

[REPUBLIC ACT NO. 7718, May 05, 1994]

AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6957, ENTITLED "AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES"

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

SECTION 1. Section 1 of Republic Act No. 6957 is hereby amended to read as follows:

"SECTION 1. *Declaration of Policy.* — It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector."

SEC. 2. Section 2 of the same Act is hereby amended to read as follows:

"SEC. 2. *Definition of Terms.* — The following terms used in this Act shall have the meanings stated below:

"(a) *Private sector infrastructure or development projects* — The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act. Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.

"For the construction stage of these infrastructure projects, the project proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: *Provided*, That, in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos: *Provided, further*, That in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of the construction where Filipino skills are available: *Provided, finally*, That projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.

"(b) *Build-operate-and-transfer* — A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years: *Provided*, That in case of an infrastructure or development facility whose operation requires a public utility franchise, the proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos.

"The build-operate-and-transfer shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

"(c) *Build-and-transfer* — A contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the government agency or local government unit concerned, which shall pay the proponent on an agreed schedule its total investments expended on the project, plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.

"(d) *Build-own-and-operate* — A contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls,

fees, rentals or other charges from facility users: *Provided*, That all such projects, upon recommendation of the Investment Coordination Committee (ICC) of the National Economic and Development Authority (NEDA), shall be approved by the President of the Philippines. Under this project, the proponent which owns the assets of the facility may assign its operation and maintenance to a facility operator.

"(e) Build-lease-and-transfer — A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or local government unit concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.

"(f) Build-transfer-and-operate — A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay, and specified performance risks.

"Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity however, operates the facility on behalf of the implementing agency under an agreement.

"(g) Contract-add-and-operate — A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded project over an agreed franchise period. There may, or may not be, a transfer arrangement in regard to the facility.

"(h) Develop-operate-and-transfer — A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.

"(i) Rehabilitate-operate-and-transfer — A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.

"(j) Rehabilitate-own-and-operate — A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

"(k) Project proponent — The private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.

"(l) Contractor — Any entity accredited under Philippine laws which may

or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.

"(m) Facility operator — A company registered with the Securities and Exchange Commission, which may or may not be the project proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users: *Provided*, That in case the facility requires a public utility franchise, the facility operator shall be Filipino or at least sixty per centum (60%) owned by Filipinos.

"(n) Direct government guarantee —An agreement whereby the government or any of its agencies or local government units assume responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of a loan default.

"(o) Reasonable rate of return on investments and operating and maintenance cost — The rate of return that reflects the prevailing cost of capital in the domestic and international markets: *Provided*, That, in case of negotiated contracts, such rate of return shall be determined by the ICC of the NEDA prior to the negotiation and/or call for proposals: *Provided, further*, That for negotiated contracts for public utility projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).

"(p) *Construction* — Refers to new construction, rehabilitation, improvement, expansion, alteration and related works and activities including the necessary supply of equipment, materials, labor and services and related items."

SEC. 3. Section 3 of the same Act is hereby amended to read as follows:

"SEC. 3. *Private Initiative in Infrastructure*. — All government infrastructure agencies, including government-owned and controlled corporations and local government units are hereby authorized to enter into contract with any duly prequalified project proponent for the financing, construction, operation and maintenance of any financially viable infrastructure or development facility through any of the projects authorized in this Act. Said agencies, when entering into such contracts, are enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in undertaking infrastructure or development projects."

SEC. 4. Section 4 of the same Act is hereby amended to read as follows:

"SEC. 4. *Priority Projects*. — All concerned government agencies, including government-owned and controlled corporations and local government units, shall include in their development programs those priority projects that may be financed, constructed, operated and maintained by the private sector under the provisions of this Act. It shall be the duty of all concerned government agencies to give wide publicity to all projects eligible for financing under this Act, including publication in national and, where applicable, international newspapers of general circulation once every six (6) months and official notification of project proponents registered with them.