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[ REPUBLIC ACT NO. **11966** ]

AN ACT PROVIDING FOR THE PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE PHILIPPINES

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

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

SEC. 2. *Declaration of Policy.* – The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments. To this end, the State shall provide an enabling environment for the private sector to mobilize its resources to finance, design, construct, operate, and maintain infrastructure or development projects and services.

It is further declared that the State shall protect the public interest by providing affordable, accessible, and efficient public services. In order to achieve better quality of Public-Private Partnership (PPP) Projects at lower costs, the State shall ensure equitable risk allocation in PPP Projects,

and that all PPP Projects yield sufficient Value for Money (VFM), promote sustainability, and advance public welfare.

The State shall pursue a policy of financing infrastructure and other development projects and services through all means available to effectively meet the objectives of the government. These may include appropriations, official development assistance (ODA), and PPPs, as well as combinations and variations thereof. The government shall determine the appropriate financing by considering budget availability, VFM, timelines, stakeholder commitments, and market capacity.

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

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

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

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

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

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

(b) *Availability Payments* refer to predetermined payments by the Implementing Agency to the Private Partner in exchange of delivering an asset or service in accordance

with the PPP contract. Availability Payments shall not be construed as Government Undertakings, Subsidy, or government contribution;

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

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

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

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

(g) *Financial Close* refers to the specific milestone in a PPP contract where the Private Partner successfully secures all necessary project and financing agreements. The achievement of such milestone confirms that all prior conditions have been met, allowing the Private Partner to draw down the financing to commence work on the PPP Project;

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

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

(j) *Government Instrumentalities with Corporate Powers (GICPs)/Government Corporate Entities (GCEs)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter;

(k) *Government-owned or -controlled corporation (GOCC)* refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock, as defined in Republic Act No. 10149, otherwise known as the "GOCC Governance Act of 2011", including GICPs, GCEs, GFIs, water districts, and economic zone authorities, which are hereby authorized to undertake PPP Projects with a Private Partner in accordance with the provisions of this Code;

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

(m) *Green Financing* refers to investments that create environmental benefits in support of green growth, low-carbon, carbon avoidance, and sustainable development, and the use of alternative assets such as carbon credits, such as those pursuant to Article VI of the Paris Agreement, or ecosystem services;

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

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

(p) *Guarantee on Private Sector Return* refers to an agreement where the Implementing Agency guarantees to provide a predetermined rate of return on the investment of the Private Partner. This shall not cover Termination Payments arising from government events of default;

(q) *Implementing Agency* refers to a department, bureau, office, instrumentality, commission, authority of the national government, state university and college (SUC), local university and college (LUC), LGU, and GOCC;

(r) *Joint Venture (JV)* refers to a national or local PPP contractual arrangement, whether solicited or unsolicited, where both the Implementing Agency performing its proprietary function and the Private Partner pool resources comprising of capital, services, or assets, including equipment, land, or intellectual property, to jointly undertake a specific investment activity within a specific period of cooperation to deliver an infrastructure or development project typically provided by the public sector;

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

(t) *Local Public-Private Partnership (PPP) Project* refers to a PPP Project that is undertaken by LGUs and LUCs;

(u) *Local Universities and Colleges (LUCs)* refer to Commission on Higher Education (CHED)-accredited public Higher Education Institutions (HEIs) established by LGUs through an enabling ordinance, financially supported by the LGU concerned, and compliant with the policies, standards, and guidelines of the CHED;

(v) *Material Adverse Government Action (MAGA)* refers to any act of the government which the Private Partner had no knowledge of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP contract, and that occurs after the effectivity of the PPP contract, other than an act which is authorized or permitted under the PPP contract, which (1) specifically discriminates against the sector, industry, or project, and (2) has a significant negative effect on the ability of the Private Partner to comply with any of its obligations under the approved PPP contract. MAGA may include unanticipated regulatory risks;

(w) *Most Responsive Bid* refers to the bid that conforms, in all material respects, to the bid solicitation requirements and approved bid parameters, and the one that is most advantageous to the government;

(x) *National Public-Private Partnership (PPP) Project* refers to a PPP Project that is undertaken by the National Government, SUCs, and GOCCs;

(y) *Original Proponent* refers to the Private Proponent conferred with the "Original Proponent Status (OPS)" in accordance with Section 10 of this Code;

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

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

(bb) *Project Cost* refers to the total cost to be expended to plan, develop, and construct the project to completion stage, including cost of feasibility studies, engineering and design, construction, equipment, land/right-of-way (ROW), taxes imposed on said cost, and development cost. For Operations and Maintenance (O & M) PPP Projects without initial capital expenditures, the present value of costs incurred in delivering the contracted service, including any reinvestment requirements, shall be considered as the **Project Cost**;

(cc) *Public-Private Partnership (PPP) Project* refers to any public infrastructure or development projects and services implemented under this Code;

(dd) *Reasonable Rate of Return* refers to the net gain of an investment over a specified time period, expressed as an annualized percentage as prescribed by the appropriate Approving Body and reflected in the PPP contract: *Provided*, That where the realized rate of return exceeds the prescribed Reasonable Rate of Return, the excess shall be remitted to the National Treasury;

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

(ff) *Solicited Project* refers to a PPP Project identified by an Implementing Agency as part of its list of PPP Projects that is subjected to a public bidding as provided in Section 9 of this Code;

(gg) *Subsidy* refers to an agreement where the Implementing Agency will: (1) defray, pay for, or shoulder a portion of the Project Cost or the expenses and costs in operating or maintaining the project; (2) bear a portion of an capital expenditures associated with the establishment of an infrastructure or development project and services; (3) contribute any property or assets to the project; and/or (4) waive charges or fees relative to business permits or licenses that are to be obtained for the Construction of the project: *Provided*, That items (1) to (4) shall not be considered as Subsidy if the government receives payment or remuneration from the Private Partner for such: *Provided*,

further, That subsidy falling under items (1) and (2) shall not exceed fifty percent (50%) of the Project Cost: *Provided, finally,* That in the case of solicited proposals, the expenses for existing ROW or ROW to be acquired shall not be included in the said cap. Subsidy shall also include Viability Gap Funding (VGF) which may be extended by the government to make an economically viable revenue-based PPP Project financially viable: *Provided,* That government payments for ROW, and resettlement shall not be considered as VGF;

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

(ii) *Unsolicited Proposal* refers to a project proposal made by a Private Proponent to undertake a PPP Project pursuant to Section 10 of this Code; and

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

SEC. 4. *Coverage.* – This Code shall cover all contractual arrangements between an Implementing Agency and a Private Partner to finance, design, construct, operate, and maintain, or any combination or variation thereof, infrastructure or development projects and services which are typically provided by the public sector, where each party shares in the associated risks. PPP Projects may be financed partly from direct government appropriations and/or from ODA of foreign governments or institutions.

ODA, when used as a source of financing for PPP Projects, shall include blended finance where the partner government, bilateral or multilateral agency, or international or multilateral lending institution may mobilize financing from private or commercial institutions in funding the loan or loan grant.

For purposes of this Code, ODA agreements shall be considered executive agreements.

This Code shall also cover the following:

(a) JVs as defined in this Code;

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

(c) Lease agreements providing for the rehabilitation, operation, and/or maintenance, including the provision of working capital and/or improvements to, by the Private Partner of an existing land or facility owned by the government for a fixed period of time covering more than one (1) year;

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

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

This Code shall not apply to infrastructure projects undertaken under Republic Act No. 9184 or the “Government Procurement Reform Act”, management contracts, service contracts, divestments or dispositions, corporatization, incorporation of subsidiaries with private sector equity, onerous donations, gratuitous donations, and joint venture agreements involving purely commercial arrangements that neither provide nor include public infrastructure or development services. In such cases, the aforementioned contractual arrangements shall be implemented in accordance with relevant governing laws.

SEC. 5. *Authority to Undertake PPP Projects.* – All Implementing Agencies as defined in Section 3(q) of this Code are hereby authorized to identify, develop, assess, evaluate, approve, negotiate, award, and undertake PPP Projects in accordance with the provisions of this Code.

*SEC. 6. Identification and Development of PPP Projects.*

– Implementing Agencies shall identify, develop, and prepare their respective lists of PPP Projects guided by the following principles: effectiveness in meeting government objectives, appropriateness of the chosen procurement modality and source of funding, VFM, accountability and transparency, consumer rights, affordability, and public access, safety, and security. All PPP Projects shall be consistent and responsive to national, local, and sectoral development and investment plans.

The Implementing Agencies shall submit their lists of PPP Projects or any update thereto to the appropriate oversight agencies, including the National Economic and Development Authority (NEDA), the regional development councils (RDCs) concerned, the local *Sanggunian* concerned, and the PPP Center, in accordance with rules, regulations, and guidelines promulgated pursuant to the provisions of this Code.

Implementing Agencies shall include in their development plans, strategies, and investment programs such lists of PPP Projects that they intend to implement by soliciting proposals from Private Proponents pursuant to Section 9 of this Code, without prejudice to the right of Private Proponents to submit Unsolicited Proposals under Section 10 of this Code.

In developing a PPP Project, the Implementing Agency shall consider the following: (a) legal, technical, economic, financial, and commercial, feasibility of the project; (b) VFM of the proposed project; (c) optimal risk allocation; (d) affordability of fees or tariffs; (e) climate resilience and sustainability; and (f) social and environmental safeguards. The development of a PPP Project shall only be undertaken after the conduct of stakeholder consultation.

*SEC. 7. Approval of PPP Projects. –*

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

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

(i) Those with Project Cost of Fifteen billion pesos (P15,000,000,000.00) and above shall be approved by the NEDA

Board, upon favorable recommendation of the NEDA Board - ICC: *Provided*, That PPP Projects to be implemented by SUCs with Project Cost of Fifteen billion pesos (P15,000,000,000.00) and above but not requiring any Government Undertaking from the National Government shall be processed through a green lane to be established pursuant to the guidelines to be issued by the NEDA Board - ICC.

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

The NEDA Board - ICC may, as it deems necessary and in strict adherence with the principles of prudence and reasonableness, review, evaluate, and update the above threshold amounts.

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

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

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

3. It requires financial Government Undertakings to be sourced and funded under the General Appropriations Act (GAA);

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

5. The contribution of an Implementing Agency in a proposed JV exceeds fifty percent (50%) of its entire assets based on its latest audited financial statements and other pertinent documents, and subject to Section 3(gg) of this Code.

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

National PPP Projects that encompass or extend beyond jurisdictional boundaries, or where bundling of similar projects can benefit from economies of scale and can increase the viability of a proposed PPP Project, may be jointly implemented by all Implementing Agencies concerned under a single PPP contract. In such cases, all the Implementing Agencies concerned shall secure the required approvals of all Approving Bodies concerned pursuant to the provisions of this Code.

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

Proposed Government Undertakings using national government funds for Local PPP Projects shall be submitted to the NEDA Board - ICC for approval, upon review and endorsement by the respective RDCs. Such Government Undertakings shall include, among others, the following items to be provided by the National Government to a Local PPP Project: (i) Guarantees on Demand; (ii) Guarantees on Private Sector Return; (iii) Guarantees on Loan Repayment; (iv) VGF and other forms of Subsidy; and/or (v) monetary payment of Contingent Liability through the PPP Risk Management Fund of the National Government as defined under Section 27 of this Code. Permits, clearances, licenses, or endorsements from national government agencies required for Local PPP Projects under laws, rules, and regulations shall not be considered as Government Undertakings by the National Government for Local PPP Projects.

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

Local PPP Projects affecting national or sectoral development plans and national projects shall likewise secure the endorsement of the National Government through the respective RDCs, prior to endorsement of the LDC concerned and approval by the local *Sanggunians* concerned in the case of LGUs, or by the boards in the case of LUCs. For this purpose, the NEDA shall provide the RDCs with copies of relevant national and sectoral development plans and updates thereof. For purposes of monitoring, the NEDA shall likewise provide the PPP Center copies of such plans.

Endorsements of the (i) LDCs for Local PPP Projects to be implemented by LGUs; and of the (ii) RDCs for PPP Projects with proposed Government Undertakings using national government funds, and/or those that affect national and sectoral development plans, shall be processed within thirty (30) calendar days from submission of complete requirements. Failure of the LDC and/or the RDC to endorse the PPP Project within the specified period shall be deemed an approval of the requested endorsement/s.

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

A PPP Project covering two (2) or more LGUs may be implemented by the National Government, subject to the approval process for National PPP Project; or by the next higher level of LGU or by the LGUs concerned, subject to the approval process for Local PPP Projects.

In case of a Local PPP Project implemented by two (2) or more LGUs, such project shall be approved by the local *Sanggunians* of the LGUs concerned. The respective RDCs may assist in the coordination of LGUs in the development, approval, and implementation of the Local PPP Project covering two or more LGUs.

(b) The Approving Body shall assess all PPP Projects based on its overall feasibility and VFM, and in accordance with the principle of protecting public interest through the provision of affordable, accessible, and efficient public services. All PPP Projects submitted to the Approving Body shall include proposed indicators to determine their benefits and outcomes, which shall be used in the monitoring and evaluation of PPP Projects during implementation. To ensure that all risks associated with PPP Projects are managed and mitigated accordingly, all PPP contracts to be entered into by the Implementing Agency shall adhere to the principles stipulated under the GPRAM, to the extent applicable. Any deviations to the preferred risk allocation shall be justified by the Implementing Agency and approved by the appropriate Approving Body.

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

The PTCs set forth by the Approving Body shall be the basis for the drafting and approval of tender documents and PPP contract, and shall include, among others, the project scope, required levels of service and key performance indicators, safeguards that will protect the interests of the government and the public, and penalties to be imposed for failure of any party to deliver obligations under the PPP contract.

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

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

To facilitate the expedient processing of National and Local PPP Projects requiring NEDA Board and NEDA Board - ICC actions, meetings of such bodies shall be held monthly, unless no projects are set for review or evaluation.

(e) Guidelines, forms, and templates that shall be used by the Implementing Agency and the appropriate Approving Body in reviewing and approving the PPP Project shall be formulated by (1) the NEDA Board – ICC, in coordination with the PPP Center, for National PPP Projects; and (2) the PPP Governing Board for Local PPP Projects.

The NEDA Board - ICC shall also formulate guidelines on the approval of Government Undertakings using National Government funds for Local PPP Projects.

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

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

**SEC. 8. PPP Pre-qualification, Bids and Awards Committee.** – The Head of the Implementing Agency undertaking PPP Projects shall create a PPP Pre-qualification, Bids and Awards Committee (PBAC), which shall be responsible for all aspects of pre-bidding and bidding process in Solicited Proposals, or the comparative bidding process in Unsolicited Proposals: *Provided*, That the final draft PPP contract shall be reviewed and approved by the Head of the Implementing Agency, upon securing the clearance of the following:

(a) For National PPP Projects

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

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

(3) Department of Finance (DOF), for national Government Undertaking under the PPP contract.



## (b) For Local PPP Projects

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

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

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

SEC. 9. *Solicited Proposals.* -

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

(b) Public Bidding - The public bidding may be conducted in a single-stage or two-stage bidding process, as proposed by the Implementing Agency, and approved by the appropriate Approving Body. Single-stage bidding process is characterized by a simultaneous submission of qualification requirements and bid proposals of Private Proponents. Two-stage bidding process is characterized by a separate submission of qualification requirements and bid proposals of Private Proponents.

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

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

If the winning bidder fails to comply with any post-award requirement which shall be set as part of the bidding documents, or fails to enter into a PPP contract with the Implementing Agency, the latter shall award the PPP contract to the next most responsive bidder. In case the PPP contract is awarded to the next most responsive bidder, the Implementing Agency, without prejudice to the remedies provided by law, can forfeit the bid security, withdraw the award, or pursue any other remedies allowed under existing rules and regulations, against the winning bidder who failed to comply with any post-award requirements, or who failed to enter in a PPP contract.

All PPP contracts shall require a period within which Financial Close shall be achieved by the Private Partner. Failure to achieve Financial Close within such period, without the fault of the government, shall subject the Private Partner to penalties under the signed PPP contract.

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

(c) Failure of Bidding - The PBAC shall declare failure of bidding in case:

- (1) No bids are received; or
- (2) There are no complying bids.

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

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

(d) Single Complying Bid - Without prejudice to paragraph (a) of this section, the Implementing Agency may consider, on a negotiated basis, a single complying and responsive bid if:

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

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

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

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

Negotiation between the Implementing Agency and the single complying and responsive bidder shall be limited to the financial proposal of the bidder and in compliance with the Reasonable Rate of Return prescribed by the appropriate Approving Body.

#### SEC. 10. *Unsolicited Proposals.* -

(a) General - Unsolicited Proposals shall be submitted to the PPP Center for determination of completeness and determination of the appropriate Approving Body, within ten (10) calendar days from receipt thereof. If the Unsolicited Proposal is determined to be complete, such Unsolicited Proposal shall thereafter be endorsed by the PPP Center to the appropriate Implementing Agency.

All Unsolicited Proposals that are determined to be incomplete shall be returned to the Private Proponent by the PPP Center.

Upon receipt of the Unsolicited Proposal endorsed by the PPP Center, an Implementing Agency may:

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

(2) Reject the proposal if such proposal is deemed not aligned with the development plans of the Implementing Agency, or if the Implementing Agency is already developing a project with similar scope and/or similar objective.

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

If the Implementing Agency fails to act on an Unsolicited Proposal ninety (90) calendar days after the end of the detailed evaluation period pursuant to Subsection (d)(2) of this section, the project proposal shall be deemed approved, without prejudice to any liability that the erring or negligent officials or employees may incur under this Code and/or existing laws.

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

#### (b) Special Requirements -

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

(2) Any change in the composition of the Original Proponent that will affect its majority ownership shall be strictly prohibited.

(c) Limitations - Unsolicited Proposals may be allowed for projects included in the list of PPP Projects referred to in Section 6 of this Code. In case the Implementing Agency has already incurred any development cost for projects subject of an Unsolicited Proposal, such as the conduct of feasibility study, business case, and surveys, among others, for the last three (3) years from the submission of the Unsolicited Proposal, the Private Proponent shall reimburse the Implementing Agency of such documented development costs notwithstanding whether it is funded through government appropriations, grants, and/or other sources: *Provided*, That such reimbursement shall be in an amount not exceeding six percent (6%) of the Project Cost, excluding the cost of ROW acquisition. The procedures for such reimbursement shall be determined by the Implementing Agency.

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

- (1) VGF and other forms of subsidy;
- (2) Payment of ROW related costs;
- (3) Performance undertaking;
- (4) Additional exemptions from any tax other than those provided for by law;
- (5) Guarantee on Demand;
- (6) Guarantee on Loan Repayment;
- (7) Guarantee on Private Sector Return;
- (8) Government equity; and
- (9) Contribution of assets, properties, and rights.

As an exception, items (2) and (9) herein may be allowed if the government receives appropriate compensation, which shall in no way be lower than the value of the costs of ROW to be acquired and the usufruct of assets, properties, and rights contributed: *Provided*, That taxes, handback values of government assets, and cashflows incidental to the PPP Project shall not form part of the compensation for the usufruct of assets, properties, and rights contributed: *Provided, further*, That such compensation shall be subject to fair valuation by a third-party appraiser. In the case of JV arrangements, items (8) and (9) may be allowed.

(d) Processing of an Unsolicited Proposal -

(1) Within ten (10) calendar days from the receipt of the first Unsolicited Proposal, the Implementing Agency may entertain similar proposals subject to Subsection (a) of this section.

(2) Detailed Evaluation of an Unsolicited Proposal and of the Qualifications of the Private Proponent – If the Implementing Agency decides to continue processing an Unsolicited Proposal found to be complete, it shall complete a detailed evaluation of the Unsolicited Proposal or similar proposals, and of the qualifications of the Private

Proponent/s, within ninety (90) calendar days. After such detailed evaluation, the Implementing Agency may:

(i) Accept the proposal and proceed to negotiation pursuant to Subsection (d)(3) of this section: *Provided*, That in case there are more than one (1) complete Unsolicited Proposal for the same or similar project, the Implementing Agency shall determine the most advantageous proposal for the government and the public among the submitted proposals, considering, among others, economic and financial viability of the project, proposed project scope and terms, investment recovery scheme, risks proposed to be assumed by the government, and the qualifications of the Private Proponent: *Provided, further*, That other Private Proponents shall have the opportunity to submit a comparative proposal during the comparative challenge period; or

(ii) Reject the Unsolicited Proposal or all similar proposals in writing with the corresponding justification.

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

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

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

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

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

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

The comparative challenge shall be conducted using the right-to-match mechanism. Under such mechanism, the Original Proponent shall have the right to match the proposal submitted by a challenger during the comparative challenge: *Provided*, That the Original Proponent shall have thirty (30) calendar days to match the said proposal put forth by the challenger.

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

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

SEC. 11. *Joint Ventures (JV)*. - A JV may be undertaken through a contractual JV or by creating a JV company: *Provided*, That:

(a) The formation of a JV company shall be in accordance with the legal mandate of the Implementing Agency and provisions of the Revised Corporation Code of the Philippines and other applicable laws, rules, and regulations. The Implementing Agency shall, subject to the approval of the appropriate Approving Body, determine the minimum PTCs of the JV PPP contract including veto rights in favor of the government.

(b) Subject to pertinent laws, rules, and regulations, the equity contribution, including contribution of assets, properties, and rights, and other allowable Government Undertakings, of the government in a JV PPP contract shall:

(1) In no case exceed fifty percent (50%) of the Project Cost in the case of a contractual JV; or

(2) Fifty percent (50%) of the outstanding capital stock of the JV company. All equity contribution of the government and the Private Partner shall be subject to fair valuation by a third-party appraiser.

(c) The formation of the JV between the Implementing Agency and the Private Partner shall not prevent the parties from entering into other JV PPP contracts with other parties or from profitably entering into other business ventures or markets: *Provided*, That such other ventures shall not compete with the first JV for the same product and geographic market.

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

(e) The shares of the Implementing Agency and the Private Partner in the profits, losses, assets acquired and/or constructed, and any other interests derived from the JV shall be proportionate to their respective contributions: *Provided*, That the parties may agree to a higher return for the government as compared to the actual percentage of government contribution in the JV. The Implementing Agency

may also accept any other more favorable terms as may be agreed upon with the Private Partner in the JV PPP contract.

(f) At the end of the JV PPP contract, all properties covered by such agreement shall be transferred or shall revert to the Implementing Agency. In cases where the government deems that divestment from the JV is in the best interest of the public, JV PPP contracts may allow the private sector to take over the undertaking of the project in its entirety. Such takeover shall be in accordance with the laws, rules, and regulations governing privatization. For purposes of monitoring the JV PPP contract, the Implementing Agency shall inform the PPP Center in writing of such takeover.

(g) Formation of JV between the Implementing Agency and the Private Partner shall not change the nature or alter the mandate of the Implementing Agency entering into such JV. The Implementing Agency's governmental responsibility shall not be diminished and shall not be a reason to avoid compliance with and coverage of existing laws, rules, or regulations.

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

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

SEC. 13. *Issuance of Franchise and Regulation of Tolls, Fares, Fees, Rentals, and Other Charges.* – All regulatory bodies charged with approval of initial tolls, fares, fees, rentals, and other charges and adjustments thereof, including, but not limited to, the Toll Regulatory Board, the Civil Aviation Authority of the Philippines, and the Land Transportation Franchising and Regulatory Board, shall:

(a) Within one hundred eighty (180) calendar days from the effectivity of the implementing rules and regulations (IRR) of this Code, issue and publish, in coordination with the PPP

Center, guidelines, frameworks, or mechanisms for consultation, review, and approval of said initial tolls, fares, fees, rentals, and other charges and adjustments thereof, with provisions mandating that regulatory approvals be made prior to the approval of a PPP Project and that during the implementation period of the PPP Project, the Private Partner shall have the right to file the application for tolls, fares, fees, rentals, and other charges and adjustments thereof;

(b) Approve the initial tolls, fares, fees, rentals, and other charges and adjustments thereof, on the basis of service quality, key performance indicators, the principles of fairness, transparency, predictability, and protection of public interest while providing for a Reasonable Rate of Return on capital or investment by the Private Partner, and other stipulations in the PPP contract; and

(c) Uphold the approved initial tolls, fares, fees, rentals, and other charges and adjustments thereof during the implementation of the PPP Project.

Where the Implementing Agency fails to implement the initial tolls, fares, fees, rentals, and other charges and adjustments thereof as stipulated in the PPP contract, the Private Partner shall be allowed to recover the difference through measures consistent with the PPP contract and applicable laws, rules, and regulations.

The approved initial tolls, fares, fees, rentals, and other charges - or the maximum acceptable initial values of the toll, fare, fee, rental, or charge that may be proposed by bidders in the case of projects for public bidding where the bid parameter is the initial value of the toll, fare, fee, rental, or charge itself - and adjustments thereof shall be included in the final draft PPP contract that will be circulated to all bidders prior to the bid submission date to be set by the Implementing Agency.

In the absence of an appropriate regulatory body, the initial tolls, fares, fees, rentals, and other charges and adjustments thereof shall be as stipulated in the PPP contract. In the case of Local PPP Projects, the Implementing Agency may also opt to create and establish a local rate setting body: *Provided*, That the composition, powers, and responsibilities

of such body shall be set forth in an ordinance or resolution approved by the local *Sanggunian* of the Implementing Agency.

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

SEC. 14. *Mandatory Inclusion of Dispute Avoidance and Alternative Dispute Resolution Mechanisms in PPP Contracts.* – All PPP contracts shall include provisions on the use of dispute avoidance and Alternative Dispute Resolution (ADR) mechanisms pursuant to Republic Act No. 9285, otherwise known as the “Alternative Dispute Resolution Act of 2004”. The contracting parties shall be given complete freedom to choose which ADR mechanisms to be followed, subject to applicable laws, rules, and regulations.

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

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

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

(b) Monitoring - The PPP Governing Board shall set the framework for monitoring the compliance of the parties with PPP contracts, for reporting of the progress of PPP Projects and their expected benefits and outcomes, and for the appropriate penalties for the noncompliance of parties to the set reportorial requirements.

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

SEC. 17. *Investment Incentives.* – PPP Projects undertaken through this Code shall be entitled to various incentives under applicable laws and existing policies of the government: *Provided*, That any exemptions or special rates on taxes for a PPP Project granted during the term of its PPP contract shall be reported in writing to the PPP Center.

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

(a) Revenue-based – refers to a scheme where the Private Partner is authorized to charge and collect, in whole or in part, from the users, reasonable tolls, fares, fees, rentals, and other charges subject to appropriate regulation in accordance with Section 13 of this Code. Where applicable, the Private Partner may likewise be repaid in the form of a share in the revenue of the PPP Project; and

(b) Availability-based – refers to a scheme where the Implementing Agency commits to make predetermined payments, which do not take the form of charges paid by the

users of the works or of the service, but of regular payments by the Implementing Agency in exchange of delivering an asset or service in accordance with the PPP contract.

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

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

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

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

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

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

(d) Extension in the contract term; or

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

The Approving Body may establish limitations on allowable variations relating to items (c), (d), and (e), as part of the approved PTCs of the PPP Project during the approval

process of the project. During project implementation, any proposed changes to the approved limitations to the aforementioned allowable variations shall be submitted to the appropriate Approving Body for decision. The Approving Body may treat the proposed changes as a new set of allowable variation or a new project. If the Approving Body treats the proposed changes as a new project, the same shall be subject to the approval process under Section 7 of this Code.

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

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

The provisions of this section shall apply prospectively to all existing franchises and concessions granted for the financing, construction, operation, and maintenance of infrastructure facilities under previous laws and decrees: *Provided*, That such shall not impair the substantive rights of the Private Partner, and shall be governed by existing laws, decrees, orders, rules, and regulations at the time of application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Awarding of any PPP contract;

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

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

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

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

This prohibition shall apply in all cases, disputes, or controversies instituted by any person, including cases filed by bidders or those claiming to have rights through such bidders. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a



temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond in an amount to be fixed by the court. The bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

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

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

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

SEC. 24. *PPP Center.* – To achieve the goals of this Code, the PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, and further amended by Executive Order No. 30, series of 2023, is hereby authorized to adopt its current organizational structure, absorb its existing employees, and upgrade its human resource component, as may be necessary, subject to applicable laws, rules, and regulations.

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

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

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

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

(4) Review PPP contracts pursuant to Section 8(a) of this Code;

(5) Require the submission of PPP Project documents including executed PPP contracts, and any subsequent amendment or supplement thereto, including settlement agreements, entered into by Implementing Agencies, notwithstanding the confidentiality clauses that are stipulated therein;

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

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

(8) Develop the capacities of Implementing Agencies, Approving Bodies, PPP units referred to in Section 28 of this Code, and other relevant government stakeholders on PPPs;

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

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

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

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

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

(14) Advise and assist Implementing Agencies and oversight agencies in developing and periodically updating an organizational development plan that will enable them to competently perform their functions under this Code; and recommend to the Department of Budget and Management (DBM) the standards of training, qualification, and compensation for necessary personnel under these organizational development plans;

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

(16) Manage and administer the PPP Risk Management Fund as provided in Section 27 of this Code;

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

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

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

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

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

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

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

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

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

*SEC. 25. PPP Governing Board.* – The PPP Governing Board, created under Executive Order No. 136, series of 2013, as amended by Executive Order No. 30, series of 2023, is hereby institutionalized. It shall be the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of the PPP Program and PPP Projects and in creating an enabling policy and institutional environment for PPP.

The PPP Governing Board shall be composed of the following:

(a) Secretary of the NEDA as Chairperson;

(b) Secretary of the DOF as Vice-Chairperson;

(c) Secretary of the DBM;

(d) Secretary of the Department of Justice;

(e) Secretary of the Department of Trade and Industry;

(f) Secretary of the Department of the Interior and Local Government;

(g) Secretary of the Department of Environment and Natural Resources;

(h) Chairperson of the CHED;

(i) Executive Secretary;

(j) Executive Director of the PPP Center; and

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

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

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

All issuances, orders, resolutions, decisions, or other acts of the PPP Governing Board shall be binding, unless otherwise stated by the PPP Governing Board.

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

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

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

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

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

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

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

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

The PPP Center, in coordination with the aforementioned Inter-Agency Technical Working Group, shall formulate the guidelines on the management of Contingent Liabilities arising from PPP Projects and the use of the PPP Risk Management Fund, for approval by the DBCC.

The target amount in the PPP Risk Management Fund is to be determined by the DBCC using risk-adjusted methods or such other means that estimate the exposure of the Government of the Philippines to PPP Contingent Liabilities.

In the case of Local PPP Projects, a similar PPP Risk Management Fund may be established by the LGU subject to the guidelines to be issued by the PPP Governing Board. Sources of the fund may include the budget of the LGU and the income of the LGU from PPP Projects. The LGUs may also access the PPP Risk Management Fund of the National Government, subject to the payment by LGUs of contributions in accordance with the guidelines to be issued by the DBCC.

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

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

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

SEC. 29. *Safekeeping and Public Disclosure of Tender Documents and PPP Contracts.* – Copies of all tender documents and PPP contracts executed under this Code shall be considered, appropriately kept safe, and preserved, as public documents. The Implementing Agency and the PPP Center shall publish, through their respective websites, copies of all (a) tender documents, and (b) PPP contracts executed under this Code. In case of PPP contracts with provisions which are

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

SEC. 30. *Miscellaneous Provisions.* –

(a) *Independent Consultants* – An independent consultant, either individuals, partnerships, or corporations, shall be procured by the Implementing Agency to provide independent advice to the Implementing Agency and Private Partner or its Contractor for the design and construction of the PPP Project, and monitoring of the performance of the contracting parties during such phases of the PPP Project. As may be necessary, an independent consultant may also be procured during the operations and maintenance phase of the PPP Project.

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

(b) *Conflict of Interest* – All relevant parties shall, at all times, avoid conflicts of interest in the interpretation and implementation of this Code. Conflict of interest, as defined in Republic Act No. 6713 or the “Code of Conduct and Ethical Standards for Public Officials and Employees”, shall include personal, pecuniary, and regulatory conflicts of interests.

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

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

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

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

(e) Mitigation of Interconnectivity and Interface Risks – All PPP Projects which will interconnect or interface with a local or national facility shall be required to submit a Memorandum of Agreement (MOA) containing an interconnection/interface plan agreed upon by all relevant parties. All MOAs shall be submitted to the PPP Center, and the NEDA Board - ICC in the case of the National PPP Projects, or the appropriate Approving Body in the case of Local PPP Projects.

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

(g) Preferential Use of Filipino Labor, Domestic Materials, and Locally Produced Goods – For the implementation of infrastructure projects under this Code,

Contractors or Facility Operators shall, as far as practicable, use Filipino labor, domestic materials, and locally produced goods in different phases of implementation. In all cases, foreign nationals employed in PPP Projects shall have the appropriate work permit and work visa in accordance with existing law.

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

SEC. 31. *Accountability in PPP Projects.* – The Head of the Implementing Agency concerned shall at all times be accountable to PPP Projects undertaken through this Code. The Private Partner shall likewise be held accountable for the works it has delivered and services it has rendered for a PPP Project. All PPP contracts are hereby required to clearly define the scope of each party's accountability under the PPP contract. Without prejudice to the penalties stated in Section 32 of this Code, failure of the Head of the Implementing Agency to comply with their obligations under the PPP contract shall allow the Private Partner to avail the appropriate remedy as provided in the PPP contract.

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

SEC. 32. *Administrative, Civil, and Penal Sanctions.* – Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act", and other penal laws, any person, whether private individual or public officer or employee, who commits any of the prohibited acts under (a), (c), (d), (e), (f), (k), (l), (m), (n), and (o) of this section, shall be punished by imprisonment from a minimum of three (3) years to a maximum of six (6) years and a fine ranging from One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00). For prohibited acts under (b), (h), (i), and (j) of this section, the penalty of imprisonment of three (3) to six (6) years or a fine ranging from One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00), or both, shall be imposed.

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

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

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

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

(e) In case of public officers or employees, whether in connivance with others or acting alone, with gross negligence or by fraud, failing to exercise the required due diligence and/or to ensure compliance with the PTCs as approved by the Approving Body, and the signed PPP contract, by approving, issuing, or confirming any certification, required documents, or deliverables of the Private Partner and the Private Proponent, which are non-compliant with existing rules, erroneous, not authentic, or fraudulent;

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

(g) Neglecting or refusing to act upon an Unsolicited Proposal within the prescribed period, insofar as determining completion and conducting detailed evaluation of the Unsolicited Proposal and the qualifications of the Private Proponent are concerned;

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

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

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

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

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

(l) In case of a Private Proponent, maliciously submitting different bids through two (2) or more persons, corporations, partnerships, or any other business entity in which they have interest in to create the appearance of competition that does not in fact exist so as to be adjudged as the winning Private Proponent;

(m) In case of two (2) or more Private Proponents or prospective Private Proponents, entering into an agreement which call upon one to refrain from bidding or participating in a PPP Project, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them;

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

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

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

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

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

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

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

SEC. 34. *Implementing Rules and Regulations (IRR).* – The IRR Committee shall be composed of the members of the PPP Governing Board. The Secretary of NEDA shall serve as the Chairperson, and the PPP Center as the Secretariat.

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

The IRR Committee shall promulgate the IRR within ninety (90) calendar days from the effectivity of this Code, after a public consultation with relevant stakeholders including the Department of Public Works and Highways, the Department

of Transportation, other key Implementing Agencies, LGUs, and the Joint Congressional Oversight Committee created under Section 33 of this Code. The IRR shall include, among others, the procedures for approval of PPP Projects, processing of Unsolicited Proposals, evaluation of bid proposals, and protests; framework for supervision and monitoring of PPP Projects, and mechanism for setting the Reasonable Rate of Return; and list of Government Undertakings that may be granted to a PPP Project, in order to carry out the provisions of this Code in the most expeditious manner.

The IRR Committee may promulgate, after due public consultation, amendments to the IRR, consistent with the provisions of this Code. Amendments to the IRR shall take effect fifteen (15) calendar days after its complete publication in the *Official Gazette* or in a newspaper of general circulation.

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

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

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

(c) Solicited PPP Projects which have commenced bidding and Unsolicited PPP Projects which have commenced the comparative challenge process at the time of the effectivity of this Code shall be governed by this Code to the extent that such application does not infringe upon established rights and obligations. Otherwise, the rules in effect at the commencement of the bidding or the comparative challenge process shall apply.

(d) All proposed PPP Projects under Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations, which are either pending

approval or have been approved by the appropriate Approving Body but the bidding or the comparative challenge process therefor has not yet commenced, shall be governed by the provisions of this Code except those that govern project approval: *Provided*, That Private Proponents that have submitted Unsolicited Proposals which have been granted OPS, but pending approval prior to the effectivity of this Code, shall have the option to proceed with the approval process or resubmit their proposals to the appropriate Approving Body under this Code. In case of the latter, the Private Proponent shall notify the Implementing Agency in writing within thirty (30) calendar days after the effectivity of the IRR of this Code, of its intention to resubmit the same, in which case the proposal shall be withdrawn and returned to the Private Proponent.

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

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

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

Upon effectivity of this Code, no other JV guidelines, PPP guidelines, codes, or ordinances, whatsoever may be enacted, issued and/or used by any government entity to enter into

PPPs, except those that are enacted, issued, and/or used in accordance with this Code and its IRR.

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

SEC. 37. *Repealing Clause.* –

(a) The following are hereby repealed or modified accordingly:

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

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

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

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

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

(6) Second paragraph of Section 1 of Presidential Decree No. 1894, series of 1983, Amending the Franchise of the Philippine National Construction Corporation (PNCC), granting the PNCC the right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway or Metro Manila Expressway or to divert



the original route and change the original end-points of the North Luzon Expressway or South Luzon Expressway as may be approved by the Toll Regulatory Board;

(7) Pertinent provisions of Presidential Decree No. 857, as amended, or the "Revised Charter of the Philippine Ports Authority" created under Presidential Decree No. 505, which are inconsistent with the provisions of this Code;

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

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

(b) The provisions pertaining to the identification, evaluation, approval, procurement, and/or implementation of PPP Projects including leases and JVs in the following laws are hereby amended or modified accordingly:

(1) Sections 22(c) and 22(e) of Republic Act No. 9500, otherwise known as the "University of the Philippines Charter of 2008"; and

(2) Presidential Decree No. 1113, series of 1977 and Presidential Decree No. 1894, series of 1983, granting a franchise to the Philippine National Construction Corporation (PNCC) (then the Construction and Development Corporation of the Philippines (CDCP)) to construct, operate, and maintain the North and South Luzon Expressways and Metro Manila Expressways.

All other references to Republic Act No. 6957 and Republic Act No. 7718 in existing laws, decrees, and other legislation are hereby amended to refer to this Code.



All executive orders and administrative laws, decrees, orders, codes, issuances, rules and regulations, and ordinances or any part thereof inconsistent with or contrary to this Code are hereby repealed or modified accordingly.

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

Approved,

*[Signature]*  
FERDINAND MARTIN G. ROMUALDEZ  
*Speaker of the House of Representatives*

*[Signature]*  
JUAN MIGUEL F. ZUBIRI  
*President of the Senate*

This Act, which is a consolidation of Senate Bill No. 2233 and House Bill No. 6527, was passed by the Senate of the Philippines and the House of Representatives on September 27, 2023.

*[Signature]*  
REGINALD S. VELASCO  
*Secretary General House of Representatives*

*[Signature]*  
RENATO N. BANTUG JR.  
*Secretary of the Senate*

Approved: **DEC 05 2023**

*[Signature]*  
FERDINAND ROMUALDEZ MARCOS JR.  
*President of the Philippines*



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ATTY. DUSTIN C. GARVIDA  
ACTING DIRECTOR IV