting  
18       alone, negligently or by fraud commits a failure to ensure compliance with  
19       the project terms as approved by the Approving Body, and the signed PPP  
20       contract, by approving, issuing, or confirming any certification, required  
21       documents, or deliverables of the Private Proponent, which are non-  
22       compliant with existing rules, erroneous, not authentic, or fraudulent.

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

29       The liability of the public officer or employee or former public officer or  
30       employee for any violation of the prohibitions under this Act shall survive the  
31       retirement of said public officer or employee, and shall include the prohibition for the

1 erring officer to hold public office, either as an elected, or an appointed government  
2 official on any local or national position, and to act as a consultant for the Philippine  
3 Government, the termination of the project contract, and the lapse of any applicable  
4 warranty period/s.

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

11       To further promote accountability in PPP Projects, the Commission on Audit  
12 (COA) shall have visitorial power, as defined in the 2009 Revised Rules of Procedure  
13 of the COA and any amendments thereto, over PPP Projects. This power shall include  
14 determining whether the contribution or share of the Implementing Agency in the PPP  
15 Project is being allocated and utilized according to its intended purpose, and if the  
16 Implementing Agency is getting its rightful share from the revenues generated, as  
17 may be applicable. The COA shall also have visitorial jurisdiction over compliance to  
18 conditions, requirements, and processes set forth under this Act. To this end, the COA,  
19 in consultation and coordination with the PPP Center, shall promulgate the necessary  
20 framework and guidelines on auditing PPP Projects.

21       *Sec. 32. Joint Congressional Oversight Committee.* – A Joint Congressional  
22 Oversight Committee is hereby created to oversee the implementation of this Act. The  
23 Committee shall be composed of five (5) members each from the Senate and House  
24 of Representatives to be designated by the Senate President and the Speaker of the  
25 House of Representatives, respectively. The Committee shall be jointly chaired by the  
26 respective Chairpersons of the House Committee on Public Works and Highways, the  
27 House Committee on Appropriations, the Senate Committee on Public Works, and the  
28 Senate Committee on Finance.

29       *Sec. 33. Transitory Provisions.* – The provisions of this Act shall apply to all PPP  
30 Projects except: (a) all projects wherein a PPP contract between the winning Private  
31 Proponent and the Implementing Agency concerned has been executed prior to  
32 effectivity of this Act; and (b) all projects undertaken through competitive selection

1 wherein the bid/s have already been opened prior to the effectivity of this Act. For  
2 PPP Projects not covered under items (a) and (b) above, this Act shall govern, provided  
3 that this Act shall not, in any manner, operate to impair vested rights already accruing  
4 to a party.

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

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

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

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

17 (b) Executive Order No. 8, s. 2010, as amended by Executive Order No. 136, s.  
18 2013 (Reorganizing and Renaming the Build-Operate And Transfer (BOT)  
19 Center to the Public-Private Partnership (PPP) Center of the Philippines and  
20 Transferring its Attachment from the Department of Trade and Industry to  
21 the National Economic and Development Authority and for other purposes);

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

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

1 (e) 2013 Revised Guidelines and Procedures for Entering Into Joint Venture  
2 Agreements Between Government and Private Entities; and

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

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

7 *Sec. 36. Separability Clause.* – If any provision of this Act is held invalid, the  
8 other provisions not affected thereby shall continue in operation.

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

*Approved,*