

CONGRESS OF THE PHILIPPINES
NINETEENTH CONGRESS
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S E N A T E *

S. No. 2233

(In substitution of Senate Bill Nos. 765, 1022, 1251, 1344,
1613, 1974, and 2068, taking into consideration
House Bill No. 6527)

PREPARED BY THE COMMITTEE ON PUBLIC WORKS, UPON
THE RECOMMENDATION OF THE SUBCOMMITTEE ON
PUBLIC-PRIVATE PARTNERSHIPS (PPP) WITH SENATORS
ANGARA, EJERCITO ESTRADA, MARCOS, LEGARDA,
ZUBIRI, VILLANUEVA, EJERCITO, GATCHALIAN,
REVILLA, JR., AND POE AS AUTHORS

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

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

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

3 SEC. 2. *Declaration of Policy.* – The State recognizes
4 the indispensable role of the private sector, encourages
5 private enterprise, and provides incentives to needed

1 investments. To this end, the State shall provide an
2 enabling environment for the private sector to mobilize its
3 resources to finance, design, construct, operate, and
4 maintain infrastructure or development projects.

5 It is further declared that the State shall protect the
6 public interest by providing affordable, accessible, and
7 efficient public services. In order to achieve better quality
8 of Public-Private Partnership (PPP) Projects at lower costs,
9 the State shall ensure equitable risk allocation in PPP
10 Projects, and that all PPP Projects yield sufficient Value
11 for Money (VFM), promote sustainability, and advance
12 public welfare.

13 The State shall pursue a policy of financing
14 infrastructure and other development projects through all
15 means available to effectively meet the objectives of the
16 government. These may include appropriations, official
17 development assistance (ODA), and PPPs, as well as
18 combinations and variations thereof. The government shall
19 determine the appropriate financing by considering budget

1 availability, VFM, timelines, stakeholder commitments,
2 and market capacity.

3 The State recognizes the autonomy of local
4 government units (LGUs) in entering and implementing
5 Local PPP Projects to enable them to attain their fullest
6 development as self-reliant communities and make them
7 more effective partners in the attainment of national goals.

8 The State shall also ensure the integration of climate
9 resilience, sustainability, and gender and development
10 policies and programs in the planning, design, and
11 implementation of PPP Projects.

12 The State shall take cognizance of partnerships that
13 have not been submitted through the administrative
14 process as long as they are PPPs as defined in this Act, and
15 shall therefore subject such projects under its jurisdiction
16 and rules.

17 Finally, it is declared that the State and LGUs shall
18 affirm open, fair, transparent, and competitive selection as
19 the central tenet for securing private investment in PPP
20 Projects. It shall implement a policy of full public

1 disclosure of all its transactions involving public interest,
2 subject to terms and conditions as prescribed by pertinent
3 laws.

4 SEC. 3. *Definition of Terms.* – As used in this Act:

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

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

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

1 (d) *Contingent Liability* refers to an obligation that
2 may arise from events specified in a PPP contract, the
3 occurrence, timing, and amount of which are uncertain.
4 These events include, but are not limited to, regulatory
5 action, force majeure, breach of government warranties,
6 and Material Adverse Government Action, among others;

7 (e) *Contractor* refers to any entity allowed and duly
8 registered and licensed under Philippine laws, which may
9 or may not be the Private Partner, that shall be
10 responsible for the Construction and/or supply of
11 equipment or services for PPP Projects;

12 (f) *Facility Operator* refers to any entity allowed and
13 duly registered and licensed under Philippine laws, which
14 may or may not be the Private Partner, that shall be
15 responsible for operating and/or maintaining a facility;

16 (g) *Financial Close* refers to the specific milestone in
17 a PPP contract where the Private Partner successfully
18 secures all necessary project and financing agreements.
19 The achievement of such milestone confirms that all prior
20 conditions have been met, allowing the Private Partner to

1 draw down the financing to commence work on the PPP
2 Project;

3 (h) *Generic Preferred Risk Allocation Matrix*
4 (*GPRAM*) refers to the document issued by the Investment
5 Coordination Committee of the National Economic and
6 Development Authority Board (NEDA Board – ICC), to
7 guide government entities and the private sector in the
8 optimal allocation of risks in structuring PPP Projects;

9 (i) *Government Financial Institutions (GFIs)* refer to
10 financial institutions or corporations in which the
11 government directly or indirectly owns majority of the
12 capital stock and which are either: (i) registered with or
13 directly supervised by the Bangko Sentral ng Pilipinas; or
14 (ii) collecting or transacting funds or contributions from
15 the public and places them in financial instruments or
16 assets such as deposits, loans, bonds and equity including,
17 but not limited to, the Government Service Insurance
18 System and the Social Security System;

19 (j) *Government Instrumentalities with Corporate*
20 *Powers (GICPs)/Government Corporate Entities (GCEs)*

1 refer to instrumentalities or agencies of the government,
2 which are neither corporations nor agencies integrated
3 within the departmental framework, but vested by law
4 with special functions or jurisdiction, endowed with some if
5 not all corporate powers, administering special funds, and
6 enjoying operational autonomy usually through a charter;

7 (k) *Government-owned or -controlled corporation*
8 (*GOCC*) refers to any agency organized as a stock or
9 nonstock corporation, vested with functions relating to
10 public needs whether governmental or proprietary in
11 nature, and owned by the government of the Republic of
12 the Philippines directly or through its instrumentalities
13 either wholly or, where applicable as in the case of stock
14 corporations, to the extent of at least a majority of its
15 outstanding capital stock: *Provided*, That the term GOCC
16 shall include GICP/GCE and GFI;

17 (l) *Government Undertakings* refer to any form of
18 contribution and/or support, which the government may
19 extend to a Private Partner for the implementation of PPP
20 Projects, as provided under this Act;

1 (m) *Green Financing* refers to a form of financing
2 projects that create environmental benefits in support of
3 green growth, low-carbon, and sustainable development;

4 (n) *Guarantee on Demand* refers to an agreement
5 whereby the Implementing Agency undertakes to assume
6 the market demand risks associated with the PPP Project:
7 *Provided*, That the adoption of availability-based schemes
8 and Availability Payments shall not be considered as
9 Guarantee on Demand;

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

18 (p) *Guarantee on Private Sector Return* refers to an
19 agreement whereby the Implementing Agency guarantees
20 to provide a predetermined rate of return on the

1 investment of the Private Partner. This shall not cover
2 Termination Payments arising from government events of
3 default;

4 (q) *Implementing Agency* refers to a department,
5 bureau, office, instrumentality, commission, authority of
6 the national government, state university and college
7 (SUC), local university and college (LUC), LGU,
8 government-owned or -controlled corporation (GOCC) as
9 defined in Republic Act No. 10149, otherwise known as the
10 “GOCC Governance Act of 2011,” including government
11 instrumentality with corporate powers (GICP), government
12 corporate entity (GCE), and government financial
13 institution (GFI), water district, and economic zone
14 authority which is hereby authorized to undertake PPP
15 Projects with a Private Partner in accordance with the
16 provisions of this Act;

17 (r) *Joint Venture (JV)* refers to national or local PPP
18 contractual arrangement, whether solicited or unsolicited,
19 where both the Implementing Agency performing its
20 proprietary function, and the Private Partner contribute to

1 pool resources comprising of capital, services, or assets
2 (including equipment, land, or intellectual property) to
3 jointly undertake a specific and time-bound investment
4 activity to deliver an infrastructure or development project
5 typically provided by the public sector, subject to Section
6 11 of this Act;

7 (s) *Land Value Capture Strategies* refer to a set of
8 mechanisms used to recover and re-invest land-based value
9 increases that arise in the catchment area of public
10 infrastructure investments. For purposes of this Act, Land
11 Value Capture Strategies may be employed to optimize the
12 financial and economic efficacy of a PPP Project;

13 (t) *Local Public-Private Partnership (PPP) Project*
14 refers to a PPP Project that shall be undertaken by LGUs
15 and LUCs;

16 (u) *Local Universities and Colleges (LUCs)* refer to
17 Commission on Higher Education (CHED) -accredited
18 public Higher Education Institutions (HEIs) established by
19 LGUs through an enabling ordinance, financially

1 supported by the LGU concerned, and compliant with the
2 policies, standards, and guidelines of the CHED;

3 (v) *Material Adverse Government Action (MAGA)*
4 refers to any act of the government which the Private
5 Partner had no knowledge of, or could not be reasonably
6 expected to have had knowledge of, prior to the effectivity
7 of the PPP contract, and that occurs after the effectivity of
8 the PPP contract, other than an act which is authorized or
9 permitted under the PPP contract, which (1) specifically
10 discriminates against the sector, industry, or project, and
11 (2) has a significant negative effect on the ability of the
12 Private Partner to comply with any of its obligations under
13 the approved PPP contract;

14 (w) *Most Responsive Bid* refers to a bid that conforms
15 in all material respects to the requirements stated in the
16 bid solicitation, pursuant to the approved bid parameter,
17 and that is most advantageous to the government;

18 (x) *National Public-Private Partnership (PPP)*
19 *Project* refers to a PPP Project that shall be undertaken by
20 the national government, SUCs as defined in Republic Act

1 No. 10931, GOCCs including GICPs, GCEs, and GFIs,
2 water districts, and economic zone authorities;

3 (y) *Original Proponent* refers to the Private
4 Proponent conferred with the “Original Proponent Status
5 (OPS)” in accordance with Section 10 of this Act;

6 (z) *Private Partner* refers to the private sector entity
7 determined to be financially, legally, and technically
8 capable to undertake obligations under an awarded PPP
9 contract;

10 (aa) *Private Proponent* refers to the private sector
11 entity which has submitted a bid in relation to a Solicited
12 Project, or a private sector entity which has submitted an
13 Unsolicited Proposal. The Private Proponent may be
14 Filipino or foreign-owned, and may engage the services of a
15 foreign Contractor or foreign Facility Operator, subject to
16 requirements and limitations provided under the
17 Constitution, existing laws, rules, and regulations;

18 (bb) *Project Cost* refers to the total cost to be
19 expended to plan, develop, and construct the project to
20 completion stage, including cost of feasibility studies,

1 engineering and design, construction, equipment,
2 land/right-of-way (ROW), taxes imposed on said cost, and
3 development cost. For Operations and Maintenance (O &
4 M) PPP Projects without initial capital expenditures, the
5 present value of costs incurred in delivering the contracted
6 service, including any reinvestment requirements shall be
7 considered as the Project Cost;

8 (cc) *Public-Private Partnership (PPP) Project* refers to
9 any public infrastructure or development project
10 implemented under this Act;

11 (dd) *State Universities and Colleges (SUCs)* refer to
12 public HEIs established by the National Government and
13 are governed by their respective independent Boards of
14 Trustees or Regents;

15 (ee) *Solicited Project* refers to a PPP Project identified
16 by an Implementing Agency as part of its list of PPP
17 Projects that is subjected to a public bidding as provided in
18 Section 9 of this Act;

19 (ff) *Subsidy* refers to an agreement whereby the
20 Implementing Agency will: (1) defray, pay for, or shoulder

1 a portion of the Project Cost or the expenses and costs in
2 operating or maintaining the project; (2) bear a portion of
3 capital expenditures associated with the establishment of
4 an infrastructure or development project; (3) contribute
5 any property or assets to the project; (4) in the case of
6 LGUs, waive or grant special rates on real property taxes
7 on the project during the term of the contractual
8 arrangement; and/or (5) waive charges or fees relative to
9 business permits or licenses that are to be obtained for the
10 Construction of the project: *Provided*, That items (1) to (5)
11 shall not be considered as Subsidy if the government
12 receives payment from the Private Partner for such
13 payment, contribution, or support: *Provided, further*, That
14 Subsidy falling under items (1) and (2) shall not exceed
15 fifty percent (50%) of the Project Cost: *Provided, finally*,
16 That in the case of Solicited Proposals, the expenses for
17 existing ROW or ROW to be acquired, shall not be included
18 in the said cap. Subsidy shall also include Viability Gap
19 Funding (VGF) which may be extended by the government
20 to make an economically viable revenue-based PPP Project

1 financially viable: *Provided*, That government payments
2 for ROW, resettlement, and exemption from real property
3 taxes shall not be considered as VGF;

4 (gg) *Termination Payment* refers to the amount
5 payable by the government or the Private Partner on the
6 occurrence of an event or series of events provided for in
7 the PPP contract that results in the termination of said
8 contract;

9 (hh) *Unsolicited Proposal* refers to a project proposal
10 made by a Private Proponent to undertake a PPP Project
11 pursuant to Section 10 of this Act;

12 (ii) *Value for Money (VFM)* refers to the effective,
13 efficient, and economic use of resources, which requires the
14 evaluation of relevant costs and benefits, along with an
15 assessment of risks, and of non-price attributes and/or life
16 cycle costs, as appropriate. Price alone may not necessarily
17 represent VFM.

18 SEC. 4. *Public-Private Partnership (PPP)*. – A PPP is
19 a contractual arrangement between an Implementing
20 Agency and a Private Partner to finance, design, construct,

1 operate, and maintain, or any combination or variation
2 thereof, infrastructure or development projects which are
3 typically provided by the public sector, where each party
4 shares in the associated risks. PPP Projects may be
5 financed partly from direct government appropriations
6 and/or from ODA of foreign governments or institutions.

7 Implementing Agencies, are hereby authorized to
8 undertake PPP Projects in accordance with the provisions
9 of this Act.

10 This Act shall also cover the following:

11 (a) JVs as defined in this Act;

12 (b) Toll operation agreements or supplemental toll
13 operation agreements, or any contractual arrangements
14 involving the construction, operation, and maintenance, or
15 a combination or variation thereof, of toll facilities in
16 accordance with Presidential Decree (PD) No. 1112 series
17 of 1977, PD No. 1113, series of 1977, and PD No. 1894,
18 series of 1983;

19 (c) Lease agreements providing for the
20 rehabilitation, operation, and/or maintenance, including

1 the provision of working capital and/or improvements to,
2 by the Private Partner of an existing land or facility owned
3 by the government for a fixed period of time covering more
4 than one (1) year;

5 (d) Lease agreements, when such lease is a
6 component of a PPP Project, as defined under this Act; and

7 (e) All other contractual arrangements which
8 possess characteristics or elements of a PPP as defined
9 under this Act, or as may be approved by the appropriate
10 Approving Body.

11 SEC. 5. *Non-application.* – This Act shall not apply to
12 infrastructure projects undertaken under Republic Act No.
13 9184 or the “Government Procurement Reform Act”,
14 management contracts, service contracts, divestments or
15 dispositions, corporatization, incorporation of subsidiaries
16 with private sector equity, onerous donations, gratuitous
17 donations, and joint venture agreements involving purely
18 commercial arrangements that neither provide nor include
19 public infrastructure or development services. In such
20 cases, the abovementioned contractual arrangements shall

1 be implemented in accordance with relevant governing
2 laws.

3 SEC. 6. *Identification and Development of PPP*
4 *Projects.* – Implementing Agencies shall identify
5 infrastructure or development projects that may be
6 financed, designed, constructed, operated, and maintained,
7 or any combination and variation thereof, by a Private
8 Partner through this Act and prepare their respective lists
9 of PPP Projects.

10 Implementing Agencies shall include in their
11 development plans, strategies, and investment programs
12 such lists of PPP Projects that they intend to implement by
13 soliciting proposals from Private Proponents pursuant to
14 Section 9 of this Act, without prejudice to the right of
15 Private Proponents to submit Unsolicited Proposals under
16 Section 10 of this Act. In identifying those projects, the
17 Implementing Agencies shall be guided by the following
18 principles: effectiveness in meeting government objectives,
19 appropriateness of the chosen procurement modality and
20 source of funding, VFM, accountability and transparency,

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

5 The Implementing Agencies shall submit their lists of
6 PPP Projects or any update thereto to the appropriate
7 oversight agencies, including the National Economic and
8 Development Authority (NEDA), the regional development
9 councils (RDCs) concerned, the local sanggunian
10 concerned, and the PPP Center, for information and in
11 accordance with existing rules, regulations, and guidelines.

12 In developing a PPP Project, the Implementing
13 Agency shall consider its technical, commercial, financial,
14 economic, and legal feasibility, taking into account the
15 principles of affordability of fees or tariffs, climate
16 resilience and sustainability, optimal risk allocation, and
17 VFM of the proposed project, and must be undertaken after
18 stakeholder consultation and consideration of social and
19 environmental safeguards.

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

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

4 (1) National PPP Projects. – National PPP Projects
5 shall be approved as follows:

6 (i) Those with Project Cost of Fifteen billion pesos
7 (P15,000,000,000.00) and above shall be approved by the
8 NEDA Board, upon favorable recommendation of the
9 NEDA Board – ICC;

10 (ii) Those with Project Cost of below Fifteen billion
11 pesos (P15,000,000,000.00) shall be approved by the Head
12 of Implementing Agency: *Provided*, That if the
13 Implementing Agency is an attached agency without a
14 governing board, the Head of the department or agency to
15 which the Implementing Agency is attached shall approve
16 the PPP Project: *Provided, further*, That if the
17 Implementing Agency has a governing board, whether or
18 not it is an attached agency, the governing board shall
19 approve the PPP Project.

1 Notwithstanding the above threshold, a proposed
2 PPP Project which costs below Fifteen billion pesos
3 (P15,000,000,000.00) shall be approved by the NEDA
4 Board – ICC, if:

5 1. It physically overlaps with a project approved by a
6 government authority or with a project being developed by
7 another government entity based on national or sectoral
8 development plans;

9 2. It negatively affects the economic benefits,
10 demand, and/or financial viability of a project approved by
11 a government authority or a project being developed by
12 another government entity based on national or sectoral
13 development plans;

14 3. It requires financial government undertakings to
15 be sourced and funded under the General Appropriations
16 Act (GAA);

17 4. It involves Availability Payments to be sourced and
18 funded under the GAA; or

19 5. The contribution of an Implementing Agency in a
20 proposed JV exceeds fifty percent (50%) of its entire assets

1 based on its latest audited financial statements and other
2 pertinent documents, and subject to Section 3(ff) of this
3 Act.

4 For PPP Projects that do not fall under any of the
5 above, the Implementing Agency shall notify the NEDA
6 and the PPP Center in writing of such information and
7 submit the project details for monitoring purposes.

8 (2) Local PPP Projects – Local PPP Projects shall be
9 approved by the respective local Sanggunians in the case of
10 LGUs, or by the boards in the case of LUCs. Prior to
11 approval, Local PPP Projects implemented by LGUs shall
12 be confirmed by the respective local development councils
13 (LDCs).

14 Proposed Government Undertakings using national
15 government funds for Local PPP Projects shall be
16 submitted to the NEDA Board - ICC for approval, upon
17 review and endorsement by the respective RDCs. Such
18 Government Undertakings shall include, among others,
19 the following items to be provided by the national
20 government to a Local PPP Project: (i) Guarantees on

1 Demand, (ii) Guarantees on Private Sector Return, (iii)
2 Guarantees on Loan Repayment; (iv) VGF and other forms
3 of Subsidy; (v) monetary payment of Contingent Liability
4 through the PPP Risk Management Fund of the national
5 government as defined under Section 27 of this Act.
6 Permits, clearances, licenses or endorsements from
7 national government agencies required for Local PPP
8 Projects under laws, rules, and regulations, shall not be
9 considered as Government Undertakings by the national
10 government for Local PPP Projects.

11 The NEDA Board - ICC shall render its decision on
12 such requested Government Undertakings within sixty
13 (60) calendar days from receipt of complete requirements.
14 The disapproval of the requested Government
15 Undertakings shall not be construed as a disapproval of
16 the Local PPP Project.

17 Local PPP Projects affecting national or sectoral
18 development plans and national projects shall likewise
19 secure the endorsement of the national government
20 through the respective RDCs, prior to endorsement of the

1 LDC concerned and approval by the local Sanggunians in
2 the case of LGUs, or by the boards in the case of LUCs. For
3 this purpose, the NEDA shall provide the RDCs with
4 copies of relevant national and sectoral development plans
5 and updates thereof.

6 Endorsements of the (i) LDCs for local PPP projects
7 to be implemented by LGUs; and of the (ii) RDCs for PPP
8 projects with proposed government undertakings using
9 national government funds, and/or those that affect
10 national or sectoral development plans, shall be processed
11 within thirty (30) calendar days from submission of
12 complete requirements. Failure of the LDC and/or the RDC
13 to endorse the PPP Project within the specified period shall
14 be deemed an approval of the requested endorsement/s.

15 To improve ease of doing business and ensure
16 expeditious processing of such endorsement, the PPP
17 Governing Board shall prescribe guidelines and
18 requirements to be followed by all RDCs and LDCs.

19 A PPP Project covering two or more LGUs may be
20 implemented by the national government, subject to the

1 approval process for National PPP Project; or by the next
2 higher level of LGU or by the LGUs concerned, subject to
3 the approval process for Local PPP Projects.

4 In case of a Local PPP Project implemented by two or
5 more LGUs, such project shall be approved by the local
6 Sanggunians of the LGUs concerned. The respective RDCs
7 may assist in the coordination of LGUs in the development,
8 approval, and implementation of the Local PPP Project
9 covering two or more LGUs.

10 (b) The Approving Body shall assess all PPP Projects
11 based on its overall feasibility and VFM, and in accordance
12 with the principle of protecting public interest through the
13 provision of affordable, accessible, and efficient public
14 services. All PPP Projects submitted to the Approving Body
15 shall include proposed indicators to determine their
16 benefits and outcomes, which shall be used in the
17 monitoring and evaluation of PPP Projects during
18 implementation. To ensure that all risks associated with
19 PPP Projects are managed and mitigated accordingly, all
20 PPP contracts to be entered into by the Implementing

1 Agency shall adhere to the principles stipulated under the
2 GPRAM, to the extent applicable. Any deviations to the
3 preferred risk allocation shall be justified by the
4 Implementing Agency and approved by the appropriate
5 Approving Body.

6 (c) The appropriate Approving Body, except when
7 the Head of the Implementing Agency is the appropriate
8 Approving Body, shall notify and advise, in writing, the
9 Implementing Agency of its receipt and assessment of the
10 completeness, in form and in substance, of the PPP Project
11 proposal. Upon submission of complete requirements by
12 the Implementing Agency, the appropriate Approving Body
13 shall evaluate and render its decision on the project, and
14 set forth the required parameters, terms, and conditions
15 (PTCs), considering the nature and complexity of the PPP
16 Project.

17 The PTCs set forth by the Approving Body shall be
18 the basis for the drafting and approval of tender
19 documents and PPP contract, and shall include, among
20 others, the project scope, required levels of service and key

1 performance indicators, safeguards that will protect the
2 interests of the government and the public, and penalties
3 to be imposed for failure of any party to deliver obligations
4 under the PPP contract.

5 (d) The decision of the appropriate Approving Body
6 shall be rendered in writing within one hundred twenty
7 (120) calendar days from receipt of complete requirements.

8 The failure of the appropriate Approving Body to
9 render its decision on the project within the specified
10 period shall be deemed an approval thereof, and the
11 Implementing Agency concerned may proceed with the
12 procurement of the PPP Project, without prejudice to any
13 liability that the erring or negligent officials or employees
14 may incur under this Act and other existing laws.

15 To facilitate the expedient processing of national and
16 local Projects requiring NEDA Board and NEDA Board -
17 ICC actions, meetings of such bodies shall be held monthly,
18 unless no projects are set for review or evaluation.

19 (e) The NEDA Board – ICC, in the case of National
20 PPP Projects, and the PPP Governing Board, in the case of

1 Local PPP Projects, shall formulate guidelines, forms, and
2 templates that shall be used by the Implementing Agency
3 and the appropriate Approving Body in reviewing and
4 approving the PPP Project. The NEDA Board – ICC shall
5 also formulate guidelines on the approval of government
6 undertakings using national government funds for Local
7 PPP Projects.

8 (f) The decision of the appropriate Approving Body to
9 approve and implement the PPP Project under any of the
10 contractual arrangements or variations thereof shall be
11 final and executory unless the Implementing Agency can
12 provide sufficient justifiable reason to convert the PPP
13 Project to another project under a different procurement
14 modality.

15 (g) The splitting of any PPP Project, for the purpose of
16 circumventing the thresholds prescribed herein, is
17 prohibited.

18 SEC. 8. *PPP Pre-qualification, Bids and Awards*
19 *Committee.* – The Head of the Implementing Agency
20 undertaking PPP Projects shall create a PPP Pre-

1 qualification, Bids and Awards Committee (PBAC), which
2 shall be responsible for all aspects of pre-bidding and
3 bidding process in Solicited Proposals, or the comparative
4 bidding process in Unsolicited Proposals: *Provided*, That
5 the final draft PPP contract shall be reviewed and
6 approved by the Head of the Implementing Agency, upon
7 securing the clearance of the following:

8 (a) For National PPP Projects

9 (1) PPP Center, for compliance with the
10 approved PTCs;

11 (2) Statutory Counsel, for compliance with
12 applicable laws, rules, and regulations; and

13 (3) Department of Finance (DOF), for national
14 Government Undertaking in the PPP
15 contract.

16 (b) For Local PPP Projects

17 (1) Statutory Counsel, for compliance with the
18 approved PTCs and all other applicable laws,
19 rules, and regulations; and

1 (2) DOF, if there is a national Government
2 Undertaking under the PPP contract.

3 If the executed PPP contract contains provision/s
4 which are contrary with the approved PTCs and are
5 grossly disadvantageous to the government, the contract
6 shall be null and void, without prejudice to the provisions
7 under Section 32 of this Act.

8 SEC. 9. *Solicited Proposals.* –

9 (a) General – Solicited proposals refer to
10 submissions by the Private Proponent in response to a
11 public bidding process initiated by the Implementing
12 Agency. Government Undertakings are allowed, subject to
13 the approval of the appropriate Approving Body.

14 (b) Public Bidding – The public bidding may be
15 conducted in a single-stage or two-stage bidding process, as
16 proposed by the Implementing Agency, for approval by the
17 appropriate Approving Body. Single-stage bidding process
18 is characterized by a simultaneous submission of
19 qualification requirements and bid proposals of Private
20 Proponents. Two-stage bidding process is characterized by

1 a separate submission of qualification requirements and
2 bid proposals of Private Proponents.

3 The public bidding may be conducted either manually
4 or electronically, as may be determined by the
5 Implementing Agency: *Provided*, That the posting of
6 invitation to pre-qualify and bid shall be through the
7 official website of the Implementing Agency and/or the
8 PPP Center with the objective of promoting competition.

9 The PPP contract shall be awarded to the bidder who
10 has satisfied all pre-qualification and eligibility
11 requirements and has submitted the most responsive bid to
12 the bid parameter proposed by the Implementing Agency
13 and set forth in the PTCs approved by the appropriate
14 Approving Body.

15 If the winning bidder fails to comply with any post-
16 award requirement which shall be set as part of the
17 bidding documents, or fails to enter into a PPP contract
18 with the Implementing Agency, the latter shall award the
19 PPP contract to the next most responsive bidder. In case
20 the PPP contract is awarded to the next most responsive

1 bidder, the Implementing Agency, without prejudice to the
2 remedies provided by law, can forfeit the bid security,
3 withdraw the award, or pursue any other remedies allowed
4 under existing rules and regulations, against the winning
5 bidder who failed to comply with any post-award
6 requirements.

7 All PPP contracts shall require a period within which
8 Financial Close shall be achieved by the Private Partner.
9 Failure to achieve Financial Close within such period shall
10 be subject to penalties to be provided for in the signed
11 contract: *Provided*, That such failure to achieve Financial
12 Close is not due to the fault of the government.

13 Any substitution in the composition of the pre-
14 qualified Private Proponent shall be allowed prior to bid
15 submission: *Provided*, That the substitute has equal or
16 better qualifications.

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

19 (1) If no bids are received; or

20 (2) If there are no complying bids.

1 The PBAC may also declare a failure of bidding in
2 case the winning bidder refuses without justifiable cause to
3 accept the award of PPP contract.

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

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

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

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

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

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

7 Negotiation between the Implementing Agency and
8 the single complying and responsive bidder shall be limited
9 to the financial proposal of the bidder and in compliance
10 with the reasonable rate of return prescribed by the
11 appropriate Approving Body.

12 SEC. 10. *Unsolicited Proposals.* –

13 (a) General – Upon receipt of an Unsolicited Proposal,
14 an Implementing Agency may either:

15 (1) decide to process such proposal, in accordance
16 with the provisions of this section; or

17 (2) reject the proposal if such proposal is deemed not
18 aligned with the development plans of the Implementing
19 Agency, or if the Implementing Agency is already

1 developing a project with similar scope and/or similar
2 objective.

3 An Unsolicited Proposal, which an Implementing
4 Agency decides to process pursuant to Subsection (a)(1)
5 above, shall be evaluated for completeness: *Provided*, That
6 Unsolicited Proposals requiring approval of the NEDA
7 Board or the NEDA Board – ICC shall be submitted to the
8 PPP Center for determination of completeness. In such
9 cases, the PPP Center shall thereafter endorse the
10 complete Unsolicited Proposals to the appropriate
11 Implementing Agency.

12 The determination of completeness, whether by the
13 Implementing Agency or the PPP Center shall be
14 conducted within ten (10) calendar days upon receipt of the
15 Unsolicited Proposal. The PPP Center shall thereafter
16 refer the same to the appropriate Approving Body. All
17 Unsolicited Proposals that are determined to be incomplete
18 shall be returned to the Private Proponent by the
19 Implementing Agency or the PPP Center, as the case may
20 be.

1 If the Unsolicited Proposal is determined to be
2 complete, the Implementing Agency may:

3 (1) Continue processing the Unsolicited Proposal in
4 accordance with Subsection (d) of this Section; or

5 (2) Decide to bid out the proposal as a Solicited
6 Project, pursuant to Section 9 of this Act.

7 In all the cases contemplated above, the
8 Implementing Agency shall state in writing with
9 corresponding justification the action it decides to take on
10 the Unsolicited Proposal.

11 If the Implementing Agency fails to act on an
12 Unsolicited Proposal three (3) calendar days after the end
13 of the detailed evaluation period, the project proposal shall
14 be deemed rejected, without prejudice to any liability that
15 the erring or negligent officials or employees may incur
16 under this Act and/or other existing laws.

17 The decision of the Implementing Agency on the
18 Unsolicited Proposal shall be deemed final and non-
19 appealable.

1 (b) Special Requirements -

2 (1) An Unsolicited Proposal involving ROW
3 acquisition, whether owned or not owned by the Original
4 Proponent, may be considered: *Provided*, That the
5 submission includes a ROW and resettlement plan:
6 *Provided, further*, That in no case shall the Implementing
7 Agency be obliged to make an advance payment for such
8 ROW acquisition and related costs.

9 (2) Any substitution in the composition of the
10 Original Proponent shall be strictly prohibited.

11 (c) Limitations - Unsolicited Proposals may be
12 allowed for projects included in the list of PPP Projects
13 referred to in Section 6 of this Act. In case the
14 Implementing Agency has already incurred any
15 development cost for projects subject of an Unsolicited
16 Proposal, such as the conduct of feasibility study, business
17 case, and surveys, among others, for the last three (3)
18 years from the submission of the Unsolicited Proposal, the
19 Private Proponent must undertake to reimburse the
20 Implementing Agency of such documented development

1 costs notwithstanding whether it is funded through
2 government appropriations, grants, and other sources:
3 *Provided*, That such reimbursement shall be in an amount
4 not exceeding six percent (6%) of the Project Cost,
5 excluding the cost of ROW acquisition. The procedures for
6 such reimbursement shall be determined by the
7 Implementing Agency.

8 An Unsolicited Proposal shall not contain any of the
9 following Government Undertakings:

- 10 (1) VGF and other forms of Subsidy;
- 11 (2) Payment of ROW related costs;
- 12 (3) Performance undertaking;
- 13 (4) Additional exemptions from any tax other
14 than those provided for by law;
- 15 (5) Guarantee on Demand;
- 16 (6) Guarantee on Loan Repayment;
- 17 (7) Guarantee on Private Sector Return;
- 18 (8) Government equity; and
- 19 (9) Contribution of assets, properties, and
20 rights.

1 As an exception, items (2) and (9) above may be
2 allowed if the government receives appropriate
3 compensation, which shall in no way be lower than the
4 value of the costs of ROW to be acquired and the usufruct
5 of assets, properties, and rights contributed: *Provided,*
6 That taxes, handback value of government assets, and
7 cashflows incidental to the PPP Project shall not form part
8 of the compensation for the usufruct of assets, properties,
9 and rights contributed. In the case of JV arrangements,
10 items (8) and (9) may be allowed.

11 (d) Processing of an Unsolicited Proposal –

12 (1) Invitation to submit similar proposals –

13 If the Implementing Agency decides to continue
14 processing the Unsolicited Proposal, the Implementing
15 Agency shall publish an invitation to submit similar
16 proposals by posting information on its website and/or the
17 PPP Center within three (3) calendar days from the
18 issuance of its decision to process the Unsolicited Proposal.
19 The information posted shall include the project title, the
20 proposed scope, and other information that are not

1 confidential business information. In case there are Private
2 Proponents that intend to submit similar proposals, such
3 proposals shall be submitted in accordance with Subsection
4 (a) of this section, within ten (10) calendar days from
5 publication of the invitation.

6 (2) Detailed evaluation of an Unsolicited Proposal
7 and of the qualifications of the Private Proponent – If the
8 Implementing Agency decides to continue processing an
9 Unsolicited Proposal found to be complete, it shall
10 complete a detailed evaluation of the Unsolicited Proposal
11 or similar proposals, and of the qualifications of the
12 Private Proponent/s, within ninety (90) calendar days.
13 After such detailed evaluation, the Implementing Agency
14 may:

15 (i) Accept the proposal and proceed to negotiation
16 pursuant to Subsection (d)(3) of this section: *Provided*,
17 That in case there are more than one (1) complete
18 Unsolicited Proposal for the same or similar project, the
19 Implementing Agency shall determine the most
20 advantageous proposal for the government and the public

1 among the submitted proposals, considering, among others,
2 economic and financial viability of the project, proposed
3 project scope and terms, investment recovery scheme, risks
4 proposed to be assumed by the government, and the
5 qualifications of the Private Proponent: *Provided, further,*
6 That unselected proponents will have the opportunity to
7 submit a comparative proposal during the comparative
8 challenge period;

9 (ii) Reject the Unsolicited Proposal or all similar
10 proposals in writing with the corresponding justification;
11 or

12 (iii) Decide to bid out the Unsolicited Proposal as a
13 Solicited Project pursuant to Section 9 of this Act.

14 The decision of the Implementing Agency shall be
15 communicated to the Private Proponent/s in writing no
16 later than three (3) calendar days from the end of the
17 detailed evaluation period. Such decision by the
18 Implementing Agency following the conclusion of the
19 detailed evaluation shall be deemed final and non-
20 appealable.

1 (3) Negotiation – The Implementing Agency and the
2 Private Proponent of the accepted Unsolicited Proposal
3 shall negotiate the PTCs of the proposed PPP Project in
4 good faith, with the assistance of the PPP Center, pursuant
5 to the guidelines to be issued by the PPP Governing Board:
6 *Provided*, That such negotiations shall conclude within a
7 period not exceeding one hundred fifty (150) calendar days.

8 If the Implementing Agency and the Private
9 Proponent reach a successful negotiation, the
10 Implementing Agency shall grant the Private Proponent
11 an OPS, which shall be valid for a period not exceeding one
12 (1) year from such conferment. The Implementing Agency
13 shall submit the Unsolicited Proposal, including the
14 negotiated PTCs, for approval by the appropriate
15 Approving Body pursuant to Section 7 of this Act.

16 For PPP Projects wherein the Approving Body is the
17 Head of the Implementing Agency, conferment of the OPS
18 shall be deemed an approval of the Unsolicited Proposal,
19 subject to compliance with the conditions stated in Section
20 7 of this Act.

1 (e) Comparative Challenge – Once an Unsolicited
2 Proposal is approved by the appropriate Approving Body,
3 the Unsolicited Proposal shall be subjected to a
4 comparative challenge. The Implementing Agency shall,
5 within seven (7) calendar days upon approval by the
6 appropriate Approving Body, publish an invitation for the
7 submission of comparative proposals.

8 The comparative challenge shall be conducted, either
9 manually or electronically, by the Implementing Agency
10 within the period proposed by it and approved by the
11 appropriate Approving Body, taking into consideration the
12 nature and complexity of the PPP Project: *Provided*, That
13 the period shall not be less than ninety (90) calendar days
14 and shall not exceed one (1) year: *Provided, further*, That
15 the posting of invitation to submit comparative proposals
16 shall be through the official website of the Implementing
17 Agency and/or the PPP Center with the objective of
18 promoting competition.

19 The Approving Body, in consideration of the nature
20 and complexity of the project, shall determine the

1 mechanism for evaluating comparative proposals, which
2 may be any of the following:

3 (1) Right-to-match Mechanism – The Original
4 Proponent shall have the right to match the proposal
5 submitted by a challenger during the comparative
6 challenge: *Provided*, That the Original Proponent shall
7 have thirty (30) calendar days to match the said proposal
8 put forth by the challenger.

9 If the Original Proponent is able to match the
10 proposal of the challenger, the PPP Project shall be
11 awarded to the Original Proponent. Otherwise, the PPP
12 Project shall be awarded to the winning challenger.

13 (2) Bid Bonus Mechanism – A bonus, which shall be
14 applied to the proposal of the Original Proponent:
15 *Provided*, That such bonus shall be in the form of a
16 percentage to be determined by the appropriate Approving
17 Body as part of the PTCs: *Provided, further*, That such
18 percentage shall neither fall below five percent (5%) nor
19 exceed ten percent (10%) of the Original Proponent's
20 proposal.

1 If the difference between the proposal of the top
2 challenger and of the Original Proponent is less than the
3 pre-determined bonus and the proposal of the top
4 challenger is more advantageous to the public, the Original
5 Proponent shall have the right to match such proposal
6 within thirty (30) calendar days. If the Original Proponent
7 matches the proposal of the top challenger, the PPP Project
8 shall be awarded to the Original Proponent. Otherwise, the
9 PPP Project shall be awarded to the top challenger.

10 If the difference between the proposal of the top
11 challenger and of the Original Proponent is beyond the pre-
12 determined bonus, the PPP Project shall be awarded to the
13 top challenger.

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

17 (f) All PPP contracts shall require a period within
18 which Financial Close shall be achieved by the Private
19 Partner. Failure to achieve Financial Close within such
20 period shall be subject to penalties to be provided for in the

1 signed contract: *Provided*, That such failure to achieve
2 Financial Close is not due to the fault of the government.

3 SEC. 11. *Joint Ventures (JV)*. – A JV may be
4 undertaken through a contract or by creating a JV
5 company: *Provided*, That the following shall be observed:

6 (a) The formation of a JV company shall be in
7 accordance with the legal mandate of the Implementing
8 Agency and provisions of the Revised Corporation Code of
9 the Philippines and other applicable laws, rules, and
10 regulations. The Implementing Agency shall determine the
11 minimum terms and conditions of the JV arrangement or
12 agreement including veto rights in favor of the
13 government, subject to the approval of the appropriate
14 Approving Body.

15 (b) The equity contribution, which shall include
16 contribution of assets, properties, and rights, and other
17 allowable Government Undertakings, of the government in
18 a JV arrangement shall in no case exceed fifty percent
19 (50%) of the Project Cost in the case of a contractual JV, or
20 fifty percent (50%) of the outstanding capital stock of the

1 JV company, subject to applicable laws, rules, and
2 regulations. All equity contribution of the government and
3 the Private Partner shall be subject to fair valuation by a
4 third-party appraiser.

5 (c) The formation of the JV between the
6 Implementing Agency and the Private Partner shall not
7 prevent the parties from entering into other JV
8 agreements and/or from profitably entering into other
9 business ventures or markets: *Provided*, That such other
10 ventures shall not compete with the JV between the
11 parties in the same product and geographic market.

12 (d) The cost of producing the particular product,
13 conducting the activity, or performance of service shall be
14 efficient or potentially efficient towards earning potential
15 profits for the Implementing Agency and the Private
16 Partner.

17 (e) The interests of the Implementing Agency and
18 Private Partner in and to any profits, losses, assets
19 acquired, constructed, and otherwise derived in connection
20 with the JV shall be proportionate to their respective

1 contributions to the JV: *Provided*, That the parties may
2 agree to a higher percentage of profit or lower percentage
3 of losses for the government as compared to the actual
4 percentage of government contribution in the JV. The
5 Implementing Agency may also accept any other more
6 favorable terms as may be agreed upon with the Private
7 Partner in the JV agreement.

8 (f) At the end of the JV agreement, all properties
9 covered by such agreement shall revert to the
10 Implementing Agency. In cases where the government
11 deems that divestment from the JV is in the best interest
12 of the public, JV agreements may allow the private sector
13 to take over the undertaking of the projects in its entirety.
14 Such takeover shall be in accordance with the laws, rules,
15 and regulations governing privatization. For purposes of
16 monitoring the JV agreement, the Implementing Agency
17 shall inform the PPP Center in writing of such takeover.

18 (g) Formation of JV between the Implementing
19 Agency and Private Partner shall not change the nature or
20 alter the mandate of the Implementing Agency entering

1 into such JV. The Implementing Agency's governmental
2 responsibility shall not be diminished and shall not be a
3 reason to avoid compliance/coverage of existing laws, rules,
4 or regulations. A JV shall not serve as a vehicle to create
5 new GOCCs.

6 SEC. 12. *Protest Mechanism.* – In all stages of the
7 procurement process for National and Local PPP Projects,
8 the mechanism for protest shall be resolved in the most
9 expeditious manner which shall not exceed forty-five (45)
10 calendar days.

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

17 SEC. 13. *Issuance of Franchise and Regulation of*
18 *Tolls, Fares, Fees, Rentals, and Other Charges.* – Subject to
19 the provisions of the Constitution and other existing laws,
20 rules and regulations, once a PPP contract is executed by

1 the Private Partner and the Implementing Agency, a
2 presumption arises that the public interest will be served
3 by the implementation of the PPP Project covered thereby,
4 and immediately upon application by the Private Partner,
5 the regulatory body shall automatically grant in favor of
6 the Private Partner a franchise to operate the facility and
7 collect the tolls, fares, fees, rentals, and other charges
8 stipulated under the PPP contract.

9 Within one hundred eighty (180) calendar days from
10 the effectivity of the implementing rules and regulations
11 (IRR) of this Act, all regulatory bodies charged with
12 approval of initial tolls, fares, fees, rentals, and other
13 charges and adjustments thereof, including but not limited
14 to the Toll Regulatory Board, the Civil Aviation Authority
15 of the Philippines, and the Land Transportation
16 Franchising and Regulatory Board, shall create and
17 publish, in coordination with the PPP Center, guidelines,
18 frameworks, or mechanisms for consultation, review, and
19 approval of the aforesaid initial tolls, fares, fees, rentals,
20 and other charges and adjustments for PPP Projects,

1 within the applicable period for approvals: *Provided*, That
2 in approving the initial tolls, fares, fees, rentals, and other
3 charges and adjustments thereof, the regulatory body shall
4 consider service quality, key performance indicators, the
5 principles of fairness, transparency, predictability, and
6 protection of public interest while providing for a
7 reasonable rate of return on capital or investment by the
8 Private Partner, and other stipulations in the PPP
9 contract: *Provided, further*, That such rules and
10 regulations shall likewise provide that the Private Partner
11 shall have the right to file the application for tolls, fares,
12 fees, rentals, and other charges and adjustments thereof.

13 During the implementation of the PPP Project, the
14 regulatory body shall uphold the approved initial tolls,
15 fares, fees, rentals, and other charges and adjustments
16 thereof.

17 In cases where the Implementing Agency fails to
18 implement the initial tolls, fares, fees, rentals, and other
19 charges and adjustments thereof as stipulated in the PPP
20 contract, the Private Partner shall be allowed to recover

1 the difference through measures consistent with the PPP
2 contract and applicable laws, rules, and regulations.

3 In the absence of an appropriate regulatory body, the
4 initial tolls, fares, fees, rentals, and other charges and
5 adjustments thereof shall be as stipulated in the PPP
6 contract. In the case of Local PPP Projects, the
7 Implementing Agency may also opt to create and establish
8 a local rate setting body: *Provided*, That the composition,
9 powers, and responsibilities of such body shall be set forth
10 in an ordinance or resolution approved by the local
11 Sanggunian of the Implementing Agency.

12 The Implementing Agency and the PPP Center shall
13 post in their respective websites the approved initial tolls,
14 fares, fees, rentals, and other charges and adjustments
15 thereof in a PPP Project.

16 SEC. 14. *Mandatory Inclusion of Dispute Avoidance*
17 *and Alternative Dispute Resolution Mechanisms in PPP*
18 *Contracts.* – All PPP contracts shall include provisions on
19 the use of dispute avoidance and Alternative Dispute
20 Resolution (ADR) mechanisms pursuant to Republic Act

1 No. 9285, otherwise known as the “Alternative Dispute
2 Resolution Act of 2004”. The contracting parties shall be
3 given complete freedom to choose which ADR mechanisms
4 to be followed, subject to applicable laws, rules, and
5 regulations.

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

1 up-to-date and be submitted to the PPP Center for
2 monitoring.

3 SEC. 16. *Project Supervision and Monitoring.* – Every
4 PPP Project shall be implemented in accordance with the
5 approved project terms and the signed PPP contract. The
6 Implementing Agency shall be entitled to exercise
7 sufficient powers of supervision, monitoring, and control
8 over the implementation of each PPP contract it has
9 entered into.

10 (a) Supervision - The Implementing Agency shall be
11 responsible for the overall supervision of the PPP Project
12 and for submission of periodic monitoring reports, executed
13 under oath, to the appropriate oversight agencies.

14 (b) Monitoring - The PPP Governing Board shall set
15 the framework for monitoring the compliance of the parties
16 with PPP contracts, for reporting of the progress of PPP
17 Projects and their expected benefits and outcomes, and for
18 the appropriate penalties due to non-compliance of parties
19 with the set reportorial requirements.

1 The PPP Center shall be responsible for the
2 coordination and monitoring of PPP Projects. For this
3 purpose, the Implementing Agency shall submit to the PPP
4 Center all executed PPP contracts, information on the
5 status of projects implemented by, as well as copies of all
6 Unsolicited Proposals and related documents received by,
7 the Implementing Agency, arbitral awards or settlement
8 agreements, and loan or financing documents of the
9 Private Partner for the PPP Project. At the end of every
10 calendar year, the PPP Center shall submit a report to the
11 President of the Philippines and to Congress, particularly
12 to the Senate President and the Speaker of the House of
13 Representatives, and the Joint Oversight Congressional
14 Committee pursuant to Section 33 of this Act, on the
15 progress of all PPP Projects.

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

1 SEC. 18. *Investment Recovery Scheme.* – In
2 undertaking PPP Projects, the Private Partner shall be
3 allowed to recover its investments and earn reasonable
4 profit through any of the following schemes or a
5 combination thereof:

6 (a) Revenue-based is a scheme where the Private
7 Partner is authorized to charge and collect, in whole or in
8 part, from the users reasonable tolls, fares, fees, rentals,
9 and other charges subject to appropriate regulation in
10 accordance with Section 13 of this Act. Where applicable,
11 the Private Partner may likewise be repaid in the form of a
12 share in the revenue of the project; and

13 (b) Availability-based is a scheme where the
14 Implementing Agency commits to make predetermined
15 payments, which do not take the form of charges paid by
16 the users of the works or of the service, but of regular
17 payments by the Implementing Agency in exchange of
18 delivering an asset or service in accordance with the PPP
19 contract.

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

9 SEC. 19. *Variation, Expansion, or Extension of an*
10 *Existing PPP Project.* – A contract variation, expansion, or
11 extension of an existing PPP project may be allowed,
12 subject to due diligence and recommendation of the Head
13 of the Implementing Agency.

14 The following variation, expansion, or extension of an
15 existing PPP Project, shall be approved by the appropriate
16 Approving Body:

17 (a) Changes in the agreed schedule or parametric
18 formula to calculate tolls, fares, fees, rentals, and other
19 charges and adjustments thereof, as stipulated in the PPP
20 contract, unless already regulated and publicly-disclosed;

1 (b) Decrease in the Implementing Agency's revenue
2 or profit share derived from the project, except as may be
3 allowed under a formula approved by the relevant
4 regulatory or Approving Body;

5 (c) Change in the approved scope of works, decrease
6 in the performance standards, deferment of committed
7 service levels, or change in the contractual arrangement;

8 (d) Extension in the contract term; or

9 (e) Increase in the financial liabilities of the
10 government under the PPP Project.

11 The Approving Body may establish limitations on
12 allowable variations relating to items (c), (d), and (e), as
13 part of the approved PTCs of the PPP Project during the
14 approval process of the project. During project
15 implementation, any proposed changes to the approved
16 limitations to the aforementioned allowable variations
17 shall be submitted to the appropriate Approving Body for
18 decision. The Approving Body may treat the proposed
19 changes as a new set of allowable variation or a new
20 project. If the Approving Body treats the proposed changes

1 as a new project, the same shall be subject to the approval
2 process under Section 7 of this Act

3 All other variations not covered in items (a) to (e)
4 above shall be approved in writing by the Head of the
5 Implementing Agency, and reported to the PPP center, also
6 in writing.

7 Failure to secure the approval of the Head of the
8 Implementing Agency and/or the appropriate Approving
9 Body, as provided in this Section, shall render the
10 variation void. No variation shall be implemented before
11 the variation is approved. The splitting of any proposed
12 changes, for the purpose of circumventing the limitations
13 and conditions prescribed in the PTCs set by the Approving
14 Body, is expressly prohibited.

15 The provisions of this section shall apply
16 prospectively to all existing franchises and concessions
17 granted for the financing, construction, operation, and
18 maintenance of infrastructure facilities under previous
19 laws and decrees: *Provided*, That such shall not impair the
20 substantive rights of the Private Partner, and shall be

1 governed by existing laws, decrees, orders, rules, and
2 regulations at the time of application.

3 SEC. 20. *Divestment.* – A Private Partner may divest
4 its ownership, rights, or interests in a PPP Project, subject
5 to the approval of the Head of the Implementing Agency:
6 *Provided*, That the divestment shall be after a holding or
7 lock-in period as indicated in the PPP contract: *Provided*,
8 *further*, That the new Private Partner has equal or better
9 qualifications as with the previous Private Partner.

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

17 SEC. 21. *Contract Termination.* – All PPP contracts
18 shall define all events that may lead to its termination,
19 including but not limited to, either party event of default,
20 force majeure and other no-fault termination events, and

1 other termination events, as may be agreed upon by the
2 parties to the PPP contract.

3 For such events that may lead to contract
4 termination, the PPP contract shall provide among others,
5 remedies, curing periods, lender step-in rights, remittance
6 procedures, default interest rates, and written notice
7 requirements agreed upon by both parties. The PPP
8 contract shall likewise provide that termination shall take
9 place only upon failure to remedy or cure the default in
10 accordance with the PPP contract.

11 The PPP Project shall not be terminated for an event
12 of default without exhausting the corresponding remedy or
13 curing period.

14 The PPP Governing Board shall issue guidelines on
15 the determination of Termination Payments and related
16 reportorial requirements.

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

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

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

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

9 (d) The provision by the Private Partner of a
10 warranty that the PPP Project meets the project technical
11 specifications, agreed system features, and performance
12 standards and services for a certain period after the
13 transfer of the PPP Project to the Implementing Agency;
14 and

15 (e) In case of JV arrangements, the compensation to
16 which the Private Partner may be entitled in case of buy-
17 out and transfer of assets to the Implementing Agency.

18 *SEC. 23. Prohibition on the Issuance of Temporary*
19 *Restraining Orders, Preliminary Injunctions, Preliminary*
20 *Mandatory Injunctions, and Similar Provisional Remedies.*

1 – No temporary restraining order, preliminary injunction,
2 preliminary mandatory injunction, temporary
3 environmental protection order, or similar temporary or
4 provisional reliefs or remedies, shall be issued by any
5 court, except the Supreme Court, against any
6 Implementing Agency or the PPP Center, its officials or
7 employees, or any person or entity, whether public or
8 private acting under the government direction, to restrain,
9 prohibit, or compel the following acts:

10 (a) Evaluation, acceptance, and rejection of
11 Unsolicited Proposals, including but not limited to,
12 preliminary examination and screening for completeness,
13 and any and all acts, determinations, or decisions by the
14 Implementing Agency in relation thereto;

15 (b) Bidding, rebidding, or declaration of failure of
16 bidding of any PPP Project;

17 (c) Awarding of any PPP contract;

18 (d) Acquisition, clearance, and development of the
19 ROW, site or location of any PPP Project;

1 (e) Construction, operation and maintenance of any
2 PPP Project;

3 (f) Commencement, execution, implementation,
4 termination, or rescission of any PPP contract; and

5 (g) Undertaking or authorization of any other lawful
6 activity necessary for such PPP Project.

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

18 In addition to any civil and criminal liabilities a
19 judge may incur under existing laws, any judge who shall
20 issue a temporary restraining order, preliminary

1 injunction or preliminary mandatory injunction, temporary
2 environmental protection order, or similar temporary or
3 provisional reliefs or remedies in violation of this Section,
4 shall suffer the penalty of suspension of at least sixty (60)
5 calendar days without pay.

6 Any temporary restraining order, preliminary
7 injunction, preliminary mandatory injunction, temporary
8 environmental protection order, or similar temporary or
9 provisional reliefs or remedies issued in violation of this
10 section is void and of no force and effect.

11 SEC. 24. *PPP Center.* – To achieve the goals of this
12 Act, the PPP Center, created under Executive Order No. 8,
13 series of 2010, as amended by Executive Order No. 136,
14 series of 2013, and further amended by Executive Order
15 No. 30, Series of 2023, is hereby institutionalized. The PPP
16 Center is hereby authorized to adopt its current
17 organizational structure, absorb its existing employees,
18 and upgrade its human resource component, as may be
19 necessary, subject to applicable laws, rules, and
20 regulations.

1 (a) Powers and Functions - In order to work towards
2 a more efficient and effective performance of its mandate,
3 the PPP Center shall have the following powers and
4 functions:

5 1) Assist Implementing Agencies in identifying,
6 prioritizing, developing, and maintaining a pipeline of PPP
7 Projects;

8 2) Provide project advisory services and technical
9 assistance to Implementing Agencies, Approving Bodies,
10 and other oversight agencies in all PPP-related matters,
11 and act as a procurement agent upon the request of the
12 Implementing Agency;

13 3) Facilitate the appraisal and approval of PPP
14 Projects by the NEDA Board and the NEDA Board - ICC;

15 4) Review PPP contracts pursuant to Section 8(a)
16 of this Act;

17 5) Require the submission of PPP Project
18 documents including executed PPP contracts, and any
19 subsequent amendment or supplement thereto, including
20 settlement agreements, entered into by Implementing

1 Agencies, notwithstanding the confidentiality clauses that
2 are stipulated therein;

3 6) Provide regular monitoring and status reports
4 on the implementation of the PPP Programs and all PPP
5 Projects entered into by Implementing Agencies, including
6 potential public interest concerns and violations of the PPP
7 Act, to the Office of the President, the Congress of the
8 Philippines, and relevant oversight committees and
9 agencies, and publish the same in the official website of the
10 PPP Center unless otherwise prohibited by existing laws,
11 rules, and regulations;

12 7) Serve as the central repository of all PPP
13 Project information;

14 8) Develop the capacities of Implementing
15 Agencies, Approving Bodies, PPP units referred to in
16 Section 28 of this Act, and other relevant government
17 stakeholders on PPPs;

18 9) Promote and market the PPP Program and
19 Projects, in collaboration with other government
20 investment promotion agencies;

1 10) Recommend plans, policies, and implementation
2 guidelines related to PPPs, in consultation with
3 appropriate oversight committees or agencies,
4 Implementing Agencies, private sector, and other relevant
5 stakeholders;

6 11) Draft policy matter opinions for approval of the
7 PPP Governing Board in response to requests by
8 government agencies and private entities;

9 12) Issue non-policy matter opinions relating to
10 PPPs;

11 13) Ensure sustainability of the implemented PPP
12 Program and Projects through monitoring, documenting,
13 and sharing the lessons learned and best practices to
14 Implementing Agencies, Approving Bodies, oversight
15 committees or agencies, and other relevant stakeholders;

16 14) Advise and assist Implementing Agencies and
17 oversight agencies in developing and periodically updating
18 an Organizational Development Plan that will enable them
19 to competently perform their functions under this Act; and
20 recommend to the Department of Budget and Management

1 (DBM) the standards of training, qualification, and
2 compensation for necessary personnel under these
3 Organizational Development Plans;

4 15) Manage and administer the Project
5 Development and Monitoring Facility (PDMF) as provided
6 in Section 26 of this Act;

7 16) Manage and administer the PPP Risk
8 Management Fund as provided in Section 27 of this Act;

9 17) Act as Secretariat to the PDMF Committee and
10 the PPP Governing Board; and

11 18) Perform such other functions as may be
12 necessary to achieve the objectives and purposes of this
13 Act.

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

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

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

10 1) Undertake the day-to-day management and
11 supervise the operations of the PPP Center;

12 2) Recommend to the PPP Governing Board such
13 policies and measures which are deemed necessary for the
14 effective exercise and discharge of the powers and
15 functions of the PPP Center;

16 3) Sit as a member of the PPP Governing Board, the
17 Technical Boards of the Infrastructure Committee
18 (INFRACOM), and NEDA Board - ICC, and other inter-
19 agency bodies in cases where PPPs are concerned; and

1 4) Perform such other functions as may be assigned
2 by the PPP Governing Board.

3 SEC. 25. *PPP Governing Board.* – The PPP Governing
4 Board (the Board), created under Executive Order No. 136,
5 series of 2013, as amended by Executive Order No. 30,
6 Series of 2023, is hereby institutionalized. It shall be the
7 overall policy-making body for all PPP-related matters,
8 including the PDMF. It shall be responsible for setting the
9 strategic direction of the PPP Programs and Projects and
10 in creating an enabling policy and institutional
11 environment for PPP.

12 The Board shall be composed of the following:

- 13 (a) Secretary of the NEDA as Chairperson;
14 (b) Secretary of the DOF as Vice-Chairperson;
15 (c) Secretary of the DBM;
16 (d) Secretary of the Department of Justice;
17 (e) Secretary of the Department of Trade and
18 Industry;
19 (f) Secretary of the Department of the Interior and
20 Local Government;

- 1 (g) Secretary of the Department of Environment and
2 Natural Resources;
- 3 (h) Executive Secretary;
- 4 (i) Executive Director of the PPP Center; and
- 5 (j) One (1) private sector representative from the
6 infrastructure sector to be appointed by the PPP
7 Governing Board.

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

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

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

1 SEC. 26. *Project Development and Monitoring*
2 *Facility (PDMF)*. – The PDMF referred to under Executive
3 Order No. 8, series of 2010, as amended by Executive
4 Order No. 136, series of 2013, and further amended by
5 Executive Order No. 30, series of 2023, is hereby
6 institutionalized. The PDMF shall be used for the
7 procurement of advisory and support services related to
8 the preparation, structuring, evaluation, procurement,
9 probity management, Financial Close, and monitoring of
10 implementation of PPP Projects. The PDMF may also be
11 used for such other services as may be required or
12 contemplated under applicable laws, rules, and
13 regulations, and as may be determined by guidelines and
14 procedures to be issued by the PPP Governing Board.

15 The PDMF may be funded through the GAA, ODA, or
16 other sources, subject to applicable laws, rules, and
17 regulations. Subject to the provisions of the GAA and
18 relevant accounting and auditing rules and regulations,
19 Implementing Agencies are hereby authorized to reallocate
20 their funds for purposes of the PDMF.

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

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

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

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

1 SEC. 27. *Creation of a Risk Management Fund.* – To
2 ensure fiscal sustainability and negotiate better financing
3 terms of PPP Projects, there is hereby created a PPP Risk
4 Management Fund to be used for the payment of
5 contingent liabilities arising from PPPs in accordance with
6 its contract terms. The PPP Risk Management Fund shall
7 be funded by: (a) general appropriations; (b) income from
8 existing PPP Projects; and (c) other sources as may be
9 determined by the Development Budget Coordination
10 Committee (DBCC): *Provided*, That the PPP Risk
11 Management Fund shall be managed by the PPP Center.

12 The Inter-Agency Technical Working Group on
13 Contingent Liabilities created under the DBCC Resolution
14 No. 2015-2 is hereby institutionalized.

15 The PPP Center, in coordination with the
16 aforementioned Inter-Agency Technical Working Group,
17 shall formulate the guidelines on the management of
18 contingent liabilities arising from PPP Projects and the use
19 of the PPP Risk Management Fund, for approval by the
20 DBCC.

1 The target amount in the PPP Risk Management
2 Fund is to be determined by the DBCC using risk-adjusted
3 methods or such other means that estimate the exposure of
4 the Government of the Philippines to PPP contingent
5 liabilities.

6 In the case of Local PPP Projects, a similar PPP Risk
7 Management Fund may be established by the LGU subject
8 to the guidelines to be issued by the PPP Governing Board.
9 Sources of the fund may include the budget of the LGU and
10 the income of the LGU from PPP Projects. The LGUs may
11 also access the PPP Risk Management Fund of the
12 national government, subject to the payment by LGUs of
13 contributions in accordance with the guidelines to be
14 issued by the DBCC.

15 SEC. 28. *Establishment of a PPP Unit.* – The Head of
16 the Implementing Agency may establish a PPP unit, or
17 assign responsibility to an appropriate unit to act as its
18 PPP unit, which shall plan, oversee, and monitor PPP
19 Projects of the Implementing Agency.

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

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

12 SEC. 29. *Safekeeping and Public Disclosure of Tender*
13 *Documents and PPP Contracts.* – Copies of all tender
14 documents and PPP contracts executed under this Act
15 should be considered, appropriately kept safe, and
16 preserved, as public documents. The Implementing Agency
17 and the PPP Center shall publish, through their respective
18 websites, copies of all (a) tender documents, and (b) PPP
19 Contracts executed under this Act. In case of PPP
20 Contracts with provisions which are proprietary, or may

1 pose threats to national security or public safety, the
2 procedures for the disclosure and publication of such
3 contracts shall be consistent with existing and applicable
4 laws, rules, and regulations.

5 SEC. 30. *Miscellaneous Provisions.* –

6 (a) Independent Consultants - An independent
7 consultant, either individuals, partnerships, or
8 corporations, shall be procured by the Implementing
9 Agency to provide independent advice to the Implementing
10 Agency and Private Partner or its Contractor for the
11 design and construction of the PPP Project, and monitoring
12 of the performance of the contracting parties during such
13 phases of the PPP Project. As may be necessary, an
14 independent consultant may also be procured during the
15 operations and maintenance phase of the PPP Project.

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

1 (b) Conflict of Interest - All relevant parties shall, at
2 all times, avoid conflicts of interest in the interpretation
3 and implementation of this Act. Conflict of interest, as
4 defined in Republic Act No. 6713 or the Code of Conduct
5 and Ethical Standards for Public Officials and Employees
6 shall include personal, pecuniary, and regulatory conflicts
7 of interests.

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

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

1 (c) Confidentiality of Information - Confidential
2 business information submitted by entities, whether public
3 or private, relevant to any activity being conducted
4 pursuant to this Act as well as any deliberation in relation
5 thereto, shall not, in any manner, be directly or indirectly
6 disclosed, published, transferred, copied, or disseminated:
7 *Provided*, That the confidentiality rule shall not apply if
8 the entity consents to the disclosure, or if a law, or a valid
9 order of a court of competent jurisdiction or of a
10 government or regulatory body, mandates the disclosure of
11 such document or information.

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

19 (e) Mitigation of Interconnectivity and Interface
20 Risks - All PPP Projects which will interconnect or

1 interface with a local or national facility shall be required
2 to submit a Memorandum of Agreement (MOA) containing
3 an interconnection/interface plan agreed upon by all
4 relevant parties. All MOAs shall be submitted to the PPP
5 Center, and the NEDA Board – ICC in the case of the
6 National PPP Projects, or the appropriate Approving Body
7 in the case of Local PPP Projects.

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

19 (g) Preferential Use of Filipino Labor, Domestic
20 Materials, and Locally Produced Goods - For the

1 implementation of infrastructure projects under this Act,
2 Contractors or Facility Operators shall, as far as
3 practicable, use Filipino labor, domestic materials, and
4 locally produced goods in different phases of
5 implementation. In all cases, foreign nationals employed in
6 PPP Projects shall have the appropriate work permit and
7 work visa in accordance with existing law.

8 (h) Land Value Capture Strategies - PPP Project
9 design shall consider adopting Land Value Capture
10 Strategies to optimize the financial and economic value of
11 the PPP Project.

12 SEC. 31. *Accountability in PPP Projects.* – The Head
13 of the Implementing Agency concerned shall at all times be
14 accountable to PPP Projects undertaken through this Act.
15 The Private Partner shall likewise be held accountable for
16 the works it has delivered and services it has rendered for
17 a PPP Project. All PPP contracts are hereby required to
18 clearly define the scope of each party's accountability
19 under the PPP contract. Without prejudice to the penalties
20 stated in Section 32 of this Act, failure of the Head of the

1 Implementing Agency to comply with their obligations
2 under the PPP contract shall allow the Private Partner to
3 avail the appropriate remedy as provided in the PPP
4 contract.

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

13 *SEC. 32. Administrative, Civil, and Penal Sanction. –*
14 Without prejudice to the provisions of Republic Act No.
15 3019, otherwise known as the “Anti-Graft and Corrupt
16 Practices Act” and other penal laws, any person, whether
17 private individual or public officer or employee, who
18 commits any of the prohibited acts hereunder proscribed,
19 shall be punished by imprisonment from a minimum of
20 three (3) years to a maximum of six (6) years and a fine

1 ranging from One million pesos (P1,000,000.00) to Five
2 million pesos (P5,000,000.00).

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

5 (b) Submitting of any false information or falsified
6 documents, or concealing any information at any stage of a
7 PPP Project by a Private Proponent or Private Partner
8 that may affect their eligibility or is otherwise required by
9 the PPP contract or the law;

10 (c) Falsifying or inserting provisions in the
11 execution copy of the PPP contract which are materially
12 and substantially different from the approved final draft
13 contract;

14 (d) Violating Sections 6, 7, 8, 9, 10, 11, 13, 16, 19, 20,
15 29, 30(b), and 30(c) under this Act;

16 (e) In case of public officers or employees, whether in
17 connivance with others or acting alone, negligently or by
18 fraud, failing to exercise the required due diligence and/or
19 to ensure compliance with the project terms as approved by
20 the Approving Body, and the signed PPP contract, by

1 approving, issuing, or confirming any certification,
2 required documents, or deliverables of the Private Partner,
3 which are non-compliant with existing rules, erroneous,
4 not authentic, or fraudulent;

5 (f) In case of public officer/s acting as the Approving
6 Authority or member of the Approving Body, knowingly or
7 with gross negligence, approving any PPP Contract that is
8 contrary to law or manifestly and grossly disadvantageous
9 to the government and the public, whether or not the
10 public officer/s is/are signatory/ies to the PPP Contract;

11 (g) Neglecting or refusing to act upon an Unsolicited
12 Proposal insofar as determining completion and conducting
13 detailed evaluation of the Unsolicited Proposal and the
14 qualifications of the Private Proponent are concerned;

15 (h) Opening any proposal or any sealed bid including
16 any and all documents required to be sealed or divulging
17 their contents, prior to the appointed time for their public
18 opening;

19 (i) Unduly influencing or exerting undue pressure on
20 any member, officer, or employee of the Approving Body or

1 Implementing Agency to take a particular action with the
2 intent to, or tends to favor a particular Private Proponent
3 or Private Partner;

4 (j) Performing any act which restricts transparency
5 or tend to restrain the natural rivalry of parties or operates
6 to stifle or suppress competition in the PPP process;

7 (k) In case of two (2) or more Private Proponents
8 agreeing and submitting different bids as if bonafide, with
9 the knowledge that such will not be accepted, and that the
10 PPP Contract will be awarded to the pre-arranged most
11 responsive bid;

12 (l) In case of a Private Proponent, maliciously
13 submitting different bids through two or more persons,
14 corporations, partnerships, or any other business entity in
15 which they have interest in to create the appearance of
16 competition that does not in fact exist so as to be adjudged
17 as the winning Private Proponent;

18 (m) In case of two or more Private Proponents or
19 prospective Private Proponents, entering into an
20 agreement which call upon one to refrain from bidding or

1 participating in a PPP Project, or which call for withdrawal
2 of bids already submitted, or which are otherwise intended
3 to secure as undue advantage to any one of them;

4 (n) Participating in a public bidding using the name
5 of another or allow another to use one's name for the
6 purpose of participating in a public bidding; and

7 (o) Withdrawing a bid, after it shall have been
8 declared the winner, or refusing award, without just cause
9 for the purpose of forcing the Implementing Agency to
10 award the PPP contract to another bidder. This shall
11 include the non-submission of requirements such as, but
12 not limited to, performance security, preparatory to the
13 final award of the contract.

14 In addition, such acts committed by the Private
15 Partner and its concerned officers may cause the
16 termination of the PPP contract, the lapse of any
17 applicable warranty period, and the perpetual
18 disqualification of the Private Partner from participating
19 in any public bidding or entering into any contractual
20 arrangement allowed in this Act. This is without prejudice

1 to any other civil or administrative liability that erring
2 officials, Private Proponents, or Private Partners may
3 incur.

4 The liability of the public officer or employee or
5 former public officer or employee for any violation of the
6 prohibitions under this Act shall survive the retirement,
7 resignation, expiration of term, or removal from office, of
8 said public officer or employee, and shall include the
9 prohibition for the erring officer to hold public office, either
10 as an elected, or an appointed government official to any
11 local or national position, and to act as a consultant for the
12 Philippine Government with regard to any activity
13 provided or authorized in this Act, the termination of the
14 PPP contract, and the lapse of any applicable warranty
15 period/s.

16 No administrative, criminal, or civil proceedings shall
17 lie against any person for having committed acts under
18 items (a) to (o) in the regular performance of his duties in
19 good faith.

1 SEC. 33. *Joint Congressional Oversight Committee.* –

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

13 SEC. 34. *Implementing Rules and Regulations (IRR).*

14 – The IRR Committee shall be composed of the members of
15 the PPP Governing Board. The Secretary of NEDA shall
16 serve as the Chairperson, and the PPP Center as the
17 Secretariat.

18 The members of the PPP Governing Board may
19 designate their respective alternates, whose acts shall be
20 considered the acts of their principals.

1 The IRR Committee, in consultation with the
2 Department of Public Works and Highways, Department of
3 Transportation, other key Implementing Agencies, LGUs,
4 relevant stakeholders, and the public, shall formulate and
5 prescribe the IRR within ninety (90) calendar days from
6 the effectivity of this Act. The IRR shall include, among
7 others, the procedures for approval of PPP Projects,
8 processing of Unsolicited Proposals, evaluation of bid
9 proposals, and protests; framework for supervision and
10 monitoring of PPP Projects, and mechanism for setting the
11 allowable rate of return; and list of government
12 undertakings that may be granted to a PPP Project, in
13 order to carry out the provisions of this Act in the most
14 expeditious manner.

15 The IRR Committee may conduct, formulate, and
16 prescribe, after due public consultation, amendments to
17 the IRR, consistent with the provisions of this Act.
18 Amendments to the IRR shall take effect fifteen (15)
19 calendar days after its complete publication in the Official
20 Gazette or in a newspaper of general circulation.

1 SEC. 35. *Transitory Clause.* – All existing contracts
2 and upcoming PPP Projects affected by this Act shall be
3 treated as follows:

4 (a) All existing contracts shall be governed by the
5 agreements entered into by the concerned parties:
6 *Provided*, That the provisions of this Act shall apply
7 suppletorily to the extent that such application does not
8 infringe upon established rights and obligations.

9 (b) All PPP Projects issued with notices of award but
10 with no executed contracts at the time of the effectivity of
11 this Act shall be governed by this Act to the extent that
12 such application does not infringe upon established rights
13 and obligations. Otherwise, the rules in effect at the time
14 the notices of award were issued shall apply.

15 (c) Solicited PPP Projects which have commenced
16 bidding, and unsolicited PPP Projects which have
17 commenced the comparative challenge process at the time
18 of the effectivity of this Act, shall be governed by this Act
19 to the extent that such application does not infringe upon
20 established rights and obligations. Otherwise, the rules in

1 effect at the commencement of the bidding or the
2 comparative challenge process shall apply.

3 (d) All proposed PPP Projects under Republic Act No.
4 6957, as amended by Republic Act No. 7718, and its
5 Implementing Rules and Regulations, which are either
6 pending approval or have been approved by the
7 appropriate Approving Body but the bidding or the
8 comparative challenge process has not yet commenced,
9 shall be governed by the provisions of this Act except those
10 that govern project approval: *Provided*, That Private
11 Proponents that have submitted Unsolicited Proposals
12 which have been granted OPS, but pending approval prior
13 to the effectivity of this Act, shall have the option to
14 proceed with the approval process or resubmit their
15 proposals to the appropriate Approving Body under this
16 Act. In case of the latter, the Private Proponent shall notify
17 the Implementing Agency in writing within thirty (30)
18 calendar days after the effectivity of the IRR of this Act, of
19 its intention to resubmit the same, in which case the

1 proposal shall be withdrawn and returned to the Private
2 Proponent.

3 (e) National and local JVs and other contractual
4 arrangements for toll road projects or toll facilities with a
5 Private Partner including Toll Operation Agreements,
6 Supplemental Toll Operation Agreements, and other
7 similar arrangements, pending approval of the Toll
8 Regulatory Board and other pertinent regulatory bodies,
9 shall be governed by the approval process under Section 7
10 of this Act.

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

1 shall be incorporated in its budget proposals, subject to the
2 existing budgeting rules and regulations.

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

6 SEC. 36. *Separability Clause.* – If any provision of this
7 Act is declared unconstitutional or invalid, other parts or
8 provisions hereof not affected thereby shall continue to be
9 in full force and effect.

10 SEC. 37. *Repealing Clause.* –

11 (a) The following are hereby repealed:

12 (1) Republic Act No. 6957, as amended by Republic
13 Act No. 7718, otherwise known as “An Act Authorizing the
14 Financing, Construction, Operation and Maintenance of
15 Infrastructure Projects by the Private Sector, and for
16 Other Purposes”;

17 (2) Section 10(e)(1) of Republic Act No. 7227,
18 otherwise known as the “Bases Conversion and
19 Development Act”, insofar as it refers to Republic Act No.
20 6957, as amended by Republic Act No. 7718;

1 (3) Section 6(p) of Republic Act No. 10844, otherwise
2 known as the “Department of Information and
3 Communications Technology Act of 2015”;

4 (4) Section 4(r) of Republic Act No. 8292, otherwise
5 known as the “Higher Education Modernization Act of
6 1997”;

7 (5) Section 3(a) of Presidential Decree No. 1112,
8 otherwise known as “An Act Authorizing the
9 Establishment of Toll Facilities on Public Improvements,
10 Creating a Board for the Regulation Thereof and for Other
11 Purposes”;

12 (6) Second paragraph of Section 1 of Presidential
13 Decree No. 1894, series 1983, Amending the Franchise of
14 the Philippine National Construction Corporation to
15 Construct, Maintain and Operate Toll Facilities in the
16 North Luzon and South Luzon Expressways to include the
17 Metro Manila Expressway to serve as an additional artery
18 in the transportation of trade and commerce in the Metro
19 Manila area;

1 (7) Pertinent provisions of Presidential Decree No.
2 857, as amended, or the “Revised Charter of the Philippine
3 Ports Authority” created under Presidential Decree No
4 505, and Philippine Ports Authority Administrative Order
5 No. 03-2016 or the Port Terminal Management Regulatory
6 Framework, which are inconsistent with the provisions of
7 this Act;

8 (8) Sections of Presidential Decree (P.D.) No. 1113,
9 Series of 1977, granting to the Construction and
10 Development Corporation of the Philippines (CDCP) the
11 right to construct, operate and maintain toll facilities in
12 the North and South Luzon Toll Expressways, which are
13 inconsistent with the provisions of this Act;

14 (9) Executive Order No. 8, series of 2010, as amended
15 by Executive Order No. 136, series of 2013, Reorganizing
16 and Renaming the Build-Operate-and-Transfer (BOT)
17 Center to the Public-Private Partnership (PPP) Center of
18 the Philippines and transferring its attachment from the
19 Department of Trade and Industry to the National
20 Economic and Development Authority and for other

1 purposes, and further amended by Executive Order No. 30,
2 series of 2023, Strengthening Private Sector Participation
3 in the Public-Private Partnership Governing Board
4 established under Executive Order No. 136, series of 2013,
5 and further amending Executive Order No. 8, series of
6 2010, as amended;

7 (10) Executive Order No. 78, series of 2012,
8 Mandating the Inclusion of Provisions on the Use of
9 Alternative Dispute Resolution Mechanisms in all
10 Contracts involving Public-Private Partnership Projects,
11 Build-Operate and Transfer Projects, Joint Venture
12 Agreements between the Government and Private Entities
13 and those entered into by Local Government Units;

14 (11) Section 8 of Executive Order No. 423, series of
15 2005, repealing Executive Order No. 109-a, dated
16 September 18, 2003, Prescribing the Rules and Procedures
17 on the Review and Approval of all Government Contracts
18 to Conform with Republic Act No. 9184, otherwise known
19 as the "Government Procurement Reform Act";

1 (12) Sections 2.2.2 and 2.3.2 of the Implementing
2 Rules and Regulations of Executive Order No. 74, dated
3 February 1, 2019, series of 2019, Repealing Executive
4 Order No. 798, series of 2009 and Executive Order No. 146,
5 series of 2013, transferring the Philippine Reclamation
6 Authority (PRA) to the Office of the President (OP),
7 delegating to the PRA Governing Board the Power of the
8 President to Approve Reclamation Projects, and for Other
9 Purposes;

10 (13) 2023 Revised Guidelines and Procedures for
11 Entering into Joint Venture Agreements between
12 Government and Private Entities;

13 (14) Tourism Infrastructure and Enterprise Zone
14 Joint Venture Guidelines;

15 (15) Metro Manila Development Authority
16 Alternative PPP Guidelines;

17 (16) Guidelines issued by GOCCs, SUCs, and other
18 government agencies on partnerships between government
19 and private sector for the financing, designing,
20 constructing, operating, and maintaining, or any

1 combination or variation thereof, of infrastructure or
2 development projects outside of Republic Act No. 9184; and

3 (17) Specific provisions in the special charters of
4 GOCCs, SUCs, and other government agencies that allow
5 the issuance of guidelines governing partnerships between
6 government and private sector for the financing, designing,
7 constructing, operating, and maintaining, or any
8 combination or variation thereof, of infrastructure or
9 development projects outside of Republic Act No. 9184.

10 (b) The pertinent provisions of the following laws are
11 hereby amended:

12 (1) Sections 22(C) and 22(E) of Republic Act No. 9500,
13 otherwise known as the “University of the Philippines
14 Charter of 2008”, insofar as it refers to leases and Joint
15 Ventures;

16 (2) Presidential Decree No. 1113, Series of 1977, on
17 the franchise granted to the Construction and
18 Development Corporation of the Philippines (CDCP) to
19 construct, operate and maintain the North and South

1 Luzon Expressways, which are inconsistent with the
2 provisions of this Act;

3 (3) Presidential Decree No. 1894, Series of 1983, on
4 the franchise granted to the Philippine National
5 Construction Corporation (PNCC), which are inconsistent
6 with the provisions of this Act; and

7 (4) Section 2.4 of the Implementing Rules and
8 Regulations of Executive Order No. 74, Series of 2019,
9 repealing Executive Order No. 798, series of 2009 and
10 Executive Order No. 146, series of 2013, transferring the
11 Philippine Reclamation Authority (PRA) to the Office of
12 the President (OP), delegating to the PRA Governing
13 Board the power of the President to approve reclamation
14 projects, and for other purposes.

15 All references to Republic Act No. 6957 and Republic
16 Act No. 7718 in laws, decrees, executive orders, rules and
17 regulations, and other issuances, are hereby amended to
18 refer to this Act.

19 All laws, decrees, orders, codes, issuances, rules and
20 regulations, and ordinances or any part thereof

1 inconsistent with or contrary to this Act are hereby
2 repealed or modified accordingly.

3 Upon effectivity of this Act, no other JV guidelines,
4 PPP guidelines, codes, or ordinances, whatsoever may be
5 enacted, issued and/or used by any government entity to
6 enter into PPPs, except those that are enacted, issued,
7 and/or used in accordance with this Act and its IRR.

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

Approved,