

REPUBLIC ACT NO. 6957

AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR THE OTHER PURPOSES

Sec. 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 favorable incentives to mobilize private resources for the purpose.

Sec. 2. Definition of Terms. - The following terms used in this Act shall have the meanings stated below:

(a) Build-operate-and-transfer scheme. - A contractual arrangement whereby the contractor undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The contractor operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges sufficient to enable the contractor to recover its operating and maintenance expenses and its investment in the project plus a reasonable rate of return thereon. The contractor 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. For the construction stage, the contractor may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino constructor: Provided, That the ownership structure of the contractor of an infrastructure facility whose operation requires a public utility franchise must be in accordance with the Constitution: Provided, however, That, in the case of corporate investors in the build-operate-and-transfer corporation, the citizenship of each stockholder in the corporate investors shall be the basis for the computation of Filipino equity in the said corporation: Provided, further, That, in the case of foreign constructors, Filipino labor shall be employed or hired in the different phases of the construction where Filipino skills are available: Provided, furthermore, That the financing of a foreign or foreign-controlled contractor from Philippine government financing institutions shall not exceed twenty percent (20%) of the total cost of the infrastructure facility of project: Provided, finally, That financing from foreign sources shall not require a guarantee by the Government or by government-owned or controlled corporations. The build-operate-and-transfer scheme 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.

(b) Build-and-transfer scheme. - A contractual arrangement whereby the contractor undertakes the construction, including financing, of a given infrastructure facility, and its turnover after completion to the government

agency or local government unit concerned which shall pay the contractor its total investment expended on the project, plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure project including critical facilities which, for security or strategic reasons, must be operated directly by the Government.

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 private contractor for the financing, construction, operation and maintenance of any financially viable infrastructure facilities through the build-operate-and-transfer or build-and-transfer scheme, subject to the terms and conditions hereinafter set forth.

Sec. 4. Priority Projects. - All concerned infrastructure agencies, including government-owned and controlled corporations and local government units, shall include in their infrastructure 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 infrastructure agencies to give wide publicity to all projects eligible for financing under this Act, including publication in national newspapers of general circulation once every six (6) months and official notification of contractors registered with them. The lists of all such national projects must be part of the medium-term infrastructure programs of the agencies concerned and must be duly approved by Congress. Local projects funded and implemented by the local government units concerned shall be submitted to the local development councils for confirmation or approval.

Sec. 5. Public Bidding of Projects. - Upon approval of the projects mentioned in Section 4 of this Act, the concerned head of the infrastructure agency or local government unit shall forthwith cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper which is circulated in the region, province, city or municipality in which the project is to be constructed a notice inviting all duly prequalified infrastructure contractors to participate in a public bidding for the projects so approved. In the case of a build-operate-and-transfer arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed tolls, fees, rentals, and charges over a fixed term or the facility to be constructed, operated, and maintained according to the prescribed minimum design and performance standards, plans, and specifications. For this purpose, the winning contractor shall be automatically granted by the infrastructure agency or local government unit the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges in accordance with Section 6 hereof.

In the case of build-and-transfer arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications: Provided,

however, That a Filipino constructor who submits an equally advantageous bid shall be given preference.

A copy of each build-operate-and-transfer or build-and-transfer contract shall forthwith be submitted to Congress for its information.

Sec. 6. Repayment Scheme. - For the financing, construction, operation, and maintenance of any infrastructure project undertaken pursuant to the provisions of this Act, the contractor shall be entitled to a reasonable return of its investment and operating and maintenance costs in accordance with its bid proposal as accepted by the concerned contracting infrastructure agency or local government unit and incorporated in the contract's terms and conditions. In the case of a build-operate-and-transfer arrangement, this repayment scheme is to be effected by authorizing the contractor to charge and collect reasonable tools, fees, rentals, and charges for the use of the project facility not exceeding those proposed in the bid and incorporated in the contract: Provided, That the government infrastructure agency or local government unit concerned shall approve the fairness and equity of the tolls, fees, rentals and charges except in case of tolls for national highways, roads, bridges and public thoroughfares which shall be approved by the Toll Regulatory Board: Provided, further, That the imposition and collection of tolls, fees, rentals and charges shall be for a fixed term as proposed in the bid and incorporated in the contract but in no case shall this term exceed fifty (50) years: Provided, finally, That during the lifetime of the franchise, the contractor shall undertake the necessary maintenance and repair of the facility in accordance with standards prescribed in the bidding documents and in the contract. In the case of a build-and-transfer arrangement, the repayment scheme is to be effected through amortization payments by the government infrastructure agency or local government unit concerned to the contractor according to the scheme proposed in the bid and incorporated in the contract.

In the case of land reclamation or the building of industrial estates, the repayment scheme may consist of the grant of a portion or percentage of the reclaimed land or industrial estate built, subject to the constitutional requirements with respect to the ownership of lands.

Sec. 7. Contract Termination and Adjustment. - In the event that a project is revoked, cancelled or terminated by the Government through no fault of the contractor or by mutual agreement, the Government shall compensate the said contractor for its actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the bidding documents and in the contract as of the date of such revocation, cancellation or termination: Provided, That the interest of the Government in these instances shall be duly insured with the Government Service Insurance System or any other insurance entity duly accredited by the Office of the Insurance Commissioner: Provided, finally, That the cost of the insurance coverage shall be included in the terms and conditions of the bidding referred to above. The tolls, fees, rentals and charges on the facility are subject to adjustment according to a formula related to official government price indices which shall be defined before the bidding, through the bidding documents, and incorporated in the contract.

Sec. 8. Toll Regulatory Board. - The Toll Regulatory Board is hereby attached to the Department of Public Works and Highways with the Secretary of Public Works and Highways as Chairman. acd

Sec. 9. Project Supervision. - Every infrastructure project undertaken under the provisions of this Act shall be constructed, operated and maintained by the contractor concerned in accordance with the plans, specifications, standards, and costs approved by the concerned government infrastructure agency and under the technical supervision of the said agency.

Sec. 10. Implementing Rules and Regulations. - A committee composed and representatives from the Department of Public Works and Highways, the Department of Finance, the Department of Local Government, the National Economic and Development Authority, and duly accredited organizations representing the private Philippine construction industry shall formulate and prescribe, after public hearing and publication as required by law, the implementing rules and regulations, including, among others, the criteria and guidelines for evaluation of bid proposals, provisions to subject the facility collections to audit by the Commission on Audit, and conditions for the cancellation of contracts, in order to carry out the provisions of this Act.

Sec. 11. Repealing Clause. - All laws or parts of any law inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 12. Separability Clause. - If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.

Sec. 13. Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved: July 9, 1990