

# Economic Briefing: The Evolving PPP Landscape

## The New PPP Act and Beyond

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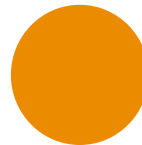
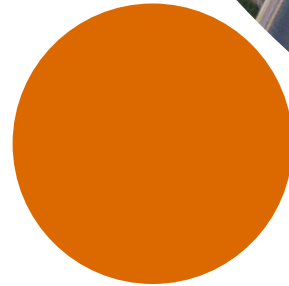


La Cámara  
SPANISH CHAMBER OF COMMERCE  
IN THE PHILIPPINES



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# OUTLINE

- **Recent Developments in the PPP Framework**
- **Key Issues in the Infrastructure Sector**
- **New PPP Law: Features and Updates**
- **Way Forward**

# RECENT DEVELOPMENTS in the PPP regulatory framework



# 01

## March 2022 BOT-IRR

- Limited action against MAGA to national executive action (excluding in exercise of regulatory powers), which in result have absolved most of the government agencies blame and responsibility for MAGA.
- Removal of the formula to determine reasonable rates of return.
- Exclusion of the acts and decisions of regulators from being subjected to arbitration.
- Introduces new prequalification requirements and added another layer of approval, the ICC technical working group (TWG).

# 02

## October 2022 BOT-IRR

- Alterations to parameter, terms, and conditions reverting the same to the PTCs in 2022 IRR.
- Lifted previously added limitation to government consequences for MAGAs
- Introduced concessionaire recourse against economic regulation in specific instances stated under the IRR.
- Provided clear guidance on rules and private sector recourse on government firm liabilities and contingent liabilities.

# 03

## 2023 NEDA JV Guidelines

- The setting up of a JV Account, as among the provisions in the contract
- Payments from the government partner as offtaker in the JV Projects may be interpreted as availability payments
- OGCC reviews the ITPSP AND the Draft JV agreement to determine and ensure compliance with respect to these Guidelines as well as existing and applicable statutory and regulatory requirements
- Introduces the “Best and Final Offer” method, replacing the right to outbid in unsolicited JVs.
- Allows adjustments to tolls, fees, and charges based on an approved formula in the JV agreement.



# KEY ISSUES

that have been addressed in the status quo

1



**Redefined  
MAGA**

The Revised 2022 IRR of the BOT Law redefined MAGA to be consistent with international best practice.

2



**Economic  
Regulation**

Regulation by contract and regulation by regulatory bodies in tariff setting and adjustments is allowed.

3



**Dispute  
Resolution**

Arbitration arising from regulatory acts and decisions is no longer prohibited.

4




**Direct  
Government  
Subsidy**

The 50% Cap on direct government subsidy shall only apply to shouldering of a portion of the project cost / capital expenses or any partial financing of the Project.

# 3



## NEW PPP ACT

A photograph of two women in professional attire. One woman, seen from the back, has her hair in a ponytail and is wearing a green blazer. The other woman, facing her, has dark hair pulled back and is wearing a black blazer over a light-colored blouse. They appear to be in a meeting or discussion. In the background, a whiteboard with some faint writing is visible. A large orange circle is overlaid on the right side of the image, containing white text.

The Senate and the House of Representatives ratified the Bicameral Conference Committee Report on the Disagreeing Provisions of Senate Bill No. 2233 and House Bill No. 6527 on September 27, 2023.



# SALIENT FEATURES

1. Reforms that address ambiguities in the existing law
2. Reforms that address bottlenecks and challenges affecting the implementation of the PPP Program
3. Reforms that foster a more competitive and enabling environment for PPPs





A PPP is a contractual arrangement between an Implementing Agency and a Private Partner to finance, design, construct, operate, and maintain, or any combination or variation thereof, infrastructure or development projects which are typically provided by the public sector, where each party shares in the associated risks. PPP Projects may be financed partly from direct government appropriations and/or from ODA of foreign governments or institutions.

Implementing Agencies, are hereby authorized to undertake PPP Projects in accordance with the provisions of this Act.

This Act shall also cover the following:

- (a) JVs as defined in this Act;
- (b) Toll operation agreements or supplemental toll operation agreements, or any contractual arrangements involving the construction, operation, and maintenance, or a combination or variation thereof, of toll facilities in accordance with Presidential Decree (PD) No. 1112 series of 1977, PD No. 1113, series of 1977, and PD No. 1894, series of 1983;
- (c) Lease agreements providing for the rehabilitation, operation, and/or maintenance, including the provision of working capital and/or improvements to, by the Private Partner of an existing land or facility owned by the government for a fixed period of time covering more than one (1) year;
- (d) Lease agreements, when such lease is a component of a PPP Project, as defined under this Act; and
- (e) All other contractual arrangements which possess characteristics or elements of a PPP as defined under this Act, or as may be approved by the appropriate Approving Body.



# WHAT IS A PPP?

# 1

## REFORMS THAT ADDRESS AMBIGUITIES IN THE EXISTING LAW

- **Fold in joint ventures under a unified PPP legal framework**
- **Clarify tariff regulation regime**
- **Delineate the regulatory and operational functions of agencies; require conflict management plan, if applicable**
- **Clarify rules on the following:**
  - Allowable investment recovery mechanisms
  - Single complying bids and failure of bidding
  - Variation
  - Divestment
  - Wind-up and transfer measures

# 2

## REFORMS THAT ADDRESS BOTTLENECKS AND CHALLENGES AFFECTING THE IMPLEMENTATION OF THE PPP PROGRAM

- **Update approval thresholds for national PPP Projects, which may be adjusted by the ICC**
- **Clarify extend of local autonomy in implementing PPP projects**
- **Institutionalize and strengthen the following:**
  - **PPP Governing Board**
  - **Project Development and Monitoring Facility**
  - **PPP Center**
- **Prohibit issuance of TROs, preliminary injunctions, and preliminary mandatory injunctions by courts, except the Supreme court**

# PPP APPROVAL

Type of PPP Project	NEDA Board	Head of Implementing Agency	NEDA Board-ICC
National PPP Projects	<p>Project cost of Fifteen billion pesos and above</p> <p>Upon favorable recommendation of the NEDA Board - ICC</p>	<p>Project cost of below Fifteen billion pesos</p> <p>If the IA is an attached agency without a governing board, the Head of the department or agency to which the Implementing Agency is attached shall approve.</p> <p>If the IA has a governing board, whether or not it is an attached agency, the governing board shall approve.</p>	<p>Project cost of below Fifteen billion pesos</p> <ol style="list-style-type: none"> <li>1. It physically overlaps with a project approved by a government entity;</li> <li>2. It negatively affects the economic benefits, demand, and/or financial viability of a project approved by a government entity;</li> <li>3. It requires financial government undertakings to be sourced and funded under the General Appropriations Act;</li> <li>4. It involves Availability Payments to be sourced and funded under the GAA; or</li> <li>5. The contribution of an IA in a proposed JV exceeds fifty percent (50%) of its entire assets based on its latest AFS and other pertinent documents.</li> </ol>

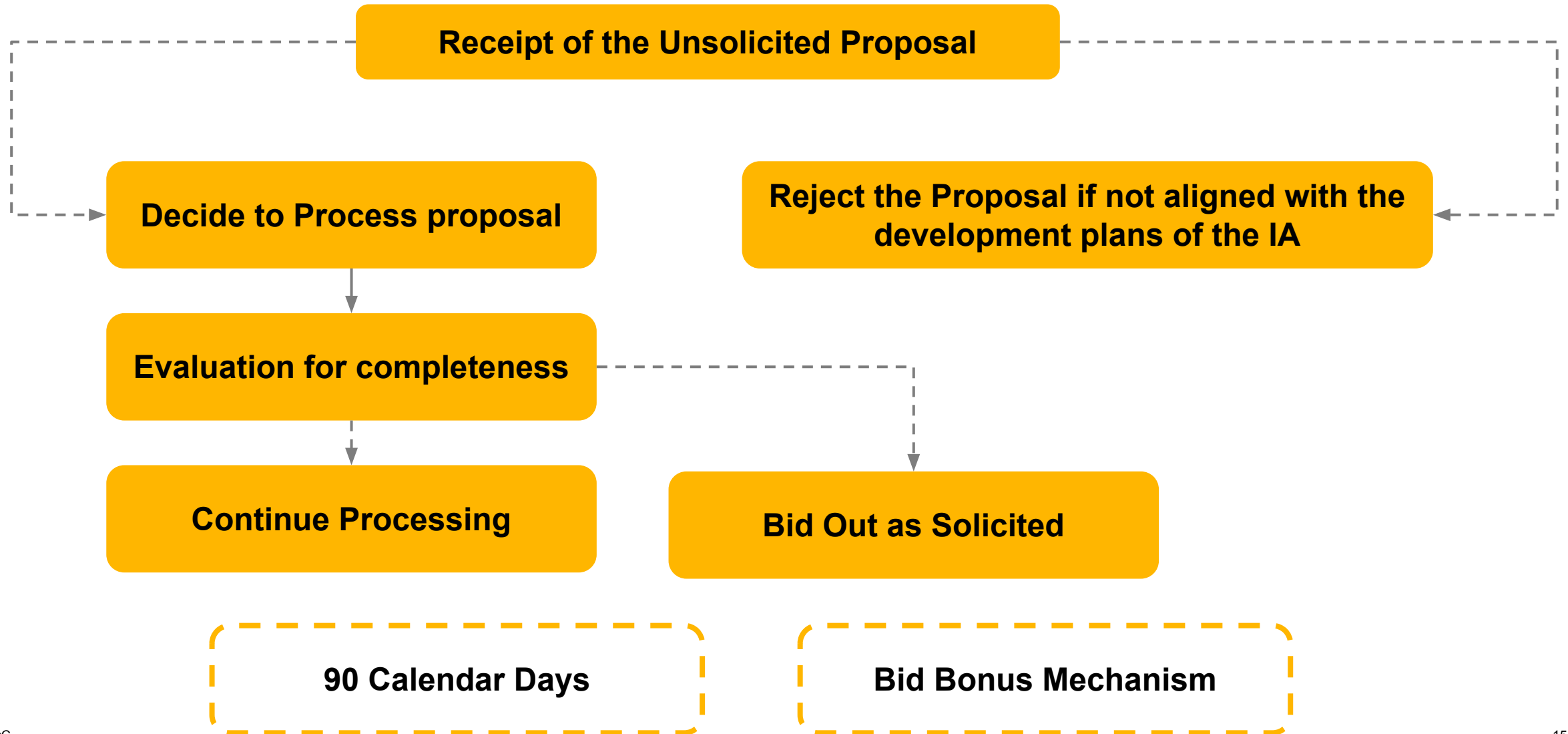
***Local PPP Projects shall be approved by the Local Sanggunian in the case of LGUs and by the Local Boards in the case of LUCs.***

# 3

## REFORMS THAT FOSTER A MORE COMPETITIVE AND ENABLING ENVIRONMENT FOR PUBLIC-PRIVATE PARTNERSHIPS

- **Improve the framework for unsolicited proposals**
- **Institutionalize the Generic Preferred Risk Allocation Matrix for PPP Projects**
- **Allow alternative sources of financing (e.g., green financing and other forms of capital market financing)**
- **Institutionalize PPP best practices:**
  - **Risk Management Fund**
  - **Dispute avoidance alternative dispute mechanisms in PPP contracts**
  - **Adoption of contract management and risk mitigation plans in PPP projects**
  - **Procurement of independent consultants**
  - **Public disclosure of tender documents and PPP contracts**

# UNSOLICITED PROPOSALS

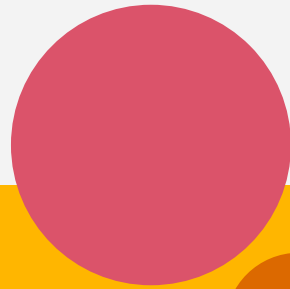


# PPP RISK MANAGEMENT FUND

<b>FUNDED BY</b>	<b>PURPOSE</b>	<b>MANAGED BY</b>
<ol style="list-style-type: none"><li>1. General Appropriations</li><li>2. Income from existing PPP Projects</li><li>3. other sources</li></ol>	For payment of contingent liabilities arising from PPPs in accordance with its contract terms.	PPP Center



# 4



## TRENDS

# SECTORS

## Transportation

Lifting of the Foreign Equity Restrictions under the Revised Public Service Act

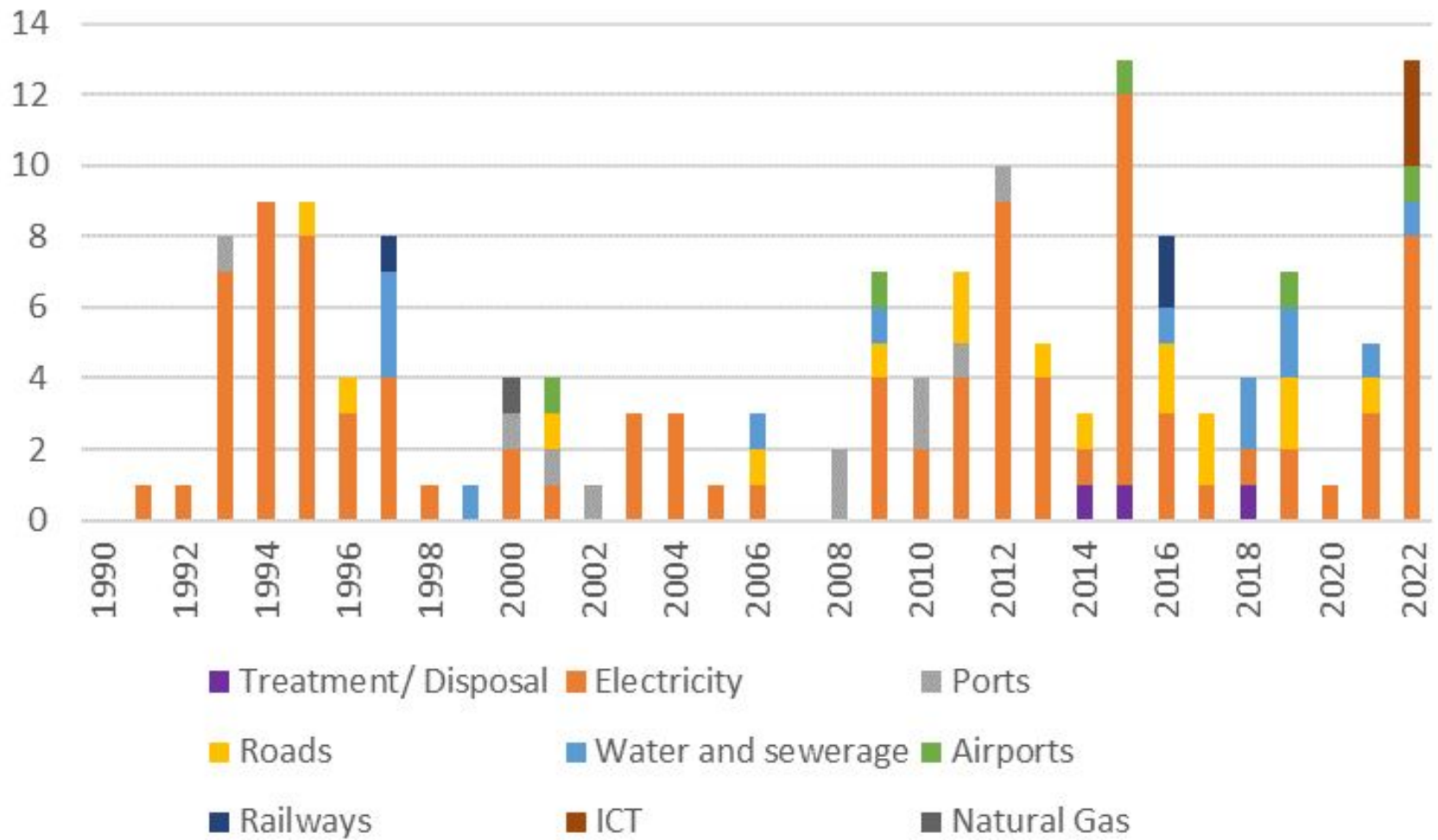
## Health Care

Due to the Universal Health Care Act

## Renewable Energy

Lifting of the Foreign Equity Restrictions under the IRR of the Renewable Energy Act

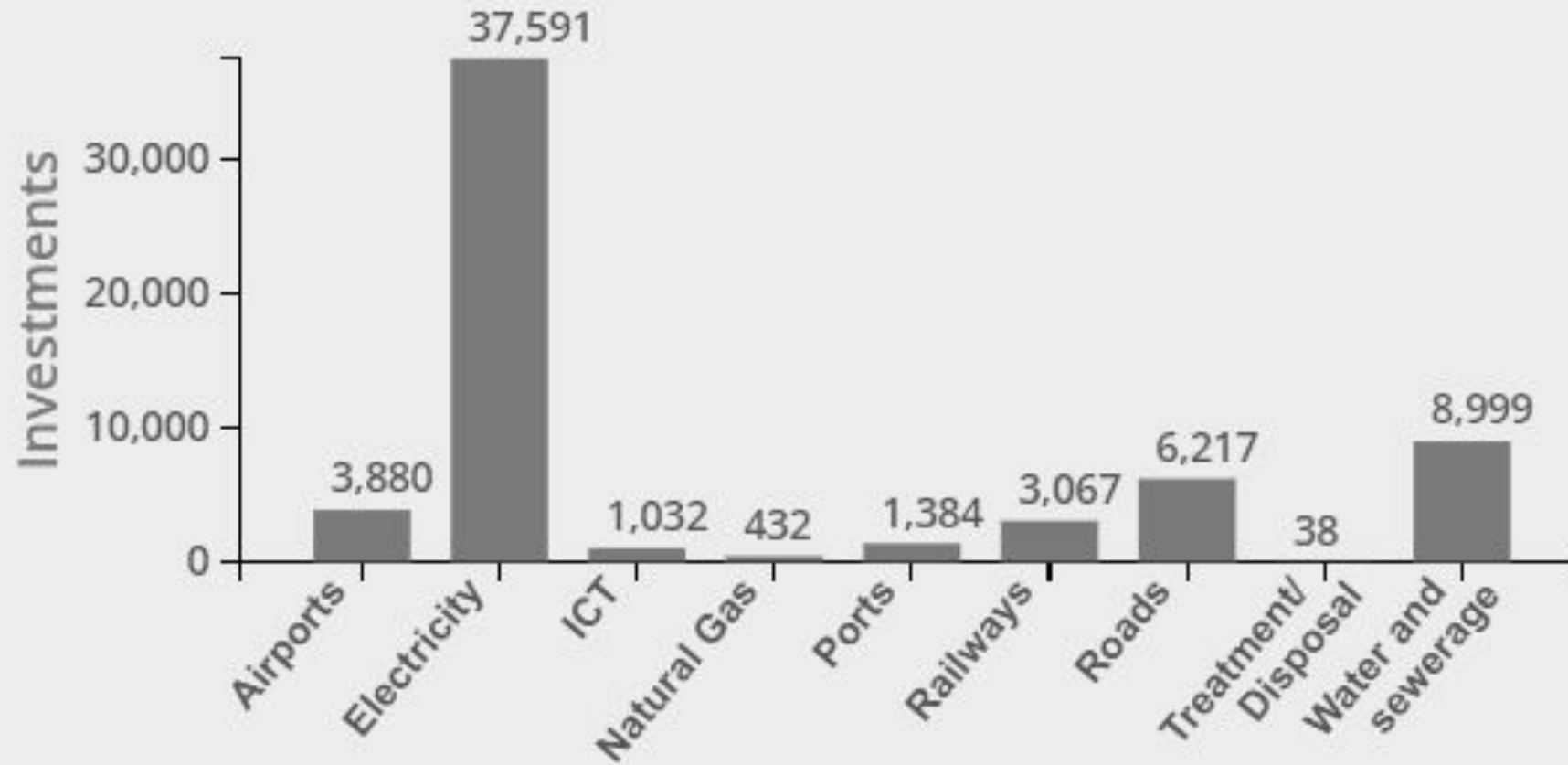
## LGU-PPP that are not Joint Ventures



# PPP PROJECTS PER YEAR PER SECTOR

Data Source: The World Bank

# INVESTMENT IN PROJECTS BY SECTOR (US\$ MILLION)



Source: The World Bank PPI visualization board

5



**WAY FORWARD**



# Thank you

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