

## **1. LEGAL AND POLICY BACKGROUND**

- 1.1. Section 2.9(b) of the Revised 2022 Implementing Rules and Regulations (IRR) of the Build-Operate-Transfer (BOT) Law<sup>1</sup> states that local projects costing above PHP 200 million shall be submitted by the LGU concerned to the Investment Coordination Committee (ICC) of the National Economic and Development Authority (NEDA) for confirmation. Such confirmation shall be for the purpose of validating the consistency of the proposed project with existing master plans and development plans. After confirmation is secured, final approval of local projects is vested on the Local Sanggunians per provisions of the Local Government Code.
- 1.2. The same section of the Revised 2022 IRR of the BOT Law further states that the said confirmation shall be given within sixty (60) calendar days from the submission of a written request for confirmation and a complete set of requirements as prescribed by the appropriate development council or the ICC. Non-confirmation of the appropriate development council or the ICC within the 60-calendar day period shall not be deemed an automatic confirmation.
- 1.3. Furthermore, the same section provides that projects to be implemented by LGUs and National Government Agencies (NGAs) as co-grantors shall undergo the approval process required for both national and local projects.
- 1.4. Section 9.3 of the Revised 2022 IRR of the BOT Law<sup>2</sup> states that the ICC shall determine the Reasonable Rate of Return (RROR) prior to negotiation in the case of:
  - a. Solicited proposals as referred to under Section 9.1 of the Revised 2022 IRR of the BOT Law<sup>3</sup>, or
  - b. Unsolicited proposals as referred under Rule 10 of the Revised 2022 IRR of the BOT Law.
- 1.5. Section 1.3(ff) of the Revised 2022 IRR of the BOT Law<sup>4</sup> states that the detailed methodology to calculate the RROR shall be in accordance with the guidelines to be issued by the ICC and which may be updated by the ICC, as necessary. Section 3.1.3(b)(v) of the Guidelines and Procedures on

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<sup>1</sup> Section 2.9 – Approval of Projects

<sup>2</sup> Section 9.3 – Conditions for Negotiated Contracts

<sup>3</sup> Section 9. 1 – Direct Negotiation

<sup>4</sup> Section 1.3 – Definition of Terms

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Processing PPP Proposals for NEDA Board/ICC Evaluation and Approval provides the guidelines on setting the RROR.

- 1.6. Section 2.13 of the Revised 2022 IRR of the BOT Law<sup>5</sup> provides that projects undertaken through Build-Operate-and-Own (BOO) scheme or through Contractual Arrangements or schemes other than those defined under Section 2 of the BOT Law shall require presidential approval.
- 1.7. In line with the instruction given during the 1<sup>st</sup> NEDA Board Meeting held on November 24, 2022, “the role of the development councils in assessing the prioritization and harmonization of local PPPs with national development plans as well as priorities” shall be included in the guidelines for processing LGU-implemented PPP projects.

### **2. COVERAGE**

This Guidelines covers ICC actions on local projects to be implemented by LGUs, particularly on the following:

- a. Confirmation of solicited and unsolicited local projects costing:
  - i. Above PHP 200 million up to PHP 2.5 billion
  - ii. Above PHP 2.5 billion
- b. Determination of RROR for negotiated projects to be implemented by LGUs under the Revised 2022 IRR of the BOT Law (i.e., solicited proposals under Section 9.1 of the same IRR, and unsolicited proposals);
- c. Approval by the President of Contractual Arrangements for projects to be implemented by LGUs under Section 2.13 of the Revised 2022 IRR of the BOT Law (i.e., through the BOO scheme or through Contractual Arrangements or schemes other than those defined under Section 2 of the BOT Law); and
- d. Approval of LGU projects to be implemented by LGUs and NGAs as co-grantors under Section 2.9 of the Revised 2022 IRR of the BOT Law.

### **3. DETAILED PROCEDURES**

The following procedures shall be applied by the ICC, NEDA Board, the ICC Core/ICC Secretariat, the Public-Private Partnership (PPP Center), and the Department of Finance (DOF) in processing solicited and unsolicited PPP projects of LGUs requiring action/s of the ICC.

Timelines mentioned in these guidelines and procedures are indicative, except for those timelines specified in the Revised 2022 IRR of the BOT Law.

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<sup>5</sup> Section 2.13 – Presidential Approval, When Required

The ICC Core Secretariat, in coordination with the PPP Center, shall periodically report updates to the ICC on the status of all LGU submissions received under this Guidelines.

**3.1. Confirmation of Solicited and Unsolicited Local Projects costing (a) above PHP 200 million up to PHP 2.5 billion, and (b) Above PHP 2.5 billion**

***Regional Development Council endorsement prior to confirmation by the ICC***

- 3.1.1. LGU submission of complete proposal to the Regional Development Council (RDC).** The Head of LGU shall endorse the solicited or unsolicited proposal, with the complete set of documents, to the RDC, through the NEDA Regional Office (NRO) as the technical and administrative secretariat of the RDC.

The ***List of documentary requirements for RDC endorsement of local projects to be implemented by LGUs*** in **Annex A-1** hereof provides for the complete set of requirements for submission in support of the proposal.

**RDC review and endorsement to the ICC.** The RDC concerned shall review the submissions and evaluate the project. The RDC shall then prepare an RDC Project Evaluation Report (RDC PER) detailing its findings on the following:

- a. Necessity to develop the project
- b. Level of priority in terms of inclusion in the Regional Development Investment Program
- c. Technical, financial, economic, environmental, and administrative feasibility
- d. Social acceptability

During its review, the RDC may seek the comments/inputs of the PPP Center, the NEDA, and the DOF on the technical aspects, institutional arrangements, financial and economic models of the proposed project. Said comments/inputs may be considered by the RDC in preparing its PER.

**Within twenty (20) working days** from receipt of complete proposal from the LGU, the RDC shall provide its decision (e.g. endorsement letter addressed to the ICC Chairpersons) and RDC

PER to the LGU. The RDC PER shall be considered by the reviewing agencies during their validation of the project.

***Confirmation of the project by the ICC***

- 3.1.2. LGU submission of complete proposal to the ICC.** The Head of LGU shall endorse the solicited or unsolicited proposal through a letter to the ICC Chairpersons, copy furnished the PPP Center and the NRO concerned.

The ***List of documentary requirements for ICC confirmation of local projects to be implemented by LGUs*** in Annex A-2 hereof provides for the complete set of requirements for submission in support of the proposal.

**Note:** For practical purposes, it is recommended that only the endorsement letter (see Annex A-2, Item No. 1) with the electronic copies of the documentary requirements be submitted to the ICC Chairpersons, while **both** the printed and electronic copies of the documents be submitted to the PPP Center (the electronic copies, through an online portal). The electronic copies of the submissions should be in searchable/ machine-readable/ optical character recognition (OCR) format.

- 3.1.3. Assessment of the completeness of the LGU submission.** The PPP Center shall validate the completeness of the LGU submission **within three (3) working days** upon receipt of the LGU submission as provided in Section 3.1.2.
- a. In conducting the completeness check, the PPP Center may convene a validation meeting with the submitting LGU.
  - b. Any substantial changes in the submission shall not be allowed at this stage. Only refinements on previous submissions, upon request by the PPP Center, shall be allowed.
  - c. The following shall be undertaken based on the results of the completeness check:
    - i. **If submission is found to be complete:**
      - a) The PPP Center shall issue a letter to the LGU, copy furnished the ICC Chairpersons, the NEDA-Investment

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Programming Group (IPG), the NRO concerned, and the DOF, confirming the completeness of project submission. The ICC Core Secretariat shall include the project in the ICC Project Appraisal Monitor (IPAM), and the project shall be processed for project review. The PPP Center shall ensure that the NEDA-IPG, the NRO concerned, and the DOF have access to the electronic copies of the LGU submission.

- b) Following the confirmation of the completeness of LGU submission, no substantial changes in the submission shall be allowed, only refinements on previous submissions upon request by the PPP Center, the NEDA, and the DOF.

The LGU shall not be allowed to submit new documents that have substantive change or inconsistency in project structure and content as compared with the original submission. Should there be such submissions, the PPP Center shall return the project to the LGU and the ICC Core Secretariat shall delist the original project from the IPAM. Any submission thereafter shall be considered a new project and shall be processed anew pursuant to this Guidelines.

- ii. **If submission is found to be incomplete**, the PPP Center shall return the proposal to the LGU through an official letter, copy furnished the ICC Chairpersons, the NEDA-IPG, the NRO concerned, and the DOF, with the list of lacking requirements, and inform the LGU that the project shall not be included in the IPAM.

- 3.1.4. Project Validation/Review, Preparation and Submission of the Joint PPP Memorandum of the PPP Center, the DOF, and the NEDA to the ICC-Technical Board (ICC-TB).** Following the confirmation by the PPP Center of the completeness of project submission, the reviewing units of the PPP Center, the DOF, and the NEDA shall review the proposal based on Section 2.9<sup>6</sup> of the Revised 2022 IRR of the BOT Law **within ten (10) working days**. The following procedures shall be applied for this purpose:

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<sup>6</sup> Section 2.9 – Approval of Projects

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- a. The review of PPP projects shall be conducted in two phases within a 10-working day period (i.e., Phase 1 duration is 7 working days, while Phase 2 duration is 3 working days). The LGU is only allowed to submit clarifications on its submitted proposal upon request by the reviewing agencies. Such clarifications may only be submitted up to the 3<sup>rd</sup> day of the review period. Any new submission received during the 10-working day review period that has substantive change or inconsistency in structure and content (e.g., submission of new financial and/or economic models, etc.), as compared with the originally submitted proposal and as may be determined during the review, shall be subject to the provisions under Section 3.1.3(c)(i)(b) of this Guidelines.
- b. **Project Review Phase 1: Validation/Review by Area of Expertise.**
  - i. The PPP Center, the DOF, and the NEDA reviewing unit(s) will conduct their respective project review. In reviewing the project, each reviewing agency shall primarily focus on, but are not limited to, their respective areas of expertise.
  - ii. The PPP Center, the DOF, and the NEDA may coordinate directly with the LGU and/or the NRO concerned to request for additional information/ documents, copy furnishing their co-reviewing agency in each communication exchanges. The PPP Center, the DOF or the NEDA may initiate the convening of technical meetings, and may also request the participation of the LGU and/or the NRO concerned in the said technical meetings.
  - iii. The DOF and the NEDA reviewing units will submit directly to the PPP Center the results of their respective review of the project by the 7<sup>th</sup> day of the reviewing period.
  - iv. For negotiated projects, the RROR shall be determined, pursuant to Sections 9.3<sup>7</sup> and 1.3(ff)<sup>8</sup> of the Revised 2022 IRR of the BOT Law (Note: For the procedures regarding

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<sup>7</sup> Section 9.3 – Conditions for Negotiated Contracts

<sup>8</sup> Section 1.3(ff) – Reasonable Rate of Return (RROR)

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RROR determination of negotiated projects, refer to Section 3.2 of this Guidelines).

- v. In validating the local project's consistency with existing master plans and development plans, the strategic framework provided in Chapter 12 of the 2023-2028 Philippine Development Plan, among others, shall guide the PPP Center, the NEDA and the DOF, particularly, that the project should:

1. Implement integrated master-planning development and convergence programs;
2. Embed resilient and innovative solutions in infrastructure design;
3. Fully implement asset management and preservation; and
4. Undertake partnerships for financing investments.

- c. **Project Review Phase 2: Harmonization of Validation/Review Results.** The results of the respective review of the PPP Center, the DOF, and the NEDA shall be consolidated and harmonized by the PPP Center **within three (3) working days** from receipt of the results of the project review by the NEDA and the DOF. The following shall be applied for this purpose:

- i. The PPP Center shall consolidate the results of the respective project review conducted by the PPP Center, the NEDA, and the DOF.
- ii. The PPP Center shall prepare and submit to the ICC-TB, through the ICC Core Secretariat, a PPP Memorandum signed by the PPP Center, containing the recommended action on the request for confirmation. Also, it is recommended that the PPP Memorandum considers procedures under Section 3.1.3(c)(i)(b).

In cases when there is recommendation for the ICC-TB to confirm/concur with requesting the LGU to submit further documentation/information, the PPP Memorandum may already indicate a recommended timeline for the LGU to submit its response.

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- d. **Within five (5) working days** upon receipt of the PPP Memorandum from the PPP Center, the ICC Core Secretariat shall include the project in the agenda of the next planned ICC-TB meeting, subject to confirmation of quorum by its members. The ICC Core Secretariat shall circulate the PPP Memorandum for the ICC-TB, along with the notice for the meeting where the proposed project will be discussed, **at least three (3) working days** before the scheduled meeting.

**3.1.5. Deliberation of the ICC**

- a. By default, the ICC-TB deliberation shall be conducted every two weeks through an *en banc* meeting, subject to confirmation of quorum by the members. In cases where the *en banc* meeting will be held through hybrid set-up (i.e., face-to-face with web conferencing platform), the LGU representative(s) is required to be physically present during the hybrid *en banc* meeting.

In certain meritorious cases, the ICC may confirm projects through *ad referendum*, subject to the instruction of the ICC Chairpersons.

- b. The PPP Center shall present to the ICC-TB the proposed project.
- c. The ICC-TB shall discuss the following during the meeting, among others:
  - i. Results of the joint review of the reviewing agencies;
  - ii. Decision on the proposed project; and
  - iii. Deadline for the LGU to comply with/respond to the conditions or further instructions of the ICC-TB, if any.
- d. On Item 3.1.5(c)(iii), the following shall be considered:

Should there be further instructions from the ICC-TB in relation to its confirmation of the project, the LGU shall be given **two (2) working days** to respond to simple instructions. For complex instructions, the ICC-TB shall set a deadline for the LGU depending on the complexity of the instruction. If there are substantial changes on the project following the deliberation, the proposal shall be returned to the LGU. The LGU may opt to submit a new proposal to the ICC-TB with the complete and compliant documentary requirements.



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e. The ICC Core Secretariat shall prepare and keep the official records of the deliberation of the ICC-TB (i.e., letter to the LGU, minutes of meeting).

f. The ICC shall process the project as follows:

i. **For projects costing above PHP 200 million up to PHP 2.5 billion:**

a) The ICC-TB shall decide on the confirmation of the project **within sixty (60) calendar days** from submission of written request to the ICC, pursuant to Section 2.9 of the Revised 2022 IRR of the BOT Law.

Non-confirmation of the ICC-TB within the 60-calendar day period shall not be deemed an automatic confirmation, pursuant to Section 2.9 of the Revised 2022 IRR of the BOT Law.

b) **If the ICC-TB decides to confirm the project without conditions or further instruction**, the ICC Core Secretariat, in coordination with the PPP Center, shall, within **three (3) working days** from the date when the decision was made, convey the decision of the ICC-TB to the LGU through a letter, copy furnished the Local Sanggunian, and the RDC and the NRO concerned.

Pursuant to Section 2.9 of the Revised 2022 IRR of the BOT Law, after confirmation is secured, final approval of the project is vested on the Local Sanggunian.

c) **If the ICC-TB decides to confirm the project with conditions or further instruction**, the PPP Center, the DOF and the NEDA shall validate the compliance of the additional LGU submission with the conditions or further instructions and the adequacy thereof to address the issues indicated in the memorandum within **ten (10) working days** from receipt of additional LGU submission.

d) **If the ICC-TB decides to not confirm the project**, the ICC Core Secretariat, in coordination with the PPP

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Center, shall, within **three (3) working days** from the date when the decision was made, convey the decision of the ICC-TB to the LGU through a letter, copy furnished the RDC and the NRO concerned.

The LGU shall be allowed to resubmit the project for confirmation provided that the reasons for non-confirmation of the project are addressed accordingly. Upon resubmission, the ICC-TB shall treat it as a new request for confirmation and act on the same pursuant to this provision.

- e) **Within three (3) working days** following confirmation or non-confirmation by the ICC-TB, the PPP Center shall prepare and submit the memorandum of the ICC-TB Chairperson for the ICC-Cabinet Committee (ICC-CC) submitting the project for notation, through a memorandum to the ICC Core Secretariat. The memorandum shall contain the ICC-TB action on the request for confirmation.
- f) **Within five (5) working days** from receipt of the memorandum from the PPP Center, the ICC Core Secretariat shall include the project in the agenda of the next planned ICC-CC meeting, subject to confirmation of quorum by its members. The ICC Core Secretariat shall circulate the memorandum for the ICC-CC, along with the notice for the meeting where the proposed project will be discussed, at least three (3) working days before the scheduled meeting.
- g) The ICC-CC shall note the action of the ICC-TB on the project.

**ii. For projects costing above PHP 2.5 billion:**

- a) **If the ICC-TB decides to endorse to the ICC-CC the confirmation of the project without conditions or further instruction**, the PPP Center shall prepare and submit the memorandum of the ICC-TB Chairperson for the ICC-CC, through a memorandum to the ICC Core Secretariat, within three (3) working days from the endorsement of the ICC-TB.

**Within five (5) working days** upon receipt of the PPP memorandum from the PPP Center, the ICC Core Secretariat shall include the project in the agenda of the next planned ICC-CC meeting, subject to confirmation of quorum by its members. The ICC Core Secretariat shall circulate the memorandum for the ICC-CC, along with the notice for the meeting where the proposed project will be discussed, at least three (3) working days before the scheduled meeting.

- b) **If the ICC-TB decides to endorse to the ICC-CC the confirmation of the project with conditions or further instructions**, the PPP Center, the DOF and the NEDA shall validate the compliance of the additional LGU submission with the conditions or further instructions and the adequacy thereof to address the issues indicated in the memorandum within **ten (10) working days** from receipt of additional LGU submission.
- c) **If the ICC-TB decides to endorse to the ICC-CC the non-confirmation of the project**, the PPP Center shall prepare and submit the memorandum of the ICC-TB Chairperson for the ICC-CC containing the reason/s for the recommended non-confirmation, through a memorandum to the ICC Core Secretariat, **within three (3) working days** from the endorsement of the ICC-TB.
- d) The ICC-CC shall decide on the confirmation of the project **within sixty (60) calendar days** from submission of written request to the ICC, pursuant to Section 2.9 of the Revised 2022 IRR of the BOT Law.

Non-confirmation of the ICC-CC within the 60-calendar day period shall not be deemed an automatic confirmation, pursuant to Section 2.9 of the Revised 2022 IRR of the BOT Law.

- e) The ICC-CC shall discuss the following during the meeting, among others:
  - 1. Results of the ICC-TB deliberation;
  - 2. Decision to confirm, with or without conditions or further instructions, the proposed project; and

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3. Deadline for the LGU to comply with/respond to the conditions or further instructions of the ICC-CC, if any.

f) On Item 3.1.5(f)(ii)(e)(3), the following shall be considered:

Should there be further instructions from the ICC-CC in relation to its confirmation of the project, the LGU shall be given **two (2) working days** to respond to simple instructions. For complex instructions, the ICC-CC shall set a deadline for the LGU depending on the complexity of the instruction. If there are substantial changes on the project following deliberation, the proposal shall be returned to the LGU. The LGU may opt to submit a new proposal to the ICC-CC with the complete and compliant documentary requirements.

g) The ICC Core Secretariat shall prepare and keep the official records of the deliberation of the ICC-CC (i.e., letter to LGU, minutes of meeting).

h) **For *ad referendum* confirmation by the ICC-CC. Within three (3) working days** following receipt of the instructions from the ICC-CC Chairperson/s or the ICC, the ICC Core Secretariat shall prepare the necessary documents (e.g., memorandum and signature sheets), considering the inputs from the PPP Memorandum to the ICC-CC.

i) **If the ICC-CC decides to confirm the project without conditions or further instruction**, the ICC Core Secretariat, in coordination with the PPP Center, shall, **within three (3) working days** from the date when the decision was made, convey the decision of the ICC-CC to the LGU through a letter, copy furnished the Local Sanggunian, and the RDC and the NRO concerned.

Pursuant to Section 2.9 of the Revised 2022 IRR of the BOT Law, after confirmation is secured, final approval of the project is vested on the Local Sanggunian.

j) **If the ICC-CC decides to confirm the project with conditions or further instruction**, the PPP Center, DOF

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and NEDA shall validate the LGU compliance of the additional LGU submission with the instructions and the adequacy thereof to address the issues indicated in the memorandum within **ten (10) working days** from receipt of additional LGU submission.

- k) **If the ICC-CC decides to not confirm the project**, the ICC Core Secretariat, in coordination with the PPP Center, shall, **within three (3) working days** from the date when the decision was made, convey the decision of the ICC-CC to the LGU through a letter, copy furnished the RDC and the NRO concerned.

The LGU shall be allowed to resubmit the project for confirmation provided that the reasons for non-confirmation of the project are addressed accordingly. Upon resubmission, the ICC-CC shall treat it as a new request for confirmation and act on the same pursuant to this provision.

**3.2. Determination of RROR for negotiated projects to be implemented by LGUs under the Revised 2022 IRR of the BOT Law (i.e., solicited proposals under Section 9.1 of the same IRR, and unsolicited proposals)**

- 3.2.1.** The ICC shall determine the RROR for negotiated projects.
- 3.2.2.** For unsolicited proposals to be implemented by LGUs costing above Php 200 million, RROR determination shall be done along with ICC confirmation of the project as provided under Section 3.1 of this Guidelines. In such cases, the Head of LGU shall also submit the complete set of requirements as provided in the ***List of documentary requirements for RROR determination of negotiated projects*** in **Annex A-3**.
- 3.2.3. LGU submission of complete proposal to the ICC.** The Head of LGU shall endorse the proposal, and submit the complete set of documents and the accomplished ICC List of Documentary Requirements in support thereof, to the ICC-CC Chairpersons, copy furnished the PPP Center and the NRO concerned.

The ***List of documentary requirements for RROR determination of negotiated projects*** in **Annex A-3** hereof provides for the

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complete set of requirements for submission in support of the proposal.

**Note:** For practical purposes, it is recommended that only the endorsement letter (see Annex A-3, Item No. 1) with the electronic copies of the documentary requirements be submitted to the ICC Chairpersons, while **both** the printed and electronic copies of the documents be submitted to the PPP Center (the electronic copies, through an online portal). The electronic copies of the submissions should be in searchable/ machine-readable/ optical character recognition (OCR) format.

**3.2.4. Assessment of the completeness of the LGU submission.** The PPP Center shall validate the completeness of the LGU submission **within three (3) working days** upon receipt from the LGU.

- a. In conducting the completeness check, the PPP Center may convene a validation meeting with the submitting LGU.
- b. Any substantial changes in the submission shall not be allowed at this stage. Only refinements on previous submissions, upon request by the PPP Center, the NEDA, and the DOF, shall be allowed.
- c. The following shall be undertaken based on the results of the completeness check:
  - i. **If submission is found to be complete:**
    - a) The PPP Center shall issue a letter to the LGU, copy furnished the ICC-CC Chairpersons, the NEDA-IPG, the NRO concerned, and the DOF, confirming the completeness of project submission. The ICC Core Secretariat shall include the project in the IPAM, and the project shall be processed for project evaluation. The PPP Center shall ensure that the NEDA-IPG, the NRO concerned, and the DOF have access to the electronic copies of the LGU submission.
    - b) Following the confirmation of the completeness of LGU submission, no substantial changes in the submission shall be allowed, only refinements on previous submissions upon request by the PPP Center, the NEDA, and the DOF.

The LGU shall not be allowed to submit new proposals that has substantive change or inconsistency in project structure and content as compared with the original submission. Should there be such submissions, the PPP Center shall return the project to the LGU and the ICC Core Secretariat shall delist the original project from the IPAM. Any submission thereafter shall be considered a new project and shall be processed anew pursuant to this Guidelines.

- ii. **If submission is found to be incomplete**, the PPP Center shall return the proposal to the LGU through an official letter, copy furnished the ICC-CC Chairpersons, the NEDA-IPG, and the DOF, with the list of lacking requirements, and inform the LGU that the project shall not be included in the IPAM.

**3.2.5. Project Review, and Preparation of Joint PPP Memorandum of PPP Center, DOF, and NEDA to the ICC-Technical Board.**

Following the confirmation by the PPP Center of the completeness of project submission, the evaluating units of the the PPP Center, the DOF, and the NEDA shall evaluate the proposal to determine the RROR based on Sections 9.3<sup>9</sup> and 1.3(ff)<sup>10</sup> of the Revised 2022 IRR of the BOT Law **within ten (10) working days**. The following procedures shall be applied for this purpose:

- a. The review of PPP projects shall be conducted within a 10-working day period. The LGU is only allowed to submit clarifications on its submitted proposal upon request by the reviewing agencies. Such clarifications may only be submitted up to the 3<sup>rd</sup> day of the review period. Any new submission received during the 10-working day review period that has substantive change or inconsistency in structure and content (e.g., submission of new financial and/or economic models, etc.), as compared with the originally submitted proposal, and as may be determined during the review, shall be subject to the provisions under Section 3.2.4(c)(i)(b) of this Guidelines.

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<sup>9</sup> Section 9.3 – Conditions for Negotiated Contracts

<sup>10</sup> Section 1.3(ff) – Reasonable Rate of Return (RROR)

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- b. The RROR shall be set at WACC, unless otherwise set by the ICC, based on prevailing market rates. If the RROR is set at WACC, the RROR shall be computed as follows:
  - i. Cost of debt, which is the sum of the following:
    - 1. Risk-free rate based on loan tenor (e.g., PHPBVAL)
    - 2. Credit spread
  - ii. Cost of equity, which is the sum of the following:
    - 1. Risk-free rate based on the project duration (e.g., PHPBVAL)
    - 2. Relevered beta based on the project's debt-to-equity ratio \* equity risk premium
  - iii.  $RROR \text{ set at WACC} = \text{cost of debt} * (100\% - \text{corporate tax rate}) * \text{debt ratio} + \text{cost of equity} * \text{equity ratio}$

Data sets for the WACC components shall be derived from reputable sources of financial data (e.g., PDS Group, Bloomberg, Philippine Stock Exchange, Damodaran Online).

As additional reference, attached is a sample computation on recommending the proposed RROR (**Annex B: Sample Computation on Determining RROR for the Toll Road Industry**).

Should the RROR be set at more than the determined WACC, the justification for such increment shall be assessed.

- c. The PPP Center, the DOF, and the NEDA reviewing unit(s) will conduct their respective project review.
- d. The PPP Center, the DOF, and the NEDA may coordinate directly with the LGU for requests for additional information/documents, copy furnishing their co-reviewing agency of each communication exchanges. The PPP Center, the DOF or the NEDA may convene technical meetings, and may also request the participation of the LGU in the said technical meetings.
- e. The DOF and the NEDA reviewing units will submit directly to the PPP Center the results of their respective review of the project by the 7<sup>th</sup> day of the review period.
- f. The PPP Center shall consolidate the results of the respective project review conducted by the PPP Center, the NEDA, and



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the DOF **within three (3) working days** from the receipt of such project review.

- g. The PPP Center shall prepare and submit a PPP Memorandum to the ICC-TB signed by the PPP Center, containing the recommended RROR. Also, it is recommended that the PPP Memorandum considers procedures under Section 3.2.4(c)(i)(b).
- h. **Within five (5) working days** upon receipt of the memorandum from the PPP Center, the ICC Core Secretariat shall include the project in the agenda of the next planned ICC-TB meeting, subject to confirmation of quorum by the ICC-TB members. The ICC Core Secretariat shall circulate the PPP Memorandum for the ICC-CC, along with the notice for the ICC-TB meeting where the proposed project will be discussed, **at least three (3) working days** before the scheduled ICC-CC meeting.

**3.2.6. Deliberation of the ICC-Technical Board**

- a. By default, the ICC-TB deliberation of projects is conducted every two weeks through an *en banc* meeting, subject to confirmation of quorum by the ICC-TB members. In cases where the *en banc* ICC-TB meeting will be held through hybrid set-up (i.e., face-to-face with web conferencing platform), the LGU representative(s) is required to be physically present during the hybrid *en banc* ICC-TB meeting. In certain meritorious cases, the ICC may approve projects through a joint ICC-TB and ICC-CC *en banc* meeting, subject to the instruction of the ICC Chairpersons.
- b. The PPP Center shall present to the ICC-TB the proposed RROR.
- c. The ICC-TB shall discuss the following during the meeting, among others:
  - i. Results of the joint review of the reviewing agencies;
  - ii. RROR for the project; and
  - iii. Deadline for LGU to comply with/respond to the ICC-TB instructions, if any.

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- d. On Item 3.2.6(c)(iii), the following shall be considered:

Should there be further instructions from the ICC-TB in relation to its determination of the RROR of the project, the LGU shall be given **two (2) working days** to respond to simple instructions. For complex instructions, the ICC-TB shall set a deadline for the LGU depending on the complexity of the instruction. If there are substantial changes on the project following ICC-TB deliberation, the proposal shall be returned to the LGU. The LGU may opt to submit a new proposal to the ICC-TB with the complete and compliant documentary requirements.

- e. The ICC Core Secretariat shall prepare and keep the official records of the ICC-TB deliberation (i.e., letter to LGU, minutes of meeting).
- f. **Within three (3) working days** from the endorsement of the ICC-TB, the PPP Center shall prepare and submit the memorandum of the ICC-TB Chairperson for the ICC-CC containing the endorsed RROR, through a memorandum to the ICC Core Secretariat. Pertinent project documents, as presented to the ICC-TB, may be annexed to the memorandum.
- g. **Within five (5) working days** upon receipt of the memorandum from the PPP Center, the ICC Core Secretariat will include the project in the agenda of the next planned ICC-CC meeting, subject to confirmation of quorum of the ICC-CC members. The ICC Core Secretariat shall circulate the memorandum for the ICC-CC, along with the notice for the ICC-CC Meeting where the proposed project will be discussed at least three (3) working days before the scheduled ICC-CC meeting.

**3.2.7. Deliberation of the ICC-Cabinet Committee**

- a. By default, the ICC-CC deliberation of projects is conducted once a month through an *en banc* meeting, subject to confirmation of quorum by the ICC-CC members. In cases where the *en banc* ICC-CC meeting will be held through hybrid set-up (i.e., face-to-face with web conferencing platform) the

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LGU representative(s) is required to be physically present during the hybrid *en banc* ICC-CC meeting.

In certain meritorious cases, the ICC-CC may determine the RROR of projects through *ad referendum*, subject to the instruction of the ICC-CC Chairpersons.

**b. For projects for ICC-CC deliberation *en banc*.** The following procedures shall be applied:

- i. The PPP Center shall present to the ICC-CC the proposed project.
- ii. The ICC-CC shall discuss the following during the meeting, among others:
  - a) Results of the ICC-TB deliberation;
  - b) RROR for the project; and
  - c) Deadline for LGU to comply with/respond to the ICC-CC instructions, if any.

iii. On Item 3.2.7(b)(ii)(c), the following shall be considered:

Should there be further instructions from the ICC-CC in relation to its determination of the RROR of the project, the LGU shall be given **two (2) working days** to respond to simple instructions. For complex instructions, the ICC-CC shall set a deadline for the LGU depending on the complexity of the instruction. If there are substantial changes on the project following ICC-CC deliberation, the proposal shall be returned to the LGU. The LGU may opt to submit a new proposal to the ICC-CC with the complete and compliant documentary requirements.

- iv. The ICC Core Secretariat shall prepare and keep the official records of the ICC-CC deliberation (i.e., letter to LGU, minutes of meeting).
- v. **Within two (2) working days** from the date of ICC-CC RROR determination, the ICC Core Secretariat, in coordination with the PPP Center, shall issue a letter to the LGU conveying the RROR as determined by the ICC-CC.

- c. **For projects for *ad referendum* RROR determination of the ICC-CC. Within three (3) working days** following receipt of the instructions from the ICC Chairperson/s or the ICC, the ICC Core Secretariat shall prepare the necessary documents (e.g., memorandum and signature sheets), considering the inputs from the PPP Memorandum.

**Within two (2) working days** from the date of ICC-CC *ad referendum* RROR determination, the ICC Core Secretariat, in coordination with the PPP Center, shall issue a letter to the LGU conveying the RROR as determined by the ICC-CC.

**3.3. Approval by the President of Contractual Arrangements for projects to be implemented by LGUs under Section 2.13 of the Revised 2022 IRR of the BOT Law (i.e., through the BOO scheme or through Contractual Arrangements or schemes other than those defined under Section 2 of the BOT Law)**

**3.3.1.** Approval of the contractual arrangement by the President shall be secured prior to the approval of the project by the Local Sanggunian.

**3.3.2.** For projects to be implemented by LGUs costing above Php 200 million, approval of the contractual arrangement shall be done along with confirmation of the project as provided under Section 3.1 of this Guidelines. Findings on the proposed contractual arrangement shall also be deliberated upon during the ICC-TB/CC meetings. The following procedures shall apply:

- a. For projects costing above PHP 200 million up to PHP 2.5 billion, following confirmation by the ICC-TB under Section 3.1.5(f)(i)(b), refer to and apply the same procedures as provided under Section 3.3.3(e) to 3.3.3(h) of this Guidelines.
- b. For projects costing above PHP 2.5 billion, following confirmation by the ICC-CC under Section 3.1.5(f)(ii)(i), refer to and apply the same procedures as provided under Sections 3.3.3(g) to 3.3.3(h) of this Guidelines.

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**3.3.3.** For projects to be implemented by LGUs costing up to Php 200 million, the following procedures shall apply:

- a. **LGU submission of complete proposal to the ICC.** The Head of LGU shall endorse the solicited or unsolicited proposal through a letter to the ICC-CC Chairpersons, copy furnished the PPP Center and the NRO concerned.

The *List of documentary requirements for solicited projects pursuant to Section 2.7 of the Revised 2022 BOT Law IRR* for solicited proposals, and the *List of documentary requirements for unsolicited projects pursuant to Section 10.7 of the Revised 2022 BOT Law IRR* for unsolicited proposals, along with the RDC endorsement, provides for the complete set of requirements for submission in support of the proposal.

- b. **Assessment of the completeness and compliance of the LGU submission.** The PPP Center shall validate the completeness and compliance of the LGU submission **within three (3) working days** upon receipt of the LGU submission.
  - i. In conducting the completeness check, the PPP Center may convene a validation meeting with the submitting LGU.
  - ii. Any substantial changes in the submission shall not be allowed at this stage. Only refinements on previous submissions, upon request by the PPP Center, the NEDA, and the DOF, shall be allowed.
  - iii. The following shall be undertaken based on the results of the completeness check:
    - a) **If submission is found to be complete,** The PPP Center shall issue a letter to the LGU, copy furnished the ICC-CC Chairpersons, the NEDA-IPG, the NRO concerned, and the DOF, confirming the completeness of project submission. The ICC Core Secretariat shall include the project in the IPAM, and the project shall be processed for project review. The PPP Center shall ensure that the NEDA-IPG, the NRO

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concerned, and the DOF have access to the electronic copies of the LGU submission.

Following the confirmation of the completeness of LGU submission, no substantial changes in the submission shall be allowed, only refinements on previous submissions upon request by the PPP Center, the NEDA, and the DOF.

The LGU shall not be allowed to submit new proposals that has substantive change or inconsistency in project structure and content as compared with the original submission. Should there be such submissions, the PPP Center shall return the project to the LGU and the ICC Core Secretariat shall delist the original project from the IPAM. Any submission thereafter shall be considered a new project and shall be processed anew pursuant to this Guidelines.

- b) **If submission is found to be incomplete**, the PPP Center shall return the proposal to the LGU through an official letter, copy furnished the ICC-CC Chairpersons, the NEDA-IPG, the NRO concerned, and the DOF, with the list of lacking requirements, and inform the LGU that the project shall not be included in the IPAM.

**c. Project Review, Preparation and Submission of the Joint PPP Memorandum of PPP Center, DOF, and NEDA to the ICC-TB.**

Following the confirmation by the PPP Center of the completeness of project submission, the reviewing units of the PPP Center, the DOF, and the NEDA shall review the proposal based on Section 2.9 of the Revised 2022 IRR of the BOT Law **within ten (10) working days**. The following procedures shall be applied for this purpose:

- i. The review of PPP projects shall be conducted in two phases within a 10-working day period (i.e., Phase 1 duration is 7 working days, while Phase 2 duration is 3 working days). The LGU is allowed to submit clarifications on its submitted proposal up to the 3<sup>rd</sup> day of the review period only. Any new submission received during the 10-working day review period that has substantive change or

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inconsistency in structure and content as compared with the originally submitted proposal shall be subject to the provisions under Section 3.3.3(b)(iii)(a) of this Guidelines.

**ii. Project Review Phase 1: Review by Area of Expertise**

- a) The PPP Center, the DOF, and the NEDA reviewing unit(s) will conduct their respective project review. In reviewing the project, each reviewing agency shall primarily focus on, but are not limited to, their respective areas of expertise.
- b) The PPP Center, the DOF, and the NEDA may coordinate directly with the LGU for requests for additional information/documents, copy furnishing their co-reviewing agency of each communication exchanges. The PPP Center, the DOF or the NEDA may convene technical meetings, and may also request the participation of the LGU in the said technical meetings.
- c) The DOF and the NEDA reviewing units will submit directly to the PPP Center the results of their respective review of the project by the 7<sup>th</sup> day of the reviewing period.
- d) During this stage, LGUs may only be allowed to submit additional requirements and/or respond to the comments/provide clarifications on their submission up to the 3<sup>rd</sup> day of the review period. No new LGU submission shall be accepted beyond this period. Any substantial changes in the proposal (e.g., submission of new financial and/or economic models, etc.), as may be determined during the review, shall be treated as a new submission and the LGU will be required to resubmit the new proposal.

**iii. Project Review Phase 2: Harmonization of Validation/Review Results.** The results of the respective review of the PPP Center, the DOF, and the NEDA shall be consolidated and harmonized **within three (3) working days** from the PPP Center's receipt of the results of the

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project review by NEDA and DOF. The following shall be applied for this purpose:

- a) The PPP Center shall consolidate the results of the respective project review conducted by the PPP Center, the NEDA, and the DOF.
- b) The PPP Center shall prepare and submit a PPP Memorandum to the ICC-TB signed by the PPP Center, containing the recommended action, through the ICC Core Secretariat. Also, it is recommended that the PPP Memorandum considers procedures under Section 3.3.3(b)(iii)(a).

In cases when there is recommendation for the ICC-TB to confirm/concur with requesting the LGU to submit further documentation/ information, the PPP Memorandum may already indicate a recommended timeline for the LGU to submit its response.

- c) **Within five (5) working days** upon receipt of the PPP Memorandum from the PPP Center, the ICC Core Secretariat shall include the project in the agenda of the next planned meeting of the ICC-TB, subject to confirmation of quorum by its members. The ICC Core Secretariat shall circulate the PPP Memorandum for the ICC-TB, along with the notice for the meeting where the proposed project will be discussed, **at least three (3) working days** before the scheduled meeting.

**d. Deliberation of the ICC-TB**

- i. The deliberation by the ICC-TB shall be conducted regularly through an *en banc* meeting, subject to confirmation of quorum by the members. In cases where the *en banc* meeting will be held through hybrid set-up (i.e., face-to-face with web conferencing platform) the LGU representative(s) is required to be physically present during the hybrid *en banc* meeting.
- ii. The PPP Center shall present to the ICC-TB the proposed contractual arrangement.



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- iii. The ICC-TB shall discuss the following during the meeting, among others:
  - a) Results of the joint review of the reviewing agencies;
  - b) Decision on the proposed contractual arrangement;  
and
  - c) Deadline for LGU to comply with/respond to the instructions of the ICC-TB, if any.

- iv. On Item 3.3.3(d)(iii)(c), the following shall be considered:

Should there be further instructions from the ICC-TB in relation to its decision on the contractual arrangement, the LGU shall be given **two (2) working days** to respond to simple instructions. For complex instructions, the ICC-TB shall set a deadline for the LGU depending on the complexity of the instruction. If there are substantial changes on the project following deliberation, the proposal shall be returned to the LGU. The LGU may opt to submit a new proposal to the ICC-TB with the complete and compliant documentary requirements.

- v. The ICC Core Secretariat shall prepare and keep the official records of the deliberation of the ICC-TB (i.e., letter to LGU, minutes of meeting).

**e. Preparation for ICC-CC deliberation**

- i. **If the ICC-TB decides to endorse the contractual arrangement without conditions or further instruction, within three (3) working days** from the date the decision was made, the PPP Center shall prepare and submit the memorandum of the ICC-TB Chairperson for the ICC-CC containing the endorsement of the ICC-TB on the proposed contractual arrangement, through a memorandum to the ICC Core Secretariat.
- ii. **If the ICC-TB decides to endorse the contractual arrangement with conditions or further instruction**, the PPP Center, DOF and NEDA shall validate the LGU compliance of the additional LGU submission with the instructions and the adequacy thereof to address the

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issues indicated in the memorandum **within ten (10) working days** from receipt of additional LGU submission.

- iii. **Within three (3) working days** from the date the ICC-TB decision was made, the PPP Center shall prepare and submit the memorandum of the ICC-TB Chairperson for the ICC-CC containing the endorsement of the ICC-TB on the proposed contractual arrangement, through a memorandum to the ICC Core Secretariat.
- iv. **Within five (5) working days** upon receipt of the memorandum from the PPP Center, the ICC Core Secretariat will include the project in the agenda of the next planned ICC-CC meeting, subject to confirmation of quorum of the ICC-CC members. The ICC Core Secretariat shall circulate the Memorandum for the ICC-CC, along with the notice for the ICC-CC meeting where the proposed project will be discussed, **at least three (3) working days** before the scheduled ICC-CC meeting.

**f. Deliberation of the ICC-CC**

- i. The deliberation by the ICC-TB shall be conducted regularly through an *en banc* meeting, subject to confirmation of quorum by the members. In cases where the *en banc* meeting will be held through hybrid set-up (i.e., face-to-face with web conferencing platform) the LGU representative(s) is required to be physically present during the hybrid *en banc* meeting.

In certain meritorious cases, the ICC-TB may confirm projects through *ad referendum*, or by joint ICC-TB and ICC-CC *en banc* meeting, subject to the instruction of the Chairpersons.

- ii. **For deliberation of the ICC-CC *en banc*.** The following procedures shall apply:
  - a) The PPP Center shall present to ICC-CC the proposed contractual arrangement of the project.

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- b) The ICC-CC shall discuss during the meeting, among others.
  - 1. Results of the ICC-TB deliberation;
  - 2. Decision on the proposed contractual arrangement; and
  - 3. Deadline for LGU to comply with/respond to the instructions of the ICC-CC, if any.

- c) On Item 3.3.3(f)(ii)(b)(3), the following shall be considered:

Should there be further instructions from the ICC-CC in relation to its decision on the contractual arrangement, the LGU shall be given **two (2) working days** to respond to simple instructions. For complex instructions, the ICC-CC shall set a deadline for the LGU depending on the complexity of the instruction. If there are substantial changes on the project following deliberation, the proposal shall be returned to the LGU. The LGU may opt to submit a new proposal to the ICC-CC with the complete and compliant documentary requirements.

- d) The ICC Core Secretariat shall prepare and keep the official records of the ICC-CC deliberation (i.e., letter to LGU, minutes of meeting).

- iii. **For *ad referendum* decision of the ICC-CC. Within three (3) working days** following receipt of the instructions from the ICC-CC, the ICC Core Secretariat shall prepare the necessary documents (e.g., memorandum and signature sheets), considering the inputs from the PPP memorandum to the ICC-CC.

**Within two (2) working days** from the date of *ad referendum* confirmation, the ICC Core Secretariat, in coordination with the PPP Center, shall issue a letter to the LGU conveying the decision of the Confirming Body.

**g. Preparation for NEDA Board presentation**

- i. **Within three (3) working days** from the date the ICC-CC decision was made, the ICC Core Secretariat, in

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coordination with the PPP Center, shall issue a letter to the LGU conveying the recommendation of the ICC-CC.

- ii. **If the ICC-CC decides to endorse the contractual arrangement without conditions or further instruction, within five (5) working days** from the date the decision was made, the PPP Center shall prepare the Memorandum for the NEDA Board containing the recommendation of the ICC-CC on the proposed contractual arrangement, and the reason for such, and submit the same to the NEDA Board, through the NEDA Board Secretariat (copy furnished the ICC Core Secretariat).
- iii. **If the ICC-CC decides to endorse the contractual arrangement with conditions or further instruction**, the PPP Center, the DOF and the NEDA shall validate the LGU compliance of the additional LGU submission with the instructions and the adequacy thereof to address the issues indicated in the memorandum **within ten (10) working days** from receipt of additional LGU submission.
- iv. The NEDA Board Secretariat shall submit the proposed contractual arrangement for Presidential approval. **Ten (10) working days** before the scheduled NEDA Board meeting, the NEDA Board Secretariat shall circulate the materials for the NEDA Board on the proposed contractual arrangement, along with the notice for the NEDA Board meeting where the proposed contractual arrangement will be discussed.

**h. Presentation to the NEDA Board**

- i. By default, the processing of the NEDA Board will be conducted through an *en banc* meeting. In certain meritorious cases, the NEDA Board may process the projects through *ad referendum*, subject to the instruction of the NEDA Board or the ICC-CC Chairpersons.

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- ii. **For deliberation of the NEDA Board *en banc*.** The following procedures shall apply:
  - a) During the NEDA Board meeting, the Head of the LGU or the ICC-CC Chairpersons may present the proposed contractual arrangement to the NEDA Board. The ICC-CC members, the ICC-TB Chairperson, and the reviewing agencies, shall be present to respond to the questions that may be raised by the NEDA Board.
  - b) NEDA shall issue a letter to the LGU, copy furnished the Local Sanggunian, conveying the decision **within five (5) working days** following the decision on the contractual arrangement.
- iii. **For deliberation of the NEDA Board *ad referendum*.** The following procedures shall apply:
  - a) The ICC Core Secretariat, in coordination with the NEDA Board Secretariat, shall circulate the ICC-CC memorandum for the NEDA Board with the pertinent documents with a request for approval *ad referendum* of the contractual arrangement. The memorandum should include a deadline on securing the signatures of the NEDA Board members.
  - b) If within the set deadline, at least a majority of the NEDA Board members' signatures are secured, the ICC Core Secretariat shall prepare the letter to the LGU advising of the NEDA Board decision, to be signed by the NEDA Secretary as Vice-Chairperson of the NEDA Board.
  - c) If any of the NEDA Board member requests for the convening of a NEDA Board meeting to discuss the proposed project, the ICC Core Secretariat shall request the NEDA Board Secretariat to inform the NEDA Board of such status in writing, with a notice of meeting.
- iv. **If the contractual arrangement is approved,** final approval of the project is vested on the Local Sanggunian per provisions of the Local Government Code.

- v. **If the contractual arrangement is disapproved**, the project shall be delisted from the IPAM. The LGU shall be allowed to resubmit the proposed contractual arrangement for approval provided that the reasons for disapproval are addressed accordingly. Upon resubmission, it shall be treated as a new endorsement and be processed as such pursuant to this provision.

### **3.4. Approval of LGU projects to be implemented by LGUs and NGAs as co-grantors under Section 2.9 of the Revised 2022 IRR of the BOT Law**

Projects to be implemented by LGUs and NGAs as co-grantors shall undergo the approval process required for both national and local projects as stated in Section 2.9 of the Revised 2022 IRR of the BOT Law.

As a general rule, a co-granted project may secure first the approval of the Local Sanggunian or of the ICC and/or NEDA Board, as applicable; or simultaneously secure the approval of both approving bodies.

However, for co-granted projects that involve government undertakings by the national government, it shall first secure the approval of the ICC and/or NEDA Board prior to securing the approval of the Local Sanggunian.

The risk allocation for co-granted projects shall specifically indicate whether it shall be the NGA or the LGU who shall take on the risks identified for the project.

## **4. AMENDMENTS**

Any amendment to this Guidelines and its attachments shall be subject to the approval of the ICC. Such amendments may be through a separate policy issuance and will be made an integral part of this Guidelines, once approved.

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**ATTACHMENTS:**

- Annex A-1: List of documentary requirements for RDC endorsement of local projects to be implemented by LGUs
- Annex A-2: List of documentary requirements for confirmation of local projects to be implemented by LGUs costing above Php 200 million
- Annex A-3: List of documentary requirements for RROR determination of negotiated projects
- Annex B: Sample Computation on Determining RROR for the Toll Road Industry