

[TRB, February 24, 1998]

IMPLEMENTING RULES AND REGULATIONS AUTHORIZING THE ESTABLISHMENT OF TOLL FACILITIES

Introduction

Pursuant to Section 3(f) and (g) of Presidential Decree (P.D.) No. 1112, the following Implementing Rules and Regulations are hereby prescribed to carry out the powers and duties of the Toll Regulatory Board (TRB).

RULE 1 - Preliminary Provisions

SECTION 1.1 Policy — The huge financial requirements of the Government's development programs have made it necessary to seek out alternative sources of financing to ensure the prosecution of certain desirable infrastructure projects that complement the over-all national development effort. The potential resources of the private sector could be tapped to the maximum benefit by the government dispensing to a great extent the availment of additional domestic and foreign borrowings as well as the utilization of government guarantee or security.

In order to attract private sector investment in the government's infrastructure projects the collection of toll fees for the use of certain public improvements that would allow a reasonable rate of return on investments should be authorized, provided that the collection of toll fees and operation of toll facilities by the private sector should be closely supervised and regulated in the public interest.

SECTION 1.2 Coverage and Applicability — These Rules and Regulations shall apply to the construction, operation and maintenance by the private sector of toll facilities under a Toll Operation Certificate (TOC) or a Contract (termed a Toll Operation Agreement or TOA) as hereunder defined and authorized under and pursuant to P.D. 1112 and the turn-over of such facilities at no cost to the government upon the expiration of the TOC/TOA. Facilities to be turned over include all operation and maintenance equipment and facilities directly related to toll operations and maintenance.

TOA's and TOC's may be issued/entered into through public bidding or negotiations as prescribed in these rules and regulations.

SECTION 1.3 Definition of Terms

a. Toll Operation

Toll Operations involve the development, improvement, upgrading, expansion, rehabilitation, reconstruction, modernization and/or construction/building and

operation and maintenance of toll facilities according to the requirements of the TRB pursuant to the exercise of its power and duty stated in Section 3.b of P.D. No. 1112.

b. Toll Facility

A Toll Facility includes but is not limited to national highways, roads, bridges and public thoroughfares direct users of which are charged tolls as authorized under P.D. No. 1112.

c. Toll Operation Certificate (TOC)

The TOC is an authority granted to a person or persons, natural or juridical, to develop, improve, upgrade, expand, rehabilitate, reconstruct, modernize and/or construct/build and operate and maintain a toll facility. At the end of the franchise period the toll facility shall be turned over to the government without cost. The person or persons must be a citizen/s of the Philippines and/or is/are a corporation/s or an association/s qualified under the Constitution and authorized by law to engage in toll operations.

The TOC has a fixed term not to exceed fifty (50) years.

The TOC may be amended, modified or revoked whenever the public interest so requires by TRB subject to just compensation and/or Section 12.17 hereof.

d. Contract or Toll Operation Agreement (TOA)

Subject to the approval of the President of the Philippines, the TOA is a contractual arrangement entered into by TRB in behalf of the Republic of the Philippines with persons, natural or juridical, for the development, improvement, upgrading, expansion, rehabilitation, reconstruction, modernization and/or construction/building and operation and maintenance of toll facilities. At the end of the franchise period the toll facility shall be turned over to the government without cost. The person or persons must be a citizen/s of the Philippines and/or is/are a corporation/s or an association/s qualified under the constitution and authorized by law to engage in toll operations.

The TOA has a fixed term not to exceed fifty (50) years.

Subject to the approval of the President of the Philippines, the TOA may be amended upon agreement by the TOA signatories.

e. Toll Regulatory Board (TRB)

The TRB was created under P.D. No. 1112 for the regulation of toll facilities and for other purposes whose powers and duties aside from those invoked under these Rules and Regulations include the following:

1. Determine and decide the kind, type and nature of public improvement that will be constructed and/or operated as toll facilities;
2. Condemn private property for public use subject to the provisions of existing

laws;

3. Issue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities and upon notice and hearing, to approve or disapprove petitions for the increase thereof. Decisions of the board on petitions for the increase of toll rate shall be appealable to the Office of the President within ten (10) days from the promulgation thereof. Such appeal shall not suspend the imposition of the new rates, provided however, that pending the resolution of the appeal, the petitioner for increased rates in such case shall deposit in a trust fund such amounts as may be necessary to reimburse toll payers affected in case of a reversal of the decision.

4. To issue rules and regulations to carry out the purposes of this P.D. No. 1112.

RULE 2 - General Provisions

SECTION 2.1 Principal Provisions of a TOC/TOA — The TOC/TOA is granted to/entered into with a Grantee after compliance with these Rules and Regulations and whose provisions may include but are not limited to the following as required by the TRB:

- a. construction and related works development program;
- b. operation and maintenance program;
- c. toll rates and the procedures for toll rate adjustment;
- d. indemnities to users arising from fault of Grantee;
- e. amenities and other associated facilities such as rest areas, truck terminals, parking, expressway buses, temporary storage, and transfer facilities as the TRB may require in the interest of the public;
- f. incentive package to the grantee such as commercial development operations which the TRB may provide depending on the viability of tollway projects; and
- g. other conditions as shall be imposed by the Board including *inter alia* the following:

g.1 That the Grantee shall desist from collecting toll upon the expiration of the TOC/TOA.

g.2 That the entire facility operated as a toll system including all operation and maintenance equipment directly related thereto shall be turned over to the government immediately upon the expiration of the TOC/TOA.

g.3 That the Grantee shall not lease, transfer, grant the usufruct of, sell or assign the rights or privileges acquired under the TOC/TOA to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the prior approval of the President of the Philippines. Such transfer of rights or privileges shall be recommended by the TRB on the basis of compliance to prequalification requirements shown in Sec. 5.4 by the proposed transferee. In the event of any valid transfer of the TOC/TOA, the transferee shall be subject to all the conditions, terms, restrictions and limitations of P.D. No. 1112 as fully and completely and to the same extent as if the TOC/TOA has been granted to/entered into

with the same person, firm, company, corporation or other commercial or legal entity.

g.4 That in time of war, rebellion, public peril, emergency, calamity, disaster or disturbance of peace and order, the President of the Philippines may cause the total or partial closing of the toll facility or order take over thereof by the Government without prejudice to the payment of just compensation.

g.5 That no guarantee, Certificate of Indebtedness, collateral, securities, or bonds shall be issued by any government agency or government owned or controlled corporation on any financing program of the Grantee in connection with his undertaking under the TOC/TOA.

g.6 That the TOC may be amended, modified or revoked whenever the public interest so requires.

SECTION 2.2 Operation and Maintenance Facilities — Among the operation and maintenance facilities of toll facilities which may form part of a TOC/TOA include the following as required by the TRB:

a. Operation

- i. Toll Collection System;
- ii. Traffic Control System;
- iii. Tollroad Patrol and Vehicle Control with Communications System;
- iv. Facilities for Assistance of Disabled Vehicles and in case of Emergencies;
- v. Information Service/Message Sign Boards;
- vi. Vehicle Regulation Facilities (e.g) weight, load height);
- vii. Telephone and Lighting Facilities; and,
- viii. Emergency Operations.

b. Maintenance

- i. Patrolling and Inspection Facility;
- ii. Road Cleaning and Obstruction Control;
- iii. Electricity and Water Supply;
- iv. Repavement Facilities, Steel Bridge Painting, Bridge Strengthening, Interchange Improvement, Parking Area Improvement, Slope Protection, Pavement Painting and the like;

v. Disaster Prevention and Reaction Facilities; and

vi. Environmental Enhancement and Protection.

SECTION 2.3 Issuing Authority of TOC — In accordance with Section 3 (e) of P.D. No. 1112, the Toll Regulatory Board (TRB) has the power and duty to issue a TOC.

SECTION 2.4 Authorized Government Contracting Agency for TOA — In accordance with Section 3 (a) of P.D. No. 1112, subject to the approval of the President of the Philippines, the TRB has the power and duty to enter into contracts in behalf of the Republic of the Philippines.

SECTION 2.5 Eligible Facilities for which a TOC may be Issued/TOA Entered Into — Toll facilities such as but not limited to national highways, roads, bridges and public thoroughfares that meet the provisions of these Rules and Regulations may be operated and maintained under a TOC/TOA

SECTION 2.6 List of Priority Projects — The TRB shall adopt a list of specific priority projects that may be developed under these Rules and Regulations. If a project requires government appropriations and/or credit enhancements the TRB shall first secure the approval of the ICC or the NEDA Board as described in Section 2.7 below before adopting said project for implementation under these Rules and Regulations.

Projects not requiring government appropriations and/or credit enhancements shall be submitted to the ICC for information/notation.

SECTION 2.7 Approval of Proposed Toll Facility Projects — In accordance with Section 3 (b) of P.D. No. 1112, the Toll Regulatory Board has the power and duty to determine and decide the kind, type and nature of public improvement that will be constructed and/or operated as toll facility.

In case government appropriations, and/or credit enhancements, as defined in Rule 13 of these Rules and Regulations, are to be provided in the construction and/or operation of toll facilities, the proposed toll facility projects shall be approved as follows:

- a. for government appropriations and/or credit enhancements of less than P 300M, the proposed project shall be submitted to the ICC of the NEDA Board for approval; and
- b. for governmental appropriations and/or credit enhancements reaching or exceeding P 300 million, each project shall be submitted to the NEDA Board for approval upon the recommendation of the ICC.

SECTION 2.8 Deadline for Approval of Proposed Toll Facility Projects — The ICC and the NEDA Board shall act on the proposed projects within thirty (30) working days upon satisfactory compliance by the TRB of requirements. Unless otherwise notified in writing by the ICC or the NEDA Board, failure to act within the prescribed period shall mean that the TRB may proceed with the solicitation of proposals.

SECTION 2.9 Publication and Notice — The TRB shall provide wide publicity to the list of priority projects proposed for implementation under these Implementing Rules