Content

Title：	Act for Promotion of Private Participation in Infrastructure Projects Ch
Date：	2018.11.21
Legislative：	1.Full text, (57 Articles), enacted and promulgated per Presidential Decree No. Hua-Tzung-(I)-Yi-8900032910, dated February 9, 2000. 2.Amended Article 3 promulgated per Presidential Decree No. Hua-Tzung-(I)-Yi-9000214000, dated October 31, 2001. 3.Added Articles 6-1, 48-1 and 51-1, deleted Article 27, and amended Articles 3 to 6, 8, 9, 11, 13 to 16, 18, 29 to 31, 35 to 41, 46, 51, and 52 to 54 promulgated per Presidential Decree No. Hua-Tzung-(1)-Yi - 10400152841, dated December 30, 2015. 4.Amended Articles 8, 13, and 51-1 promulgated per Presidential Decree No. Hua-tzung-(1) 10700125381, dated November 21, 2018.
Content：	Chapter 1 General Principles Article 1 This Act is enacted to upgrade the level of public service, to expedite social economic development and to encourage private participation in infrastructure projects. Article 2 With regard to the promotion of the private participation in the infrastructure projects, this Act shall prevail. For such matters not specified herein, other relevant laws shall apply. Article 3 The term "infrastructure project" as referred to herein shall mean a project for constructing any of following facilities for public use and for promotion of public interest: 1. Transportation facilities and common conduits; 2. Environmental pollution prevention facilities; 3. Sewerage, water supply and water conservancy facilities; 4. Sanitation and medical facilities; 5. Social and labor welfare facilities; 6. Cultural and educational facilities; 7. Tourist attractions and lodgings; 8. Power facilities and public gas and fuel supply facilities; 9. Sports facilities; 10. Parks and green spaces; 11. Industrial, commercial and hi-tech facilities; 12. Development of new towns; 13. Agricultural facilities; and 14. Government office buildings. The term "major infrastructure projects" as referred to herein shall mean infrastructure projects that are important and of a certain scale. The scope of the major infrastructure projects shall be determined by the competent authority in conjunction with the Ministry of the Interior and

the central authorities in charge of the relevant industries.

Article 4

The term "private institution" as referred to herein shall mean a company established under the Company Act or any private juristic person approved by the authority in charge and that has entered into a concession agreement for its participation in an infrastructure project with the authority in charge.

Where the government or any government-owned enterprise makes any equity investment in, or makes any donation to, a private institution as referred to in the preceding Paragraph, the total equity investment or donation from the government and such government-owned enterprises shall not exceed twenty percent (20%) of the total capital or the total assets of the private institution.

Where a foreign investor holds shares in a private institution as referred to in Paragraph 1, the authority in charge may, as it may deem necessary on a case-by-case basis, request the approval of the Executive Yuan for exempting the foreign investor from foreign ownership restrictions under any other laws, unless such restrictions are necessary for national security and energy self-reliant.

Article 5

The term "competent authority" as referred to herein shall mean the Ministry of Finance.

The term "authority in charge" as used herein shall mean any authority in charge of the matters relating to private participation in infrastructure projects, and shall refer to the central authorities in charge of the relevant industries, the municipal governments at the municipal level, or the county (city) governments at the county (city) level. An authority in charge may authorize any of its subordinate agencies (institutions) to execute matters to be handled by the authority under this Act.

An authority in charge may, with the approval of its superior authority, delegate matters to be handled by it under this Act to any other government agency for execution.

Where an authority in charge delegates matters to another government agency in accordance with the preceding Paragraph, the authority shall publicly announce the matters delegated and the preceding Paragraph, which is the legal basis of the delegation, and publish the same in the government gazette or newspapers or post the same on the Internet.

Article 6

The competent authority shall supervise the following matters, which concern the promotion of private participation in infrastructure projects:

1. Establishment of policies and rules, and promotion of awareness of decrees and policies;
2. Collection and publication of, and compiling statistics for, information and data;
3. Specialist training;
4. Inter-agency affairs of coordination among the relevant authorities in charge, and supervision over and evaluation of the relevant infrastructure projects;
5. Processing of complaints; and
6. Other related matters.

The authority in charge shall have cases concerning promotion of private participation in infrastructure projects handled by specialists who are in charge of promotion of private participation in infrastructure projects. The regulations governing the qualifications, examination, training, certification, follow-up personnel record keeping, and rewards for specialists responsible for private participation in infrastructure projects under the preceding paragraph shall be prescribed jointly by the competent authority and the relevant authorities.

Article 6-1

An authority in charge shall conduct a feasibility assessment before promoting private participation in infrastructure projects in accordance with this Act.

The feasibility assessment under the preceding paragraph shall cover the types and details of the public interest to be promoted and the targets to be achieved through the infrastructure project. Experts, scholars, local residents, and civil groups at the places (The Township or District) where the infrastructure will be located shall be invited to public hearings. If the authority in charge does not adopt the suggestions given or oppositions raised by the experts, scholars, local residents, or civil groups, it shall state the reasons in its feasibility assessment report.

Article 7

An infrastructure project may be initiated by the private institution.

Article 8

A private institution may participate in an infrastructure project in any of the following way:

1. The private institution invests in the construction and operation of a new infrastructure, and upon expiration of the operation period, transfers the ownership of such infrastructure to the government.
2. The private institution invests in the construction of the infrastructure and upon completion of the construction, relinquishes the ownership to the government without compensation. The government then lets the private institution operate the infrastructure. Upon expiration of the operation period, the right to operate reverts to the government.
3. The private institution invests in the construction of the infrastructure. Upon completion of the construction, the government acquires the ownership by paying the construction expenses in a lump sum or in installments. The government then lets the private institution operate the infrastructure. Upon expiration of the operation period, the right to operate reverts to the government.
4. The private institution invests in the extension, reconstruction and/or repair of an existing infrastructure, and operates the infrastructure. Upon expiration of the operation period, the right to operate reverts to the government.
5. The private institution operates an infrastructure built with investment from the government. Upon expiration of the operation period, the right to operate reverts to the government;
6. To support the government policy, the private institution invests in the construction of an infrastructure on private land provided by the private institution itself, has the ownership thereof upon completion of the construction, and then operates the infrastructure itself or commissions a

third party to operate it.
7. Any other way approved by the competent authority.
The operation periods under the subparagraphs of the preceding Paragraph shall be specified by the authority in charge in the approved project or in the concession agreement. Where an infrastructure project is for establishing a public utilities enterprise, the operation period shall not be subject to the restrictions under Article 19 of the Statute Governing Privately Operated Public Utilities Enterprises. Where a lease agreement is entered into for such an infrastructure, the operation period thereof shall not be subject to the restrictions under Article 449 of the Civil Code, Article 25 of the Land Act, Article 28 of the National Property Act, and laws and regulations governing local governments' management of government-owned property.
Article 9
The new construction, extension, reconstruction and repair (hereinafter collectively referred to as "building") or operation as referred to in Paragraph 1 of the preceding Article may be conducted either on a part or the whole of an infrastructure project.
Article 10
To build any of the infrastructure projects in the manner specified in Subparagraph 3 of the first Paragraph of Article 8 hereof, the authority in charge shall, before implementation, submit its construction and financial plans to the Executive Yuan for prior approval or have the plans approved by the relevant local governments in advance, as the case may be, and appropriate the relevant budgets for the credit and for the construction plan concerned through the budgetary process.
If the construction of the project referred to in the preceding Paragraph has been estimated and examined by the authority in charge of such project, the credit and the construction plan so estimated and examined shall be deemed to have been executed.
Article 11
The concession agreement between an authority in charge and a private institution shall specify the following matters, depending on the type of the project concerned:
1. The planning, building, operation and transfer of the infrastructure;
2. The bearing of the rental for the land, the royalties, and the relevant expenses;
3. The fare rate and the adjustment thereof;
4. The renewal of the agreement upon the expiration of the operation period;
5. The risk allocation;
6. The solution in case of poor construction or operation, and the step-in right of the related parties;
7. The auditing, construction control, and management of operation quality;
8. The dispute resolution mechanism, the arbitration clause, and amendment to or termination of the agreement; and
9. Any other agreed matters.
Article 12
Unless otherwise specified in this Act, the rights and obligations between the authority in charge and the private institution shall be governed by

the concession agreement and for matters not specified in the concession agreement, the relevant provisions under the Civil Code shall apply.
The parties shall, taking into account protection of the public interest, enter into the concession agreement on a fair and reasonable basis, and shall perform the concession agreement in good faith.

Chapter 2 Land Acquisition and Development

Article 13

The land needed for an infrastructure project as referred to in this Chapter shall mean the land needed for the whole plan for the project approved by the authority in charge, including the land needed for the infrastructure, the ancillary facilities, and the ancillary businesses.
If the land for an infrastructure project as referred to in the preceding Paragraph will be secured through expropriation by zone or section, the authority in charge of the project may, with the prior approval of the Executive Yuan, commission a private institution to draft an urban planning proposal and to handle the matters relating to the expropriation by zone or section.
Where the operations of an ancillary business require the approval of any other relevant authority, the private institution shall apply for such approval.
Income derived from the operations of an ancillary business under Paragraph 1 by the private institution shall be counted as the overall revenues of the infrastructure project.

Article 14

Where the land needed for an infrastructure project involves any change in the urban planning, the authority in charge shall cooperate with the relevant authorities in charge of the urban planning to effect prompt changes in accordance with Article 27 of the Urban Planning Act. Where the land needed for the infrastructure project involves any changes in the use of non-urban land, the authority in charge shall cooperate with the relevant authorities in charge of area planning to effect the relevant changes in accordance with the relevant area planning laws and regulations.
Where environmental impact assessment, and soil and water conservation treatment and maintenance for the land needed for a major infrastructure project are required in accordance with the law, the assessment, treatment and maintenance shall be reviewed in parallel, jointly or concurrently by the authorities concerned in accordance with the laws and regulations governing urban planning and regional planning.

Article 15

Where the land needed for an infrastructure project is government-owned land, the authority in charge may, after completing the allocation process, set a fixed term to allow the use of the land by a private institution by means of lease, creation of superficies, trust, or paying royalties or rental for use of the land, without being subject to the restrictions under Article 25 of the Land Act, Article 28 of the National Property Act, or the regulations governing local governments' management of government-owned property. Rental in connection with the lease and the creation of superficies mentioned above may be charged on favorable terms.
Regulations governing favorable rental rates as referred to in the preceding Paragraph shall be prescribed by the Ministry of the Interior in

conjunction with the competent authority.
Any odd government-owned land within the scope of the land for an infrastructure project developed by a private institution in accordance with Subparagraph 6, Paragraph 1 of Article 8 may be sold by the authority in charge of selling government-owned land to the private institution, without being subject to Article 25 of the Land Act or regulations governing local governments' management of government-owned property, if the authority in charge of the relevant infrastructure projects determines that such sale is necessary for a policy.
Article 16
Where the land needed for an infrastructure project is privately owned, the authority in charge or the private institution concerned shall negotiate with the land owner to purchase the land at the arm's length price in the market. If an agreement on purchase of the land cannot be reached and the land is needed for a major infrastructure project planned by the government, the authority in charge may expropriate such land in accordance with applicable laws.
If the land subject to expropriation by the authority in charge as referred to in the preceding Paragraph is urgently needed for the use of an enterprise of national defense, transportation, or water conservancy in public safety, the authority in charge may directly expropriate such land in accordance with applicable laws, bypassing the price negotiation process required by the preceding Paragraph.
The authority in charge may state in the expropriation plan that the land so expropriated will be used by private institution for development, building and/or operation purposes by means of joint development, commissioned development, cooperative operation, lease, creation of superficies, paying royalties or rental for use of the land, without being subject to the restrictions under Article 25 of the Land Act, Article 28 of the National Property Act, or the regulations governing local governments' management of government-owned property.
Where the land for an infrastructure project has been acquired through expropriation prior to the promulgation of this Act, the land may be provided to a private institution for development, building or operation in accordance with the preceding Paragraph, without being subject to the restrictions under Article 25 of the Land Act, Article 28 of the National Property Act, or the regulations governing local governments' management of government-owned property.
For the lease of, or the creation of superficies on, expropriated land, favorable rental terms in Paragraphs 1 and 2 of the preceding Article shall apply mutatis mutandis.
Article 17
Where due to the character of a particular infrastructure project, there is a necessity to expedite the acquisition of the land required for any of the major infrastructure projects referred to in the preceding Article, the authority in charge may coordinate with the relevant authorities in charge of the management of the government-owned land or the government-owned enterprises owning such land for the sale or the transfer of such land, so that the development plan may be formulated and the land concerned may be developed and processed. In addition, a certain portion of the land and

buildings so developed shall be made available for retrieval by the uncompensated owners of the expropriated land as an offset of the monetary compensation that they are entitled to.
The development or processing of the government-owned land as referred to in the preceding Paragraph shall not be subject to the restrictions under Article 25 of the Land Act, Article 28 of the National Property Act, or the regulations of the local government governing the management of the government-owned property. The retrieval of the land and buildings by the owners of the expropriated land shall not be subject to the restrictions under Article 7 of the National Property Act or Article 23 of the Budget Act.
The amount of the compensation for the land expropriated and the value of the land and buildings to be retrieved by the land owners after development of the land as referred to in the preceding Paragraph shall be determined on the same basis. When applying for the retrieval of the land and buildings as mentioned above, the land owner shall, during the period of the public announcement of the land expropriation, submit the relevant supportive documents together with a written undertaking addressed to the relevant municipal or county (city) governments undertaking not to receive monetary compensation. When the application is submitted to and approved by the authority in charge, the land owner concerned shall be deemed to have been compensated for the land expropriated.
The regulations governing development, disposition and offset basis in connection with the retrieval of the developed land and/or buildings by the owners of the expropriated land as referred to in the first Paragraph, as well as the implementation date thereof, shall be prescribed by the authority in charge of the particular infrastructure project in conjunction with the relevant government authorities and then be approved by the Executive Yuan.
Article 18
Where an infrastructure to be built by a private institution needs to pass through over or under any government- or privately owned land, unless otherwise stipulated by other laws, the private institution hereunder shall negotiate with the relevant authority in charge of the management of the government-owned land or the owner of the private land, as the case may be, for creation of superficies on the needed area. If such an agreement cannot be reached on government-owned land, the private institution may apply to the authority in charge, which will forward the application to the Executive Yuan for a final decision, without being subject to the restrictions under Article 25 of the Land Act. If such an agreement cannot be reached on a part of privately owned land, the government may acquire the superficies on such land mutatis mutandis in accordance with the regulations governing expropriation of land, and then lease such land to the private institution for use for favorable rental to be determined mutatis mutandis in accordance with Paragraphs 1 and 2 of Article 15.
In the event that the land as referred to in the preceding Paragraph becomes unsuitable for proper use because it is traversed by routes of the infrastructure project, the land owners may, from the date of the construction until one year after the commencement of the operations of the infrastructure, apply to the authority in charge for expropriation of the

ownership of such land, and the authority in charge shall not reject such application. The compensation for the land so expropriated shall be decided in accordance with Article 16 and shall be given to the relevant owners after deduction of the compensation receivable by the owners for the superficies created. The land costs increased as a result thereof shall be included in the costs of the infrastructure project.

The regulations governing the procedures for use of the space over or under the land, the scope of such use, the demarcation of the boundaries, the creation of superficies, the land expropriation, the compensation for expropriation, registration and review of such use as referred to in the preceding two Paragraphs shall be prescribed by the central authorities in charge of the relevant industries in conjunction with the Ministry of the Interior.

Article 19

With regard to the land required for the infrastructure project and to be expropriated by zone or section, the authority in charge may consult with the authority in charge of expropriation by zone or section to effect the expropriation by zone or section in accordance with applicable laws, and shall announce its decision to implement urban planning and to proceed with the land development within one year after expiration of the notice period of such expropriation, without being subject to the restrictions under Article 52 of the Urban Planning Act.

The land within the scope of the zone or section to be expropriated in accordance with the preceding Paragraph, after being mapped out and put in order, shall be handled in the following manners and in accordance with relevant laws and regulations governing expropriation by zone or Paragraph:

1.The transportation land for routes, yards/stations, highway interchanges, service areas, bridges and tunnels and related ancillary facilities shall be registered as state, municipality or county (city) owned land without any consideration; provided, however, that the title of the land for mass rapid transit systems shall be subject to the provisions under the Mass Rapid Transit Act.

2.The land for the transit area, the harbors and related facilities, and the major tour-site and recreation facilities shall be assigned, at the price of the development costs, to the authority in charge or the authority which requires the land.

3.Other land suitable for construction shall be owned by the authority in charge and the relevant municipal or county (city) government(s) in proportion to the development costs shared by them.

For the land handled by the private institution hereunder in accordance with Article 13 hereof, the title thereto shall be determined in the same manner mentioned above.

The authority in charge may lease, or create superficies on, the land acquired in accordance with the preceding two Paragraphs for use by the private institution hereunder in accordance with Articles 15 and 27 hereof or, it may use, collect benefits therefrom and dispose of such land without being subject to the restrictions under Article 25 of the Land Act, Article 28 of the National Property Act and the regulations of the local government governing the management of the government-owned property. The relevant regulations shall be prescribed by the authority in charge in conjunction

with the Ministry of Interior.

Article 20

The use period for the land, of which the ownership or the superficies is expropriated in accordance with Articles 16 and 18 hereof, shall be determined in accordance with the deadline approved for the project concerned. In case the authority in charge fails to use the land in accordance with the deadline approved for the project concerned, the original land owners may, within five (5) years from the day following the expiration of the deadline approved for the project concerned, apply with the relevant municipal or county (city) governments to purchase back the land previously expropriated at the original expropriation price.

Article 21

In respect of the land required for any of the major infrastructure projects and the scope of the expropriation by zone or section under Article 19 hereof, the authority in charge may, as it may deem necessary and upon approval of its superior authority, notify the municipal or county (city) government where the land is located to make, either concurrently or separately, public announcement(s) prohibiting the following:

1.Transfer of, division of, or creation of encumbrance on, the land.

2.Construction, expansion or reconstruction of buildings on, or excavation of soil or gravel from, or changing the contours of, the land.

The prohibition period referred to in the preceding Paragraph shall not exceed two (2) years.

Article 22

To maintain the building and operation safety of the major infrastructure project, the relevant authorities in charge may consult with the local municipal or county (city) government(s) to survey and demarcate the restricted areas adjacent to the infrastructure project concerned, and to make a public announcement prohibiting and restricting the construction or erection of the government and/or privately owned buildings and advertising structures within such restricted areas, without being subject to the regulations of the use/zoning control for the urban planning land or the use/zoning control for the non-urban land. With regard to the buildings, the advertising structures and other obstacles which are under construction or already in existence within such restricted areas and which may impede the building or the operation safety of the infrastructure project concerned, the authority in charge may consult with the relevant local authorities in charge of construction to set a time limit for modification or removal thereof by the owner in due course. Failure on the part of the owner to comply within the given time limit will cause a compulsory removal thereof; provided, however, that the owner shall be entitled to reasonable compensation. If the owner objects to the amount of the compensation, the case shall be referred to the superior competent authority for a final decision. The compensation thereof shall be included into the costs of the infrastructure project concerned.

The regulations governing the construction prohibition and restrictions as referred to in the preceding Paragraph shall be prescribed by the competent authority in conjunction with the Ministry of Interior.

Article 23

Where a private institution hereunder needs to make a site survey,

exploration, or to perform engineering work or maintenance work on the government and/or privately owned land or buildings, it may, after obtaining approval of the authority in charge and giving a thirty (30) days prior notice to the owner, the possessor, the user or the administrator of such government and/or privately owned land or buildings, have access to or use such land or buildings. The owner, the possessor, the user or the administrator of such land or buildings shall not refuse to provide such access or use. Notwithstanding the above, in case of emergency where a delay is likely to jeopardize major public interest, the private institution may enter or use such land or buildings without following the procedures mentioned above.

When the private institution hereunder enters or uses the privately owned land or buildings in accordance with the preceding Paragraph, it shall invite the local police to attend the scene.

If any damages or losses are caused as a result of the entry or use of the land or buildings under the first Paragraph, reasonable compensation for such damages or losses incurred shall be given. If there is any dispute on the amount of such compensation and such a dispute cannot be settled though amicable negotiations of the parties, the case shall be referred to the authority in charge for a final decision. The compensation thereof shall be included into the costs of the infrastructure project concerned.

Article 24

In making use of the government and/or privately owned land or buildings pursuant to the preceding Article, if it is necessary to destroy or dismantle the buildings or other works on the land in full or in part, the private institution concerned shall report the case to the authority in charge for consent first, and then the authority in charge shall consult with the relevant local authorities in charge of construction to notify the owner, the possessor or the user thereof to effect such destruction or dismantling within the given period. Failure on the part of the owner to comply within the given period or in case of emergency where a delay is likely to jeopardize major public interest, the authority in charge may forthwith, either by itself or entrust the local relevant authorities in charge of construction to, enforce the compulsory destruction or dismantlement.

Reasonable compensation shall be made for the destruction and dismantlement made under the preceding Paragraph and for the losses and damages caused from the destruction or dismantlement thereof. If there is any dispute on the amount of such compensation and such a dispute cannot be settled though amicable negotiations of the parties, the case shall be referred to the authority in charge for decision. The compensation thereof shall be included into the costs of the infrastructure project.

Article 25

A private institution may, if necessary for the performance of the construction work, request the authority in charge to coordinate with the relevant administering authorities for the use by the private institution of a river, ditch, culvert, dike, road, park and other land for public use.

Article 26

Where a private institution plans to build an infrastructure project above or underneath a city road, highway, railroad, or other transportation

systems or public facilities, it shall obtain a prior approval from the relevant authorities in charge of such facilities. If co-installation or co-construction is required, the authority in charge shall first coordinate with, and obtain prior consents from, the relevant authorities in charge of such facilities. Then, the proposed co-installation or co-construction work can be proceeded with.

If the private institution has acted in accordance with the preceding Paragraph but cannot obtain the consents from the relevant authorities, the authority in charge shall request the competent authority to conduct necessary coordination. Upon the failure of such coordination, the authority in charge may report, with reasons, the case to the Executive Yuan for a final decision.

Article 27

(deleted)

Article 28

In case of any private donation to the government of any land required for an infrastructure project and relevant facilities, the authority in charge may grant award to the donor.

Chapter 3 Financing and Taxes Benefit

Article 29

If the Selection Committee determines that a private institution cannot fully self-finance its investment in an infrastructure project even if other incentives under this Act are applicable, the authority in charge may, for the insufficiently self-financed portion, subsidize part of the interest on the loan needed by the private institution or grant a subsidy, depending on the operating performance, and stipulate such subsidy in the concession agreement.

If an infrastructure project an authority in charge conducts in accordance with the preceding Paragraph will require funds from the central government budget, the authority in charge shall, prior to working on the project, submit the construction plan and the proposals for the relevant subsidies to the Executive Yuan for approval. Where funds from the central government budget are not required, the authority in charge may approve the infrastructure project at its sole discretion.

The subsidies under Paragraph 1 shall be handled in accordance with the relevant budgeting procedures.

Article 30

The authority in charge may, depending on the financing needed for infrastructure projects, negotiate with financial institutions or special funds for provision of medium- or long-term loans to the relevant private institutions, provided that where the loan guarantees or other measures provided by the authority in charge carry contingent liabilities, such guarantees and measures are subject to the review and approval of the relevant civil representative bodies.

Article 31

Where a financial institution extends credit to a private institution for use in a major transportation infrastructure project to support a government policy, and obtains the approval of the Financial Supervisory Commission ("FSC") for such credit, the line of such credit shall not be subject to the restrictions under Articles 33-3, 38, and 72-2 of the

Banking Law.

Article 32

Where any foreign corporate financial institution participates in the syndication of loans to a private institution hereunder, such foreign financial institution shall have the same ability as a domestic company to enjoy the rights and to assume the obligations arising from the financing, without being subject to the restrictions under Article 12 of the Enforcement Act of the Part of General Principles of the Civil Code and Article 375 of the Company Law.

Article 33

A private institution participating in the infrastructure project hereunder may offer new shares to the public, without being subject to the restrictions under Subparagraph 1 of Article 270 of the Company Law; provided, however, that if the private institution has incurred losses in two consecutive years or more, a settlement plan thereof shall be submitted and the relevant information shall be fully disclosed.

Article 34

A private institution which has become a public offering company according to law may issue non-discretionary corporate bonds to raise the funds required for the infrastructure project concerned, without being subject to the restrictions under Article 247, Subparagraph 2 of Article 249 and Subparagraph 2 of Article 250 of the Company Law; provided, however, that the total issued amount shall be subject to the consent of the authority in charge of the securities after consultation with the central authorities in charge of the relevant industries.

Article 35

If, during the building or operation of an infrastructure project, the private institution concerned sustains material damage as a result of a natural disaster, the authority in charge shall join the FSC and the relevant competent authorities in negotiating with financial institutions or special funds for extending serious natural disaster recovery loans to the private institution.

Article 36

A private institution participating in a major infrastructure project may be exempted from business income tax for a maximum period of five (5) years from the year in which taxable income is derived after the infrastructure begins operations.

For a major infrastructure project, the private institution as referred to in the preceding Paragraph may, within four (4) years from the year in which taxable income is derived after the infrastructure project begins operations, elect at its sole discretion to defer the commencement date of the tax exemption period, provided that the maximum period of such deferral is three (3) years, and the commencement date of such deferred tax-exemption period is the first day of a fiscal year.

The scope and the period of the tax exemption as referred to in Paragraph 1, and the authority granting the approval, the deadline and the procedure for application, the implementation period, supplemental tax payment, and other relevant matters shall be prescribed by the competent authority in conjunction with the central authorities in charge of the relevant industries.

Article 37
A private institution participating in a major infrastructure project may credit five percent (5%) to twenty percent (20%) of the following expenditures on the project against the business income tax payable by it for the then current year. If the amount of the business income tax payable for the then current year is less than the amount of the creditable expenditures, the balance thereof may be credited against the profit-seeking enterprise income tax payable in the four (4) years following the then current year:
1. Capital expenditures invested in building or operating equipment or technology;
2. Capital expenditures invested in procurement of pollution-control equipment or technology; and
3. Capital expenditures invested in research and development, and personnel training.
The total investment expenditures creditable against the profit-seeking enterprise income tax payable in each year under the preceding Paragraph shall not exceed fifty percent (50%) of such income tax payable by the private institution for the then current year, except in the last year of the four-year period.
The applicable scope of each Subparagraph in Paragraph 1, the authority granting the approval, the deadline and the procedure for application, the implementation period, supplemental tax payment, and other relevant matters shall be prescribed by the competent authority in conjunction with the central authorities in charge of the relevant industries.
Article 38
Customs duties on the construction machinery and equipment, special transporting vehicles, training facilities, and the required parts/components thereof imported by a private institution or its direct contractor(s) for use in building a major infrastructure may be exempted if the purpose for use of such items is confirmed by the authority in charge, and the Ministry of Economic Affairs confirms that such items have not yet been manufactured or supplied domestically.
Customs duties on the machinery and equipment, training facilities, and the required parts/components thereof imported by a private institution for use in the operation of a major infrastructure project may be paid in installments one year after the date of the major infrastructure project concerned enters operation, if the purpose for use of such items is confirmed by the authority in charge, and the private institution furnishes a guarantee acceptable to the authority.
If the authority in charge proves that the machinery and equipment imported by a private institution in accordance with Paragraph 1 have been manufactured or supplied domestically, customs duties on such imports may be paid in installments one year after the infrastructure is constructed, with a guarantee acceptable to the authority from the private institution.
If, before the customs duties are fully paid, the ownership of any machinery or equipment on which the customs duties is paid in installments in accordance with Paragraphs 2 and 3 is assigned or used for any purpose other than those originally approved, the outstanding customs duties shall be paid in a lump sum within a given time limit in accordance with the

Customs Act, provided that if such assignment is specially approved by the competent authority, the assignee thereof may continue to pay the outstanding customs duties in installments.
The regulations governing exemption from, installment payments of, and supplemental payment of, customs duties under Paragraphs 1 to 3 shall be prescribed by the competent authority.
Article 39
The land value tax and the housing tax leviable on the real estate for direct use by a private institution during the building or operations of a major infrastructure project in which the private institution participates, and the deed tax leviable at the time of acquisition of such real estate may be reduced or completely exempted at the discretion of the authorities.
The tax exemption or reduction period, the scope thereof, the criteria and procedures therefor, and the supplemental tax payment as referred to in the preceding Paragraph shall be prescribed by the relevant municipal/county/city governments, submitted to the relevant municipal/county/city councils for approval, and filed with the competent authority for recordation.
Article 40
Where a profit-seeking enterprise subscribes for or underwrites registered shares issued by a private institution participating in a major infrastructure project upon its incorporation or expansion, and has held such registered shares for a period of four (4) years or more, such profit-seeking enterprise may credit up to twenty percent (20%) of the subscription price against the profit-seeking enterprise income tax payable for the current year. Where the amount of profit-seeking enterprise income tax payable is less than the amount creditable, the balance thereof may be credited against the profit-seeking enterprise income tax payable in the four (4) years following the current year.
The total amount of investment credit against the payable profit-seeking enterprise income tax in each year as referred to in the preceding Paragraph shall not exceed fifty percent (50%) of the profit-seeking enterprise income tax payable by the profit-seeking enterprise concerned for the current year, provided that this restriction does not apply to the amount creditable in the last year of such a four-year period.
The authority approving investment credit, the application time limit and procedures, the implementation period, the rates of tax credit, and the regulations for supplemental payment and the relevant matters shall be prescribed by the competent authority in conjunction with the central authorities in charge of the relevant industries.
Article 41
Provisions in this Chapter shall not apply to any of the ancillary businesses operated by a private institution hereunder in accordance with Article 13 of this Act.
Chapter 4 Application and Evaluation
Article 42
In respect of an infrastructure project planned by the government which is evaluated by the authority in charge as suitable for private participation, the authority in charge shall announce by a public notice the programmed contents of the building and/or the operation thereof, as well as the

qualifications of the participants for the infrastructure project concerned, so to invite private participation.
The applicants of the infrastructure project as referred to in the preceding Paragraph shall acquire from the authority in charge the relevant information of the programmed project before the expiration of the deadline set forth in the public notice.
Article 43
To participate in an infrastructure project specified in the preceding Article, the applicants shall, before the expiration of the deadline set forth in the public notice, prepare the qualification documents, the relevant land utilization plan, the construction plan, the operation plan, the financial plan, the letter of intent for financing issued by the financial institution and other information as may be required in the public notice concerned, and then submit the same to the authority in charge to apply for participation in the infrastructure project concerned.
Article 44
To evaluate the applications submitted in response to the public notice inviting private participation, the authority in charge shall organize a Selection Committee which shall establish the evaluation criteria based on the purpose of the infrastructure project concerned, examine and evaluate the materials submitted by the applicants on a fair basis and then select the best applicant therefrom within the evaluation period.
The evaluation criteria referred to in the preceding Paragraph shall be announced simultaneously upon the announcement of the public notice inviting private participation. The evaluation period shall be determined on a case-by-case basis and a notice thereof shall be given to the applicants.
The regulations governing the organization of the Selection Committee and the evaluation thereof as referred to in the first Paragraph shall be prescribed by the competent authority. One half or more of the members of the Selection Committee shall be specialists and scholars and the evaluation process shall be made public.
Article 45
The applicant which is selected as the best applicant shall, from the date of receipt of the notice from the authority in charge, proceed with all preparatory work and complete the execution of the concession agreement with the authority in charge in accordance with the schedule required by the Selection Committee. Afterwards, the best applicant may proceed with the construction and/or the operation of the relevant infrastructure project in accordance with applicable laws.
If the applicant which is selected as the best applicant fails to complete the required preparatory work or to execute the concession agreement with the authority in charge in accordance with the schedule referred to in the preceding Paragraph, the authority in charge may notify the best applicant to correct such failure within a given period. If the best applicant fails to make correction within the given period, the authority in charge may, at its sole discretion, either replace the best applicant by the second best applicant for execution of the concession agreement or, announce again by a public notice to re-invite private participation in accordance with Article 42 hereof.

Article 46
A private institution applying for participating in an infrastructure project it itself is planning shall submit a land utilization plan, a building plan, an operational plan, a financial plan, a letter of intent to finance issued by a financial institution, and other documents required by applicable laws to the authority in charge for approval.
The land and facilities needed for the application under Paragraph 1 may be provided by the applicant itself or be provided by the authority in charge.
If the authority in charge receiving an application finds that the application does not meet the policy requirements, it shall reject the application. If the authority in charge finds the application meet the policy requirements, the application shall be reviewed according to the following procedure:
1. Where the private institution applicant provides private land needed by the project, the application shall be reviewed by the authority in charge.
2. Where the authority in charge provides land and facilities needed by the project, the private institution applicant shall submit a project outline. After the project outline passes the preliminary review of the authority in charge, the applicant shall submit the documents set forth in Paragraph 1 according to the result of the preliminary review to the authority in charge for evaluation according to the procedure set forth in Paragraph 1, Article 44.
The best applicant as selected according to the review procedure under the preceding paragraph shall proceed with all the preparatory work according to a given schedule, acquire the ownership of, or the right to use, the needed land, and sign a concession agreement with the authority in charge before proceeding to construct and operate the infrastructure in accordance with the law.
Where none of the applicants under Subparagraph 2, Article 3 pass the review, are able to complete the preparatory work within the given time limit, or are able to sign a concession agreement with the authority in charge, the authority may, out of consideration for public interest, publish an announcement in accordance with the applicable laws to invite private participation in accordance with Article 42, or let the government construct and/or operate the infrastructure on its own.
The regulations governing the application documentation, the application and review procedures, the review guidelines, the time limit for review, and the related matters under Paragraphs 1 to 4 shall be prescribed by the competent authority.
Article 47
For any dispute in connection with or arising out of the application and the evaluation procedures between an applicant for participating in an infrastructure project and the authority in charge, the protest and the complaint thereof shall be handled, mutatis mutandis, in accordance with the provisions under the Government Procurement Act with regard to the dispute resolutions for the invitation to tender, the evaluation of tender and the award of contract.
The regulations governing dispute resolutions as referred to in the preceding Paragraph shall be prescribed by the competent authority.
Article 48

With regard to the infrastructure projects which are built or operated by the private institutions as approved under this Act, the provisions under the Government Procurement Act shall not apply.

Article 48-1

The concession agreement shall set forth the formation of a mediation committee for contract dispute resolution and may stipulate that disputes shall be submitted to arbitration if the mediation fails.

Chapter 5 Supervision and Administration

Article 49

Where an infrastructure project participated in by the private institution is a public utilities enterprise, the private institution may, based on the following factors, set the fare rate and the schedule and method for fare adjustment in the financial plan submitted in its application:

1.Cost expenditures for planning, construction, operation and other financial matters;

2.Income derived from the operation and the ancillary enterprises;

3.Operation period;

4.Payment of royalty; and

5.Price index.

The fare rate and the schedule and method for fare adjustment as referred to in the preceding Paragraph shall, before the execution of the concession agreement by the authority in charge and the private institution, be approved by the relevant authority in charge of the public utilities concerned in accordance with applicable laws. Afterwards, the authority in charge shall have such approved fare rate and the schedule and method for fare adjustment included in the concession agreement and then announce the same in a public notice.

If after the operation of the infrastructure project hereunder, it is necessary to make any adjustment to the fare rate and/or the schedule and method for fare adjustment as approved under the preceding Paragraph, such an adjustment shall first be approved by the competent authority in charge of the public utilities in accordance with applicable laws. Afterwards, the authority in charge shall have the concession agreement modified accordingly and then announce the same in a public notice.

Article 50

For the infrastructure projects operated under this Act, the government shall not request the relevant private institutions to provide any favorable treatment for reduction of fare price unless otherwise permitted by applicable laws. Where any favorable treatment is provided due to the regulatory requirements under applicable laws, the authorities in charge of the relevant laws shall, unless otherwise specified in the concession agreement, appropriate respective budgets to subsidize the relevant private institutions.

Article 51

A private institution shall not transfer, lease out, or create any encumbrance on, the concession obtained under the concession agreement, nor shall it make such concession an object for enforcement in a civil action, unless the authority in charge declares that such an act is necessary for the improvement plan specified in Article 52 or the proper measures specified in Article 53.

Without the consent of the authority in charge, a private institution shall not transfer, lease out, or create any encumbrance on, any operating asset and/or equipment obtained from the building and/or the operation of an infrastructure.
Any transfer, lease, or creation of any encumbrance in violation of any of the preceding two Paragraphs shall be null and void.
Without the consent of the authority in charge, a private institution shall not proceed with any merger or spin-off.
Article 51-1
While an infrastructure is in operation, the authority in charge shall evaluate the operating performance of the private institution concerned at least once every year.
If the authority in charge rates the operating performance of a private institution as "good," the authority in charge may give the institution the priority to extend the concession agreement before the expiration of the operation period. Such priority shall be given only once, and the extension period shall not exceed the term of the original concession agreement.
The criteria for operating proficiency evaluation, the evaluation standards and procedures, and the method of giving good ratings shall be set forth in the concession agreement.
Article 52
If, during the building or operations of an infrastructure by a private institution, there is any serious schedule delay, material defects in the construction quality, poor operation, or other major events, the authority in charge shall take the following actions in accordance with the concession agreement, with a written notice to the private institution:
1. To order the private institution to make improvements within a given period.
2. To suspend part or all of the construction or operations if no improvement is achieved within the given period or if the improvement is ineffective, or allow a financial institution, a guarantor, or any other institution designated by the financial institution or the guarantor to temporarily take over the infrastructure project and continue the building and/or the operations thereof for a certain period.
3. To terminate the concession agreement if after a certain period following the suspension of the construction or operations or the temporary takeover by a financial institution, a guarantor, or any other institution designated by the financial institution or the guarantor under the preceding Subparagraphs, no improvement is achieved.
When taking actions in accordance with the preceding Paragraph, the authority in charge shall notify the financial institution, the guarantor, and the relevant government agencies of such actions.
After the concession agreement is terminated upon occurrence of any event specified in Subparagraph 3 of Paragraph 1 and the accounts are settled, the financial institution or the guarantor may, with the approval of the authority in charge, sign or designate another institution meeting legal requirements to sign a concession agreement with the authority in charge to continue the building or operations of the infrastructure.
Article 53
If, during the building or operations of an infrastructure, there are

serious schedule delays, material defects in the building quality, poor operations, or other major events, and due to the pressing nature thereof, any failure to take immediate action may jeopardize major public interests or result in imminent danger, the central authority in charge of the relevant industries may order the private institution concerned to cease part or all of the construction or the operations of the infrastructure, with a notice to each of the government agencies concerned.
In the event of suspension of part or all of the operations of an infrastructure under Paragraph 1 of the preceding Article, or the cessation of part or all of the operations under the preceding Paragraph, or the termination of the concession agreement, the authority in charge may take steps at its discretion to maintain the operations of the infrastructure. If necessary, the authority in charge may compulsorily take over the operations of the infrastructure. The regulations governing the takeover methods, the scope, enforcement and termination of the takeover, and related matters shall be prescribed by the central authority in charge of the relevant industries.

Article 54

Where a private institution is required to transfer an infrastructure to the government upon expiration of the operation period, it shall have any and all existing operating assets or the operation concession transferred or reverted to the authority in charge with or without consideration in accordance with the concession agreement.

Chapter 6 Additional Provisions

Article 55

This Act shall not affect any of the rights and obligations under the concession agreement for a particular infrastructure project executed prior to the promulgation of this Act by and between the government and the private institution. For any matters not specified in the relevant concession agreements, the provisions of this Act may apply if such provisions are more favorable to the private institution concerned.
With regard to any of the infrastructure projects which was publicly invited by the government for private participation prior to the enforcement of this Act but the concession agreement thereof is executed after the enforcement of this Act, if it has been stated in the public announcement that the then current laws and regulations for encouragement of private investments shall apply to such project and if such applicable laws and regulations have been specifically referred to in the concession agreement, the infrastructure project concerned as well as the rights and obligations under such concession agreement shall be governed by such laws and regulations; provided, however, that the provisions of this Act may apply if such provisions are more favorable to the private institution concerned.

Article 56

The Enforcement Rules of this Act shall be prescribed by the competent authority and promulgated after the approval of the Executive Yuan.

Article 57

This Act shall be enforced from the date of promulgation.