Public-Interest Due Diligence, Disclosure and Participation Before the Philippines Enters into Public-Private, Government-to-Government, Foreign Financing and International Economic Agreements

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EXECUTIVE SUMMARY

Philippine law contains several important controls over public-private partnerships, government procurement, foreign borrowing, official development assistance, international economic agreements, environmentally significant projects and activities affecting ancestral domains. These controls include feasibility studies, value-for-money analysis, government approvals, environmental impact assessment, stakeholder consultation, public notice, Monetary Board concurrence, Senate concurrence in constitutionally covered international agreements, and free, prior and informed consent for affected Indigenous Cultural Communities and Indigenous Peoples.

These requirements are, however, distributed across different transaction types, agencies and stages of decision-making. Philippine law does not presently establish a **general** requirement for the Government to undertake an independent and comprehensive public-interest due-diligence assessment before it enters into a significant:

- public-private partnership;
- government joint venture, concession or long-term lease;
- government-to-government agreement;
- foreign loan, grant or sovereign guarantee;
- official development assistance agreement;
- trade, investment, digital-trade or economic-partnership agreement;
- framework agreement or memorandum of understanding;
- resource-utilization or production-sharing agreement;
- host-government or stabilization agreement; or
- side letter, implementation arrangement or amendment creating material public obligations.

A key issue concerns sequencing. Environmental, local-government, procurement or sectoral approvals may be required before implementation, procurement or operation, but **the Government may already have selected the project, financing source, location, technology, private partner or contractual structure. It may also have granted exclusivity, reserved public land or resources, accepted a foreign loan package, or assumed diplomatic and political commitments.** At that stage, subsequent assessment may have more limited scope to influence the underlying decision.

The existing framework also places greater emphasis on assessment of the physical project than on the agreement itself. Long-term public exposure may nevertheless arise from contractual provisions on sovereign guarantees, tariff adjustments, minimum-revenue commitments, foreign-exchange protection, stabilization, compensation for future regulation, dispute settlement, waiver of immunity, termination payments, automatic renewal, data access, exclusivity and confidentiality.

International law also supports the case for earlier review. Treaties[1] in force are to be performed in good faith, and a State may not ordinarily rely on its internal law as justification for non-performance. Accordingly, constitutional, human-rights, labour, environmental, fiscal and regulatory-space review would be most useful if completed before the Philippines expresses consent to be bound or creates a comparable binding commitment.[2]

The United Nations (UN) Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements similarly support assessment at a stage early enough to influence negotiations, together with independence, transparency, participation and attention to groups that may be disproportionately affected.[3]

One possible reform approach would be a standalone Public Agreements Due Diligence, Transparency and Accountability Act, supported by corresponding amendments to the Public-Private Partnership (PPP) Code of the Philippines[4], the New Government Procurement Act[5], foreign-borrowing and official development assistance (ODA) laws, the Customs Modernization and Tariff Act, the Economy, Planning and Development Act and executive procedures for international agreements.

Such a framework would not need to transfer constitutional decision-making authority from the President, Congress, Senate, Monetary Board, approving agencies or local governments to a new commission. An independent body could instead:

1. classify agreements by risk;
2. establish assessment standards;
3. verify the evidence and methodology;
4. administer disclosure and participation requirements;
5. certify completion of due diligence;
6. review material changes and side arrangements; and
7. monitor whether projected benefits and risks materialize.

A single consent standard would not be suitable for all agreement types, particularly nationwide trade, fiscal or foreign-policy agreements. A differentiated framework could instead apply the following participation standards:

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[1] "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. As defined by the Vienna Convention on the Law of Treaties, 1969, article 2 (a), United Nations.

[2] Vienna Convention on the Law of Treaties, 1969, arts. 26–27, United Nations.

[3] United Nations Human Rights Council, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5, 19 December 2011.

[4] https://ppp.gov.ph/republic-act-no-11966/

[5] https://lawphil.net/statutes/repacts/ra2024/ra_12009_2024.html

- free, prior and informed consent (FPIC) where required by the Indigenous Peoples' Rights Act;
- binding consent where another law expressly requires it;
- representative surveys for geographically concentrated and directly affected populations;
- national, regional and sectoral consultation for trade and macroeconomic agreements;
- parliamentary oversight for international, sovereign-financing and nationally significant agreements; and
- a reasoned government response to material objections and dissenting technical findings.

I. SCOPE AND ANALYTICAL APPROACH

This analysis examines whether Philippine law provides for sufficient due diligence **before the Government signs or otherwise <u>becomes substantially committed</u>** under a public-private, government-to-government, foreign financing, international trade or related agreement.

The analysis applies five principles.

A. Substance over form

An instrument may create a substantial public commitment even when described as:

- preliminary;
- exploratory;
- non-binding;
- a memorandum of understanding;
- a framework agreement;
- a letter of intent;
- a term sheet;
- an exchange of notes; or
- an implementation arrangement.

The relevant question is whether it grants exclusivity, reserves land or resources, commits public funds, creates compensation rights, identifies a final location or technology, authorizes preliminary works, limits future procurement choices, or materially raises the cost of withdrawal.

B. Assessment of both the initiative and the agreement

The review would examine:

1. the impacts of the underlying project, programme or policy; and
2. the legal and economic effects of the agreement used to implement it.

An environmentally acceptable initiative/project may still be governed by an agreement that creates substantial fiscal liabilities, constrains future public regulation, weakens public accountability or exposes the Government to disproportionate termination or arbitration risks.

C. Assessment before lock-in

For due diligence to influence the decision meaningfully, it should occur before alternatives are materially foreclosed. The relevant trigger would therefore not be limited to physical construction or final implementation.

Assessment would ideally **precede** any action that:

- grants exclusivity;
- reserves public land or resources;
- selects a preferred proponent;
- commits a financing source;
- issues a sovereign guarantee;
- fixes a project site or technology;
- creates a procurement preference;
- authorizes preliminary works;
- makes a nonrefundable payment; or
- creates a right to compensation if the Government does not proceed.

D. Long-term and distributional assessment

Aggregate gains alone may not establish that an agreement is equitable or sustainable. A fuller due-diligence assessment would identify:

- who receives the benefits;
- who pays the costs;
- when benefits and costs arise;
- whether harms are concentrated on particular communities or sectors;
- whether future governments and generations inherit the obligations; and
- whether adverse impacts are reversible and remediable.

E. Compatibility with continuing legal obligations

Assessment would ideally consider not only whether the agreement is lawful on the date of signature, but also whether it could prevent or discourage future compliance with:

- the Constitution;
- existing statutes;
- binding international obligations;
- environmental and climate commitments;
- labour and human-rights standards;
- duties relating to Indigenous Peoples; and
- the State's continuing obligation to protect health, safety, public welfare and national patrimony.

II. EXISTING PHILIPPINE LEGAL FRAMEWORK

1. Constitutional controls

The Constitution provides an important legal foundation for pre-agreement due diligence.[6]

It establishes:

- the right to information on matters of public concern;
- the policy of full public disclosure of transactions involving public interest;
- presidential authority over foreign relations;
- prior Monetary Board concurrence for foreign loans contracted or guaranteed by the President;
- Senate concurrence for treaties and international agreements falling under Article VII, Section 21;
- accountability of public officers;
- protection of health, ecology, labour, social justice and human rights; and
- restrictions relating to natural resources, public utilities and national patrimony.

2. Public-Private Partnership Code of the Philippines

Republic Act No. 11966, the Public-Private Partnership (PPP) Code of the Philippines, creates a unified legal framework for national and local PPP projects. It governs project development, approval, procurement and implementation.[7]

The PPP framework requires or supports consideration of:

- technical, legal, economic, financial and commercial feasibility;
- value for money;
- project affordability;
- fiscal and contingent-liability implications;
- risk allocation;
- climate resilience and sustainability;
- environmental and social safeguards; and
- stakeholder consultation during project preparation.

Existing strengths

The PPP Code provides one of the most developed general Philippine frameworks for assessing a proposed contractual development project before procurement and execution.

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[6] 1987 Constitution of the Republic of the Philippines, art. II, sec. 28; art. III, sec. 7; art. VII, secs. 20–21; art. XI, sec. 1; and relevant provisions of art. XII, Lawphil, https://lawphil.net/consti/cons1987.html.

[7] Republic Act No. 11966, Public-Private Partnership Code of the Philippines, 5 December 2023, Lawphil, https://www.lawphil.net/statutes/repacts/ra2023/ra_11966_2023.html; Implementing Rules and Regulations of Republic Act No. 11966, 2024, https://lawphil.net/statutes/repacts/ra2024/irr_11966_2024.html [accessed 11 August 2026].

It recognizes that a PPP decision must involve more than identifying a funding source. The implementing agency must establish project feasibility, justify the PPP structure and obtain approval from the appropriate approving body.

Remaining gaps

a. Assessment independence

The implementing agency ordinarily develops or commissions the feasibility study. Advisers may also be financed through project-development facilities or provided with information from proponents.

The framework does not appear to establish a general requirement that the principal public-interest assessment be independently appointed and independently verified outside the project-promoting institution.

b. Project assessment rather than agreement assessment

The framework evaluates project viability and PPP structure, but it does not uniformly require a public, clause-level review of:

- stabilization provisions;
- material-adverse-government-action clauses;
- foreign-exchange protection;
- minimum-revenue guarantees;
- availability or take-or-pay payments;
- termination compensation;
- waiver of immunity;
- dispute settlement;
- automatic renewal;
- data ownership; or
- restrictions on future regulation.

c. Limited pre-signature disclosure

The public may obtain project and procurement information, and executed PPP contracts are subject to disclosure rules. The framework does not generally require disclosure of the complete nonconfidential feasibility study, fiscal-risk statement and substantially final agreement for public review before signature.

d. Participation standards

Stakeholder consultation is recognized, but the law does not establish uniform rules for:

- determining affected populations;
- representative participation;
- youth participation;
- inclusion of workers and informal livelihoods;
- public access to underlying data;
- independent facilitation; or

- a response matrix showing how material objections changed the project.

e. Material changes

Although the execution copy must remain consistent with approved terms, additional statutory guidance could be considered for subsequent:

- side letters;
- waivers;
- refinancing;
- extension;
- contract amendment;
- renegotiation;
- settlement; and
- changes in guarantees or risk allocation.

f. Deemed approval

Administrative deadlines may promote efficiency. For high-impact agreements, however, it may be preferable for substantive approval to rest on an affirmative review rather than solely on the expiry of an administrative deadline.

3. New Government Procurement Act

Republic Act No. 12009 emphasizes transparency, competitiveness, proportionality, public monitoring, sustainability and value for money. Sustainability covers the lifecycle of the procured property or service and seeks maximum social and economic benefit with minimal environmental impact. The statute also provides that applicable treaties and international or executive agreements affecting procurement shall be observed.[8]

Existing strengths

The law improves procurement planning, lifecycle consideration, transparency and professionalization. It can help ensure that procurement specifications and evaluation reflect broader value rather than purchase price alone.

Remaining gaps

a. Procurement begins after the policy decision

Procurement law governs how the Government acquires goods, infrastructure and services. It does not ordinarily determine whether the underlying project, concession or international commitment should exist.

By the time procurement begins, the Government may already have:

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[8] Republic Act No. 12009, New Government Procurement Act, 20 July 2024, Lawphil, https://lawphil.net/statutes/repacts/ra2024/ra_12009_2024.html; Implementing Rules and Regulations of Republic Act No. 12009, 2025, https://www.lawphil.net/statutes/repacts/ra2025/irr_12009_2025.html.

- selected the preferred solution;
- allocated the budget;
- accepted a foreign loan;
- committed to a particular technology;
- identified a site; or
- excluded direct public provision and other alternatives.

b. No comprehensive public-interest assessment

Sustainable procurement does not necessarily include full analysis of:

- human rights;
- labour displacement;
- regional distribution;
- regulatory space;
- public-health implications;
- debt sustainability;
- international arbitration;
- food and water security;
- cumulative impacts; or
- intergenerational liabilities.

c. International-agreement exception risk

Where procurement terms are governed by a treaty, international agreement, executive agreement or foreign financing arrangement, there is a corresponding case for subjecting the antecedent international commitment to equivalent or proportionate due diligence. Otherwise, procurement safeguards may be constrained by an agreement that did not receive comparable scrutiny.

d. Disclosure is transaction-focused

Bid notices and procurement documents provide information required for competition. They do not necessarily disclose the full policy rationale, no-project alternative, projected distributional effects or long-term public liabilities.

4. Foreign loans, guarantees and official development assistance

Republic Act No. 4860 authorizes foreign borrowing for approved development purposes, while Republic Act No. 8182, as amended by Republic Act No. 8555, governs the use and monitoring of official development assistance (ODA). The ODA framework seeks equitable development and supports feasibility studies, planning, monitoring and evaluation.[9]

Existing strengths

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[9] Republic Act No. 4860, Foreign Borrowing Act, 8 September 1966, https://lawphil.net/statutes/repacts/ra1966/ra_4860_1966.html; Republic Act No. 8182, Official Development Assistance Act of 1996, 11 June 1996, https://lawphil.net/statutes/repacts/ra1996/ra_8182_1996.html; Republic Act No. 8555, 26 February 1998, https://lawphil.net/statutes/repacts/ra1998/ra_8555_1998.html.

Foreign loans and ODA are subject to:

- constitutional Monetary Board concurrence where applicable;
- executive authorization;
- development-planning processes;
- feasibility requirements;
- fiscal and debt review;
- project monitoring; and
- applicable environmental and sectoral approvals.

Remaining gaps

a. Assessment of the financed project, not the financing agreement

A feasibility study may establish that a project is needed while giving limited attention to whether the proposed financing agreement creates material or disproportionate:

- foreign-exchange risk;
- interest-rate or refinancing exposure;
- cross-default liability;
- acceleration risk;
- tied-procurement obligations;
- nationality restrictions;
- consultant conditions;
- security arrangements;
- waiver-of-immunity provisions;
- foreign arbitration exposure; or
- termination costs.

b. Limited public access before signature

There is no general statutory requirement to disclose, before signature:

- a nonconfidential term sheet;
- debt-service scenarios;
- total lifecycle fiscal cost;
- contingent liabilities;
- tied-procurement terms;
- foreign governing law;
- arbitration arrangements;
- security or collateral arrangements;
- side letters; or
- the reasons the financing was preferred over domestic or alternative financing.

c. Limited counterfactual analysis

The law does not uniformly require comparison with:

- domestic borrowing;
- phased implementation;

- direct budget financing;
- public procurement;
- a smaller project;
- a different technology;
- an alternative site; or
- the no-project option.

d. Community and human-rights analysis may occur too late

The Government may sign the loan or grant agreement before the full environmental, social, Indigenous Peoples or resettlement process is completed. This may narrow the practical scope for reconsideration because financing, diplomatic commitments and repayment schedules are already established.

e. Conditionalities and policy effects

A financing agreement may contain policy, regulatory, procurement or institutional conditions extending beyond the physical project. These would benefit from separate assessment of their human-rights, labour, public-service and regulatory effects.

5. Government-to-government and executive agreements

Executive procedures require authority and inter-agency review before Philippine agencies negotiate or sign international agreements, foreign loans, foreign grants and guarantees.[10]

Existing strengths

Internal executive review can:

- confirm negotiating authority;
- coordinate agency positions;
- assess foreign-policy implications;
- prevent unauthorized commitments; and
- identify legal or budgetary concerns.

Remaining gaps

The process is primarily an internal executive control. It does not itself establish a statutory entitlement to:

- public notice of proposed negotiations;
- disclosure of negotiating objectives;
- independent public-interest assessment;
- identification of affected sectors;
- regional and sectoral consultations;
- pre-signature review of a substantially final text;

[10] Executive Order No. 459, Providing for the Guidelines in the Negotiation of International Agreements and its Ratification, 25 November 1997, https://lawphil.net/executive/execord/eo1997/eo_459_1997.html; Memorandum Circular No. 51, 18 April 2024, https://lawphil.net/executive/mc/mc2024/mc_51_2024.html [accessed 11 August 2026].

- disclosure of side letters or implementation arrangements;
- a public response matrix; or
- judicial or administrative relief where required assessment was omitted.

Executive procedures may also be modified administratively. A matter involving long-term public debt, public resources, essential services or regulatory autonomy warrants minimum safeguards established by Congress.

6. Trade and international economic agreements

The Customs Modernization and Tariff Act requires reasonable public notice of an intention to conclude a trade agreement and provides an opportunity for interested persons to present views to the Tariff Commission before conclusion.[11]

Republic Act No. 12145, the Economy, Planning and Development Act, reorganized the National Economic and Development Authority into the Department of Economy, Planning and Development (DEPDev). Its inter-agency bodies include mechanisms addressing major capital projects, fiscal implications, tariffs and national positions in international economic negotiations.[12]

Existing strengths

The framework recognizes:

- public notice;
- stakeholder submissions;
- technical tariff analysis;
- inter-agency economic coordination; and
- executive and, where constitutionally applicable, Senate review.

Remaining gaps

a. Modern agreements extend beyond tariffs

International economic agreements may affect:

- services;
- investment;
- public utilities;
- government procurement;
- digital trade;
- cross-border data;
- intellectual property;
- food and agriculture;
- fisheries;
- competition;

[11] Republic Act No. 10863, Customs Modernization and Tariff Act, 30 May 2016, sec. 1609(d), Lawphil, https://www.lawphil.net/statutes/repacts/ra2016/ra_10863_2016.html [accessed 11 August 2026].

[12] Republic Act No. 12145, Economy, Planning and Development Act, 10 April 2025, Lawphil, https://www.lawphil.net/statutes/repacts/ra2025/ra_12145_2025.html [accessed 11 August 2026].

- state-owned enterprises;
- labour;
- environmental policy;
- subsidies;
- public health; and
- dispute settlement.

A tariff-centred process may not, by itself, capture these broader impacts.

b. No mandatory negotiating-objectives document

The Government is not generally required by statute to disclose:

- the specific public problem being addressed;
- negotiating objectives;
- protected sectors;
- regulatory red lines;
- expected concessions;
- projected sectoral winners and losers;
- regional and employment impacts; or
- proposed exclusions and safeguards.

c. No mandatory distributional impact assessment

Aggregate gross domestic product (GDP) or trade gains may conceal substantial losses affecting:

- farmers;
- fisherfolk;
- manufacturing workers;
- micro, small and medium enterprises (MSMEs);
- particular regions;
- women;
- young workers;
- low-income consumers; or
- users of public services.

Philippine law does not appear to impose a unified statutory requirement for distributional modelling and a funded adjustment plan before signature.

d. No general final-text review period

Public input before or during negotiations does not guarantee access to the substantially final terms. Important provisions may emerge only near the end of negotiations.

e. Treaty versus executive-agreement classification

For these purposes, due diligence could be applied according to an agreement's substance and effect, rather than merely according to whether it is classified as a treaty requiring Senate concurrence or as an executive agreement.

f. Regulatory-space risk

Trade and investment commitments may affect the future ability of the Philippines to regulate:

- public health;
- medicines;
- labour conditions;
- climate;
- environmental protection;
- taxation;
- food security;
- financial stability;
- data protection;
- public services; and
- natural resources.

No uniform statutory review presently appears to assess this form of long-term policy lock-in.

7. Philippine Environmental Impact Statement System

Presidential Decree No. 1586 establishes the Philippine Environmental Impact Statement (EIS) System for environmentally critical projects and projects in environmentally critical areas. Covered projects may not be undertaken or operated without an Environmental Compliance Certificate (ECC).[13]

The broader environmental-impact framework considers:

- likely environmental effects;
- unavoidable adverse effects;
- alternatives;
- the relationship between short-term resource use and long-term productivity; and
- whether use of depletable or non-renewable resources is warranted.

Existing strengths

The EIS System provides an established national process for:

- screening;
- environmental study;
- mitigation;
- environmental clearance;
- public participation;
- monitoring; and
- enforcement.

Remaining gaps

[13] Presidential Decree No. 1586, Establishing an Environmental Impact Statement System, 11 June 1978, particularly secs. 2–4, Lawphil, https://lawphil.net/statutes/presdecs/pd1978/pd_1586_1978.html [accessed 11 August 2026].

a. Coverage

The system does not cover every public agreement. A financing, framework, trade or digital agreement may have substantial social, fiscal or regulatory effects without being an environmentally critical physical project.

b. Timing

An ECC is principally required before a covered project is undertaken or operated. **The Government may already have signed a financing, cooperation or project agreement before the final environmental process is complete.**

c. Proponent control

The project proponent generally prepares or commissions the environmental submission. Government review does not necessarily remove the value of independent verification of baseline data, assumptions and alternatives.

d. Impact categories

Environmental assessment may include socioeconomic and human-environment effects, but it does not, by itself, provide a full analysis of:

- sovereign debt;
- regulatory autonomy;
- labour rights;
- trade distribution;
- public-service affordability;
- dispute settlement;
- contractual guarantees; or
- long-term fiscal liabilities.

8. Local Government Code

Sections 26 and 27 of the Local Government Code require coordination and consultation with affected local government units (LGUs), non-governmental organizations (NGOs), people's organizations and concerned sectors for specified national projects, together with prior sanggunian approval in covered circumstances.[14]

Existing strength

The Code recognizes that affected local governments and sectors should be involved before environmentally or socially consequential national projects are implemented.

Remaining gaps

- Consultation is not equivalent to an independent impact assessment.

[14] Republic Act No. 7160, Local Government Code of 1991, secs. 26–27, Lawphil, https://www.lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html.

- Sanggunian approval is not necessarily approval by affected communities.
- The provisions do not cover every private or international agreement.
- The principal statutory trigger is project implementation, **which may occur after contractual lock-in.**
- No uniform survey, disclosure or assessment methodology is prescribed.
- The Code does not require analysis of the agreement's sovereign, fiscal or international-law implications.

9. Indigenous Peoples' Rights Act

The Indigenous Peoples' Rights Act (IPRA) provides an important Philippine precedent for requiring prior community consent before particular governmental agreements.[15]

Under IPRA, FPIC is defined as community consensus determined according to customary laws and practices, free from external manipulation, interference and coercion, and obtained after full disclosure through a process understandable to the community.

Section 59 prohibits government agencies from issuing or renewing specified rights or entering into a production-sharing agreement without the necessary certification from the National Commission on Indigenous Peoples (NCIP). Where ancestral domains are affected, certification cannot be issued without the required written FPIC.

Existing strength

IPRA connects consent and certification to the Government's authority to enter into a substantive resource agreement. It therefore provides a model for proper sequencing.

Remaining gaps

IPRA applies specifically to Indigenous Cultural Communities and Indigenous Peoples and their ancestral domains and rights. It is not a general assessment and consent statute for:

- urban communities;
- non-Indigenous rural communities;
- workers;
- consumers;
- downstream populations;
- relocation communities;
- sectors affected by trade agreements; or
- nationwide public-finance agreements.

Any new framework would need to preserve, rather than replace or dilute, IPRA and customary decision-making.

10. Right to information and confidentiality

[15] Republic Act No. 8371, Indigenous Peoples' Rights Act of 1997, secs. 3(g) and 59, Lawphil, https://lawphil.net/statutes/repacts/ra1997/ra_8371_1997.html [accessed 11 August 2026].

The Constitution supports access to information and proactive disclosure of transactions involving public interest.[16]

The right is not absolute. Legitimate restrictions may protect:

- active diplomatic negotiations;
- national security;
- intelligence;
- personal information;
- protected commercial information; and
- deliberative communications.

Remaining gap

Philippine law lacks a complete pre-signature disclosure architecture distinguishing:

1. information that must always be disclosed;
2. information that may be temporarily withheld;
3. information that may be disclosed in redacted form;
4. information available confidentially to Congress and independent reviewers; and
5. information subject to automatic disclosure after negotiations or signature.

The absence of such a framework can contribute to disputes between claims of broad negotiating confidentiality and demands for immediate disclosure of every negotiating document.

III. RELEVANT INTERNATIONAL LEGAL INSTRUMENTS AND STANDARDS

For analytical purposes, international sources may be considered in three groups:

1. binding obligations of the Philippines;
2. authoritative or persuasive standards guiding assessment; and
3. lender safeguards that may become contractually applicable.

A. Binding international instruments

INSTRUMENT	DUE-DILIGENCE IMPLICATIONS
VIENNA CONVENTION ON THE LAW OF TREATIES[17]	Provides that treaties in force are binding on the parties and are to be performed in good faith. This supports completing legal, constitutional and implementation-capacity review before expressing consent to be bound.
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), INTERNATIONAL	Provide relevant standards for assessing impacts on civil, political, economic, social

[16] 1987 Constitution of the Republic of the Philippines, art. II, sec. 28 and art. III, sec. 7, Lawphil, https://lawphil.net/consti/cons1987.html.
[17] Vienna Convention on the Law of Treaties, 1969, arts. 26–27, United Nations, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), CONVENTION ON THE RIGHTS OF THE CHILD (CRC) AND CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)[18]	and cultural rights, including differentiated effects on women, children and persons with disabilities.
RATIFIED INTERNATIONAL LABOUR ORGANIZATION (ILO) CONVENTIONS[19]	Provide relevant standards on freedom of association, collective bargaining, forced labour, child labour, discrimination, occupational safety and health, labour inspection and other obligations under Conventions ratified by the Philippines.
UNITED NATIONS CONVENTION AGAINST CORRUPTION[20]	Supports preventive anti-corruption systems, integrity in public contracting and financial management, accountability, transparency and action against bribery, concealment and abuse of public office.
CONVENTION ON BIOLOGICAL DIVERSITY[21]	Article 14 supports impact assessment of projects likely to cause significant biodiversity harm and, where appropriate, public participation. Convention on Biological Diversity (CBD) guidance also recognizes assessment of policies and programmes and integration of socioeconomic, cultural and health effects.
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA[22]	Requires assessment where planned activities may cause substantial pollution or significant harmful changes to the marine environment. This is relevant to ports, reclamation, offshore energy, seabed activities, fisheries and marine infrastructure.
PARIS AGREEMENT[23]	Requires long-term climate mitigation, adaptation and resilience considerations

[18] Office of the United Nations High Commissioner for Human Rights, Ratification Status for Philippines, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN.

[19] International Labour Organization, NORMLEX, Ratifications for Philippines, https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000%3A11200%3A0%3A%3ANO%3A11200%3AP11200_COUNTRY_ID%3A102970.

[20] United Nations Convention against Corruption, 2003, particularly arts. 5, 9 and 10, United Nations Office on Drugs and Crime, https://www.unodc.org/documents/treaties/Special/2003%20United%20Nations%20Convention%20against%20Corruption.pdf.

[21] Convention on Biological Diversity, 1992, art. 14, Secretariat of the Convention on Biological Diversity, https://www.cbd.int/doc/legal/cbd-en.pdf.

[22] United Nations Convention on the Law of the Sea, 1982, art. 206, United Nations, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

[23] Paris Agreement, 2015, particularly art. 2(1)(c) and arts. 4 and 7, United Nations Framework Convention on Climate Change, https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf.

	and alignment of financial decisions with low-emission and climate-resilient development. The Philippines is a Party to the Agreement.
APPLICABLE WORLD TRADE ORGANIZATION (WTO) AGREEMENTS AND EXISTING REGIONAL OR BILATERAL TRADE AGREEMENTS[24]	New economic agreements would benefit from review against existing market-access, services, intellectual-property, technical-standard, subsidy and dispute-settlement obligations to reduce the risk of inconsistency or unintended cumulative commitments.
SECTOR-SPECIFIC ENVIRONMENTAL AND CULTURAL CONVENTIONS	Agreements may also need assessment under international obligations relating to hazardous waste, toxic substances, wetlands, marine resources, cultural property and world heritage, depending on their subject matter and location.

B. Authoritative and persuasive standards

1. UN Guiding Principles on Business and Human Rights

1. United Nations Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (UNGPs) emphasize that human-rights due diligence should begin early because risks may be created or significantly shaped when contracts and agreements are structured. Principle 9 also calls on States to preserve adequate domestic policy space when entering economic agreements with other States or businesses.[25]

2. UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements

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These principles provide a useful reference for the proposed Philippine framework:[26]

- timing early enough to influence negotiations;
- independence;
- transparency;

[24] World Trade Organization, WTO legal texts: Marrakesh Agreement Establishing the World Trade Organization and its annexes, https://www.wto.org/english/docs_e/legal_e/legal_e.htm.
[25] United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, particularly principles 4–6, 9 and 17–21, Office of the United Nations High Commissioner for Human Rights, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.
[26] United Nations Human Rights Council, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5, 19 December 2011, https://ap.ohchr.org/documents/dpage_e.aspx?si=A%2FHRC%2F19%2F59%2FAdd.5.

- inclusive participation;
- specific rights-based indicators;
- disaggregated analysis;
- attention to vulnerable groups;
- modification or rejection of incompatible terms; and
- periodic ex post review.

3. Rio principles and biodiversity-inclusive assessment

International environmental standards support:

- access to information;
- participation;
- access to remedies;
- precaution where serious harm is plausible;
- assessment of cumulative and indirect impacts; and
- consideration of environmental, social, cultural and human-health effects.

CBD guidance describes information, participation and transparent decision-making as essential components of effective impact assessment.[27]

4. Sendai Framework for Disaster Risk Reduction

The Sendai Framework supports:[28]

- understanding hazard, exposure, vulnerability and capacity;
- strengthening risk governance;
- investing in resilience; and
- preventing development decisions from creating new disaster risk.

This is particularly relevant to infrastructure, land use, urban development, energy, transport, water and coastal agreements.

5. UN Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) can inform interpretation of rights concerning Indigenous Peoples' lands, culture, knowledge, resources, participation and consent. It does not replace the more specific protections and procedures under IPRA.[29]

6. Organisation for Economic Co-operation and Development and United Nations responsible-business standards

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[27] Convention on Biological Diversity, Conference of the Parties, Decision VIII/28, Impact assessment: Voluntary guidelines on biodiversity-inclusive impact assessment, 2006, annex, https://www.cbd.int/decision/cop?id=11042.
[28] United Nations Office for Disaster Risk Reduction, Sendai Framework for Disaster Risk Reduction 2015–2030, 2015, https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030.
[29] United Nations Declaration on the Rights of Indigenous Peoples, General Assembly resolution 61/295, 13 September 2007, United Nations, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct and Due Diligence Guidance, the United Nations Conference on Trade and Development (UNCTAD) Investment Policy Framework for Sustainable Development, and the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) offer useful standards concerning:[30]

- human rights;
- labour;
- environment;
- anti-corruption;
- consumers;
- taxation;
- responsible supply chains;
- technology transfer;
- sustainable investment; and
- preservation of regulatory space.

These instruments may be used as assessment benchmarks even where they do not independently create enforceable domestic rights.

C. Development-finance safeguards

World Bank, Asian Development Bank, Asian Infrastructure Investment Bank, Japan International Cooperation Agency (JICA) and other development-finance institutions maintain environmental and social safeguard systems.[31]

These may cover:

- stakeholder engagement;
- land acquisition;
- resettlement;
- Indigenous Peoples;
- labour;
- biodiversity;

[30] Organisation for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 2023, https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html; OECD Due Diligence Guidance for Responsible Business Conduct, 2018, https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-responsible-business-conduct_15f5f4b3-en.html; United Nations Conference on Trade and Development, Investment Policy Framework for Sustainable Development, 2015 edition, https://unctad.org/publication/investment-policy-framework-sustainable-development-2015-edition; International Labour Organization, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 2022, https://www.ilo.org/publications/tripartite-declaration-principles-concerning-multinational-enterprises-and-3.
[31] World Bank, Environmental and Social Framework, https://www.worldbank.org/en/projects-operations/environmental-and-social-framework; Asian Development Bank, Environmental and Social Framework, https://www.adb.org/who-we-are/environmental-social-requirements/environmental-social-framework; Asian Infrastructure Investment Bank, Environmental and Social Framework, https://www.aiib.org/en/policies-strategies/framework-agreements/environmental-social-framework.html; Japan International Cooperation Agency, Guidelines for Environmental and Social Considerations (January 2022), https://www.jica.go.jp/english/about/policy/environment/guideline/index.html .

- pollution;
- community health and safety;
- grievance mechanisms; and
- disclosure.

These safeguards can be treated as additional contractual protections rather than substitutes for Philippine due diligence. Lender standards may:

- apply only to a financed component;
- depend on the lender's own risk categorization;
- exclude broader sovereign or contractual risks;
- change over time;
- be enforced principally through the financing relationship; and
- fail to address constitutional, debt, regulatory-space or national-development concerns.

IV. CONSOLIDATED GAPS

1. Objectives gap

Government processes may begin with a preferred project, lender or partner without first defining the public problem independently.

This creates a risk that:

- the chosen solution is treated as the objective;
- financing availability drives project selection;
- diplomatic or commercial objectives remain unstated;
- alternatives receive less rigorous analysis; or
- expected outputs are confused with public outcomes.

One option would be to require a statutory Agreement Objectives and Alternatives Statement before authority to negotiate is issued.

2. Commitment and lock-in gap

Assessments may occur before construction but after the Government has become politically, financially or contractually committed.

Lock-in may arise from:

- exclusivity;
- site reservation;
- preferred-proponent designation;
- financing commitments;
- sovereign guarantees;
- advance payments;
- preliminary works;
- resource access;

- confidentiality arrangements;
- compensation rights; or
- diplomatic assurances.

A stronger framework could trigger assessment before any such action.

3. Agreement-versus-project gap

Existing systems often evaluate the project but not the agreement's legal architecture.

The following terms can create substantial long-term risk:

- guaranteed revenues;
- tariff-adjustment formulas;
- availability payments;
- take-or-pay obligations;
- foreign-exchange protection;
- stabilization;
- compensation for regulatory changes;
- waiver of immunity;
- foreign governing law;
- international arbitration;
- termination compensation;
- automatic renewal;
- survival clauses;
- data-control rights; and
- exclusivity.

4. International-obligations compatibility gap

No unified process requires a formal matrix showing whether a proposed agreement:

- conflicts with existing treaties;
- makes compliance with human-rights obligations more difficult;
- restricts future labour, health or environmental measures;
- creates discriminatory effects;
- permits retrogression in economic and social rights;
- limits access to remedies;
- affects persons outside Philippine territory; or
- requires legislation or appropriations not yet authorized.

5. Independence gap

Initiating agencies, proponents, lenders or counterparties may prepare or finance the studies supporting the transaction.

This does not automatically make the studies unreliable, but there is no consistent independent mechanism to:

- verify raw data;

- test assumptions;
- examine alternatives;
- assess the no-agreement option;
- disclose uncertainty; or
- publish dissenting technical findings.

6. Disclosure gap

No uniform minimum pre-signature disclosure package exists.

The public may receive a general project description without access to:

- lifecycle cost;
- guarantees;
- contingent liabilities;
- risk allocation;
- tariff effects;
- debt scenarios;
- termination exposure;
- dispute settlement;
- regulatory-compensation provisions;
- beneficial ownership;
- distributional impacts; or
- the substantially final terms.

7. Participation gap

Existing consultation requirements lack common standards concerning:

- identification of affected populations;
- representative participation;
- accessible language and formats;
- worker and livelihood participation;
- youth participation;
- inclusion of persons with disabilities;
- protection against retaliation;
- disclosure of funding and conflicts;
- independent facilitation; and
- reasoned responses to submissions.

8. Long-term and intergenerational gap

Assessments may focus on construction and early operation without adequately examining:

- the full contractual term;
- renewal periods;
- survival clauses;
- climate scenarios;
- demographic change;
- technological obsolescence;

- public debt inherited by future governments;
- stranded assets;
- cumulative ecological loss;
- post-closure impacts; or
- delayed health and livelihood effects.

9. Distributional gap

Aggregate national benefits may conceal concentrated harm.

A project or agreement may increase GDP or trade while imposing losses on:

- specific regions;
- farmers;
- fisherfolk;
- workers;
- MSMEs;
- low-income consumers;
- public-service users;
- Indigenous Peoples;
- women;
- youth; or
- future taxpayers.

10. Fiscal and contingent-liability gap

Public debt analysis may not capture the full economic exposure created through:

- PPP guarantees;
- minimum-revenue obligations;
- tariff support;
- foreign-exchange protection;
- government undertakings;
- termination payments;
- off-budget liabilities;
- state-enterprise commitments;
- refinancing obligations; or
- linked agreements.

11. Regulatory-space and sovereignty gap

Existing processes do not uniformly assess whether an agreement would limit future government action concerning:

- taxation;
- public health;
- medicines;
- labour protection;
- environmental regulation;
- climate action;

- financial stability;
- public utilities;
- food security;
- data protection;
- national emergencies; or
- national patrimony.

12. Confidentiality gap

Current law does not provide a sufficiently clear graduated regime for:

- temporary negotiating confidentiality;
- protected national-security information;
- commercial redaction;
- confidential congressional access;
- disclosure of public liabilities;
- automatic post-signature release; or
- declassification after the reason for confidentiality ends.

13. Side-letter and material-change gap

Publicly reviewed terms may later be altered through:

- side letters;
- amendments;
- waivers;
- settlements;
- refinancing;
- contract extension;
- implementation arrangements;
- bid clarification; or
- renegotiation.

Material changes do not always receive the same assessment, disclosure and participation applied to the original proposal.

14. Enforcement gap

There is no unified consequence for deficient due diligence.

A stronger system requires:

- a mandatory compliance certificate;
- a public registry;
- pre-signature restraint of unauthorized commitments;
- invalidation or suspension of unauthorized domestic implementation;
- personal liability for willful concealment or falsification;
- whistle-blower protection;
- debarment where appropriate; and
- reassessment of material changes.

V. CHECKLIST FOR DETERMINING THE SUBSTANTIAL OBJECTIVES OF AN AGREEMENT

This checklist could be completed before authority to negotiate is issued.

A. Public problem and evidentiary basis

- What specific public problem is the agreement intended to address?
- What baseline data demonstrate the nature, scale and causes of the problem?
- Are the data current, disaggregated and independently verifiable?
- Is the problem national, regional, sectoral or community-specific?
- What would occur without government intervention?
- Does the problem statement improperly assume the preferred solution?
- Are material uncertainties and conflicting evidence disclosed?
- Has the initiating agency distinguished public need from financing availability?

B. Hierarchy of objectives

The agency could separately state:

- the primary public objective;
- secondary development objectives;
- fiscal or transaction objectives;
- foreign-policy or diplomatic objectives;
- employment and industrial-policy objectives;
- counterparty objectives;
- political or institutional objectives; and
- objectives not expressly written but reasonably inferred from the arrangement.

For each objective:

- Is it lawful?
- Is it measurable?
- Is there a target and timeframe?
- Is it necessary?
- Can achievement reasonably be attributed to the agreement?
- Does it conflict with another objective?
- Who determined its priority?
- What evidence would establish success or failure?

C. Legal and practical effect

- Is the instrument legally binding, politically binding or formally non-binding?
- Does it grant exclusivity or preferential access?
- Does it reserve land, natural resources, capacity, spectrum, data or infrastructure?
- Does it commit appropriations, subsidies, guarantees or future payments?
- Does it authorize studies, entry, clearing or preliminary works?
- Does it identify or fix a final site, route, technology or supplier?
- Does it restrict procurement or negotiation with third parties?
- Does it create compensation rights if the Government does not proceed?

- Does it restrict future legislation or regulation?
- Does it establish foreign governing law or international arbitration?
- Does it include confidentiality affecting public oversight?
- Are there annexes, minutes, exchanges of notes or side letters?
- Would withdrawal create material financial, diplomatic or reputational consequences?

An affirmative answer to any of these questions could create a presumption that the instrument involves a substantial public commitment.

D. Beneficiaries and burden bearers

- Who receives the principal financial benefit?
- Who gains access to public assets, markets or resources?
- Who receives employment or business opportunities?
- Who pays through taxes, tariffs, tolls, debt or foregone public revenue?
- Who bears environmental, health or displacement risks?
- Are benefits national while harms are concentrated locally?
- Are benefits immediate while costs emerge later?
- Are vulnerable groups differently affected?
- Are future generations expected to finance present benefits?
- Are investor remedies stronger than remedies available to affected persons?

E. Alternatives and necessity

- Has the no-agreement option been assessed?
- Can the objective be achieved through legislation or regulation?
- Can it be achieved through direct public delivery?
- Can it be financed domestically?
- Can the initiative be smaller, phased or differently located?
- Is a PPP superior to ordinary procurement on independently verified grounds?
- Are less restrictive contractual or treaty provisions available?
- Is exclusivity necessary and proportionate?
- Would a shorter term achieve the objective?
- Were all alternatives tested using comparable assumptions?

F. Success, failure and exit

- What indicators define success?
- Who independently verifies performance?
- What constitutes material failure?
- When may the Government reopen, suspend or terminate the agreement?
- What is the termination cost under different scenarios?
- Can regulation be changed without disproportionate compensation exposure?
- What assets, data, personnel and liabilities revert to the Government?
- Is continuity of essential services protected?
- Is there a funded closure, transition or rehabilitation plan?
- Are periodic review and sunset clauses included?
- Are survival provisions limited and justified?

Where an agreement's primary objectives remain vague, unmeasurable or internally contradictory, or where they can be achieved through a materially less harmful and less restrictive option, the proposal would warrant reconsideration, including the possibility of non-approval.

VI. CHECKLIST FOR LONG-TERM ADVERSE-IMPACT ASSESSMENT

A. Required assessment periods

The assessment should cover:

- negotiation and pre-implementation;
- construction or institutional transition;
- early operation;
- five-year effects;
- ten-year effects;
- twenty- and thirty-year scenarios where relevant;
- the entire agreement term;
- extension and automatic-renewal periods;
- termination;
- post-termination obligations;
- decommissioning and rehabilitation; and
- effects continuing beyond the agreement's legal term.

B. Counterfactual and alternatives

- A credible no-agreement baseline has been developed.
- Expected demographic, economic, technological and climate changes are included.
- Existing and reasonably foreseeable related projects are considered.
- Alternatives are assessed at comparable levels of detail.
- Opportunity costs and avoided harms are identified.
- Delay, phasing and reduced-scale options are tested.
- The baseline is not incorrectly assumed to remain static.

C. Fiscal and financial sustainability

- Total lifecycle public cost;
- debt-service profile;
- interest-rate and refinancing risk;
- foreign-exchange exposure;
- sovereign and performance guarantees;
- minimum-revenue and take-or-pay commitments;
- availability payments;
- subsidies and tax expenditures;
- termination compensation;
- contingent and off-budget liabilities;
- cross-default and acceleration;
- demand and revenue sensitivity;
- stress tests under economic shocks;
- affordability for future budgets;

- impact on essential public spending;
- stranded-asset risk; and
- intergenerational allocation of public cost.

D. Constitutional, legal and international compatibility

- Constitutional authority;
- statutory authority;
- need for legislative amendment;
- need for appropriation;
- Senate-concurrence implications;
- Monetary Board requirements;
- national-patrimony restrictions;
- foreign-ownership restrictions;
- compliance with existing treaties;
- compatibility with human-rights obligations;
- compatibility with ratified ILO Conventions;
- environmental and climate commitments;
- Indigenous Peoples' rights;
- effects on access to justice; and
- enforceability of obligations and remedies.

E. Human rights and equality

- Life, health and personal security;
- food and water;
- housing and tenure;
- education;
- work and livelihood;
- social security;
- culture;
- privacy and data protection;
- participation and expression;
- direct and indirect discrimination;
- retrogression in economic and social rights;
- impacts on vulnerable groups;
- access to affordable essential services;
- displacement;
- access to effective remedies; and
- risk that arbitration or stabilization provisions discourage rights-protective regulation.

Human-rights risk would be better assessed by reference to the severity of effects on rights-holders, and not only by financial materiality to the State, lender or investor.

F. Labour and employment

- Net jobs created and lost;
- job quality and duration;
- wage levels;
- working time;
- freedom of association;

- collective bargaining;
- forced labour;
- child labour;
- discrimination and equal remuneration;
- occupational safety and health;
- recruitment risks;
- outsourcing and informalization;
- worker displacement;
- skills and technology transfer;
- treatment of migrant workers;
- automation;
- effects on labour inspection and enforcement; and
- funded just-transition measures.

G. Environment, biodiversity and climate

- Lifecycle greenhouse-gas emissions;
- consistency with Philippine climate commitments;
- physical climate risks;
- adaptation and resilience;
- biodiversity loss;
- ecosystem-service impacts;
- deforestation;
- coastal and marine effects;
- water extraction and quality;
- soil and air pollution;
- noise and light pollution;
- hazardous substances and waste;
- cumulative and induced development;
- transboundary effects;
- disaster-risk creation;
- restoration feasibility;
- irreversible loss; and
- resource availability for future generations.

H. Disaster risk and community safety

- Existing hazards;
- exposure of communities and infrastructure;
- vulnerability of affected groups;
- cascading and systemic risks;
- emergency-response capacity;
- evacuation and continuity plans;
- effects on evacuation routes and shelters;
- infrastructure failure scenarios;
- climate-intensified hazards;
- responsibility for emergency costs; and
- post-disaster reconstruction obligations.

I. Food, water, land and livelihoods

- Food prices and availability;
- agricultural land conversion;
- municipal fishing access;
- water allocation and privatization;
- customary and communal resources;
- physical displacement;
- economic displacement;
- livelihood restoration;
- land speculation and rent increases;
- informal enterprises;
- relocation-site capacity;
- receiving-community pressures; and
- long-term food and water security.

J. Public health and social systems

- Communicable and noncommunicable disease;
- mental health;
- occupational and community exposure;
- accidents;
- emergency medical capacity;
- health-system costs;
- education-system pressures;
- affordability of medicines;
- nutrition;
- gender-based violence;
- trafficking and exploitation;
- community cohesion; and
- long-term surveillance and treatment.

K. Youth and intergenerational effects

- Access to education and training;
- future employment and skills;
- youth migration;
- housing and land availability;
- public debt inherited by younger generations;
- climate and environmental burdens;
- delayed health effects;
- cultural continuity;
- digital rights;
- access to natural resources;
- youth participation in assessment;
- whether benefits expire before costs emerge; and
- whether future governments retain sufficient policy options.

L. Indigenous Peoples and cultural heritage

- Ancestral-domain impacts;
- validity and sequencing of FPIC;
- NCIP certification;

- customary decision-making;
- sacred and burial sites;
- cultural landscapes;
- intangible heritage;
- traditional knowledge and data ownership;
- customary resource access;
- benefit-sharing;
- cumulative cultural impacts; and
- conditions for cultural survival.

M. Economic structure and distribution

- Sectoral winners and losers;
- regional distribution;
- MSME effects;
- domestic value added;
- import dependence;
- technology transfer;
- market concentration;
- monopoly and exclusivity;
- consumer prices;
- agriculture and fisheries;
- balance-of-payments effects;
- tax-base erosion;
- state-enterprise impacts; and
- resilience of strategic industries.

N. Regulatory space and sovereignty

- Stabilization clauses;
- compensation for regulatory change;
- investor-State dispute settlement;
- foreign governing law;
- waiver of immunity;
- restrictions on licensing;
- procurement restrictions;
- local-content restrictions;
- limits on capital controls;
- tax restrictions;
- intellectual-property effects;
- cross-border-data obligations;
- public-utility implications;
- emergency exceptions;
- treaty-survival clauses; and
- ability to comply with future constitutional, statutory and treaty obligations.

O. Governance and corruption

- Beneficial ownership;
- intermediaries and agents;
- commissions and success fees;

- politically exposed persons;
- conflicts of interest;
- gifts and donations;
- tied or single-source procurement;
- confidentiality;
- audit access;
- side letters;
- amendment authority;
- revolving-door risks;
- whistle-blower protection;
- debarment provisions; and
- termination for corruption.

P. Data, technology and national security

- Ownership of public data;
- cross-border transfer;
- data localization;
- cybersecurity;
- surveillance capability;
- digital identity;
- algorithmic decision-making;
- access by foreign governments or entities;
- technology dependence;
- vendor lock-in;
- interoperability;
- intellectual-property restrictions;
- continuity if the provider exits; and
- national-security classification and oversight.

Q. Implementation capacity and remedies

- Responsible agency for each obligation;
- adequate personnel and expertise;
- sufficient budget;
- measurable indicators;
- access to raw operational data;
- independent monitoring;
- community complaint mechanisms;
- worker grievance mechanisms;
- enforceability against contractors;
- financial assurance;
- suspension rights;
- reopener provisions;
- restoration;
- compensation;
- service continuity; and
- orderly exit.

VII. SUFFICIENCY TEST FOR LONG-TERM DUE DILIGENCE

Long-term adverse impacts could be considered sufficiently assessed where all of the following conditions are satisfied:

- The public problem and primary objective are clearly established.
- A credible baseline and no-agreement counterfactual exist.
- Reasonable alternatives were assessed using comparable assumptions.
- The initiative and the agreement were both reviewed.
- Direct, indirect, induced, cumulative and transboundary impacts were examined.
- Impacts were disaggregated by geographic location, sector, sex, age, disability, income and livelihood.
- Applicable constitutional and international obligations were used as express standards.
- Worst-case and low-probability/high-impact scenarios were considered.
- Climate and disaster-risk scenarios were included.
- Irreversibility and intergenerational effects were separately identified.
- Fiscal and contingent liabilities were stress-tested.
- Regulatory-space implications were assessed.
- Uncertainties and data limitations were disclosed.
- Dissenting qualified opinions were preserved.
- Evidence was independently prepared or independently verified.
- Affected sectors participated before negotiating positions became final.
- Avoidance was considered before mitigation or compensation.
- Proposed mitigation is technically and financially feasible.
- Monitoring, remedies, rehabilitation and closure are fully funded.
- The substantially final agreement was checked against the assessment.
- Material changes require reassessment.
- Periodic ex post review is mandatory.
- The legally authorized decision-maker expressly accepted or rejected residual risks.

Findings of illegality, invalid FPIC, severe human-rights harm, unmanageable fiscal exposure, irreversible environmental loss, corruption, absence of an effective remedy or inability to implement the agreement would ordinarily warrant non-approval unless satisfactorily addressed, rather than being treated only as a lower numerical score.

VIII. HIGH-, MEDIUM- AND LOW-RISK CLASSIFICATION

A. Automatic high-risk triggers

An agreement could be classified as high risk where it involves any of the following:

- a treaty or executive agreement materially limiting future regulatory discretion;
- sovereign borrowing or a sovereign guarantee;
- substantial contingent liabilities;
- minimum-revenue, availability-payment or take-or-pay commitments;
- foreign-exchange guarantees;
- waiver of sovereign immunity;
- foreign or international arbitration;

- stabilization or regulatory-compensation clauses;
- long-term monopoly or exclusivity;
- automatic renewal or extended survival provisions;
- natural resources or public land;
- water, energy, minerals, forests or fisheries;
- critical infrastructure;
- public utilities or essential services;
- strategic data, digital identity or surveillance;
- physical or economic displacement;
- ancestral domains or FPIC;
- significant biodiversity or marine impacts;
- material climate or disaster risk;
- nationwide or multi-regional economic effects;
- a trade, investment, digital-trade or comprehensive economic agreement;
- substantial effects on medicines, food or intellectual property;
- material national-security implications;
- operations in conflict-affected or fragile areas;
- inability to withdraw without substantial compensation;
- secret or undisclosed side arrangements; or
- credible risk of severe or irreversible harm.

The presence of one automatic trigger could be sufficient to require full assessment.

The reviewing authority could classify an agreement at a higher risk level where:

- material information is missing;
- most evidence is controlled by the initiating agency or counterparty;
- cumulative effects are likely;
- vulnerable groups are affected;
- experts reasonably disagree;
- the agreement establishes a precedent; or
- impacts may be irreversible.

Uncertainty would not, by itself, provide a basis for lowering the risk classification.

IX. RECOMMENDED LEGISLATIVE AND INSTITUTIONAL REFORMS

1. Enact a standalone framework law

A standalone statute may be preferable to placing the entire regime within one existing law because the issues cut across:

- PPPs;
- procurement;
- foreign borrowing;
- ODA;
- government-to-government (G2G) agreements;
- international economic agreements;
- public utilities;
- resource agreements;

- government joint ventures; and
- local-government agreements.

2. Consider requiring three core pre-signature documents

A. Agreement Objectives and Alternatives Statement

This document could be completed and disclosed before authority to negotiate.

It could identify:

- the public problem;
- primary and secondary objectives;
- baseline evidence;
- intended beneficiaries;
- expected burden bearers;
- alternatives;
- the no-agreement option;
- negotiating objectives;
- legal red lines;
- grounds for withdrawal; and
- the preliminary risk classification.

B. Public-Interest Due Diligence Assessment

This assessment could be completed before any significant public commitment.

It could cover the full checklist in this analysis and be independently verified or independently prepared according to risk.

C. Proposed Final Agreement Compatibility Review

This review could compare the substantially final text with:

- the objectives statement;
- assessed assumptions;
- constitutional and statutory requirements;
- international obligations;
- public consultations;
- fiscal-risk analysis;
- environmental and social safeguards; and
- approved negotiating parameters.

All annexes, side letters and implementation arrangements could be included in the review.

3. Consider a Due Diligence Compliance Certificate

One possible statutory approach would be to require a compliance certificate before a covered high- or medium-risk agreement is signed, guaranteed or domestically implemented, confirming that:

- the assessment was adequate;
- relevant evidence was independently verified;
- public disclosure was completed;
- affected sectors participated meaningfully;
- applicable FPIC and consent requirements were satisfied;
- residual risks were expressly addressed;
- the final text did not materially depart from assessed terms; and
- the authorized government decision-maker received all material findings.

Certification would confirm due-process compliance without replacing the constitutional authority of the President, Senate, Congress, Monetary Board, approving agency or LGU.

4. Consider amendments to the PPP Code

Amendments to the PPP Code could address:

- independent public-interest verification for high-risk projects;
- publication of nonconfidential feasibility and fiscal-risk assessments;
- pre-signature disclosure of the risk-allocation matrix and key commercial terms;
- assessment of the public-delivery alternative;
- no deemed approval of high-risk projects;
- recertification of material changes; and
- publication of amendments, waivers, refinancing and side letters.

5. Consider amendments to the New Government Procurement Act

The procurement framework could be amended to address:

- completion of antecedent public-interest due diligence before final procurement programming;
- disclosure of the policy justification and alternatives;
- no procurement award or contract signature without required certification;
- documentation of departures caused by international financing arrangements; and
- confirmation that no treaty or financing term waives mandatory constitutional, environmental, labour, Indigenous Peoples, anti-corruption or transparency protections.

6. Consider amendments to foreign-borrowing and ODA laws

Republic Act Nos. 4860, 8182 and 8555 could be reviewed with a view to providing for:

- a preliminary assessment before authority to negotiate;
- disclosure of a nonconfidential financing term sheet;
- independent debt and foreign-exchange stress testing;
- assessment of contingent liabilities;
- disclosure of tied procurement and consultant conditions;
- comparison with alternative financing;
- review of governing law, arbitration and immunity waivers;
- congressional notification for high-risk financing;
- publication of final agreements and side letters; and

- human-rights, labour, environmental and community assessment before signature.

7. Strengthen trade-agreement procedures

The Customs Modernization and Tariff Act and related procedures could be strengthened through:

- publication of negotiating objectives;
- identification of protected sectors and regulatory red lines;
- a Trade and Distributional Impact Assessment;
- regional and sectoral hearings;
- analysis of employment, wages, agriculture, fisheries, food security, MSMEs and consumer prices;
- assessment of public-health, intellectual-property, data and regulatory effects;
- a public response matrix;
- review of the substantially final text; and
- a funded transition plan for sectors facing material losses.

8. Integrate due diligence into Department of Economy, Planning and Development processes

The Economy and Development Council and relevant inter-agency committees could be required to consider:

- the due-diligence certificate;
- alternative options;
- fiscal and distributional analysis;
- international-obligations compatibility;
- dissenting technical views;
- consultation findings; and
- residual long-term risks.

Published decisions could state the principal reasons for accepting the agreement and the residual risks identified.

9. Strengthen executive procedures for international agreements

Requests for authority to negotiate or sign could include:

- the objectives and alternatives statement;
- initial risk classification;
- legal authority;
- negotiating mandate;
- constitutional and international-obligations matrix;
- fiscal-risk analysis;
- participation plan;
- confidentiality schedule; and
- statement of any term requiring legislation, appropriation, Senate concurrence or Monetary Board action.

10. Establish a graduated confidentiality system

The framework could distinguish:

Information that must ordinarily be disclosed

- objectives;
- expected public benefits;
- public costs and liabilities;
- guarantees;
- tariffs;
- environmental and health risks;
- beneficial ownership;
- consultation results;
- final agreements;
- amendments; and
- side letters creating public obligations.

Information that may be temporarily withheld

- active negotiating positions;
- genuine national-security information;
- protected personal data; and
- specific trade secrets whose disclosure would cause demonstrable competitive injury.

Safeguards for restricted information

- specific written justification;
- independent review;
- confidential congressional access;
- expiry date;
- periodic reassessment;
- narrow redaction instead of whole-document secrecy; and
- automatic disclosure when the justification ends.

11. Provide for material-change reassessment

Reassessment could be required where a change affects:

- total public cost;
- scope;
- location;
- technology;
- duration;
- guarantee;
- tariff;
- ownership;
- financing;
- regulatory powers;
- dispute settlement;

- termination payment;
- environmental or social safeguards;
- procurement;
- affected populations; or
- access to remedies.

The framework could also address the segmentation of material changes through several smaller instruments.

12. Provide for periodic ex post review

The framework could provide for periodic review of high-risk agreements, for example at intervals of around three years, and medium-risk agreements at intervals of around five years, subject to sector-specific requirements and the nature of the agreement.

Periodic review could compare:

- projected and actual benefits;
- projected and actual costs;
- fiscal exposure;
- employment;
- environmental and health impacts;
- distributional effects;
- complaints and remedies;
- changing climate and disaster risk; and
- continued consistency with constitutional and international obligations.

Where appropriate, agreements could include reopener, suspension and exit provisions that permit corrective action when key assumptions materially fail.

13. Preserve the functions of constitutional bodies

The independent reviewing institution should not:

- negotiate agreements;
- select projects;
- choose foreign-policy objectives;
- contract loans;
- award procurement;
- ratify treaties;
- appropriate funds; or
- replace legally authorized approving bodies.

A more limited role for the independent reviewing institution would be to certify the quality, completeness, transparency and independence of the due-diligence process.

14. Use differentiated participation and consent

The framework could provide for:

- FPIC under IPRA where applicable;
- any consent expressly required under another law;
- representative surveys where a specific population bears concentrated and severe effects;
- youth-sensitive consultations;
- worker and livelihood consultations;
- regional and sectoral consultation for national economic agreements;
- full public submissions;
- a response matrix; and
- congressional scrutiny for nationally significant commitments.

X. CONCLUSION

Philippine law already contains several forms of due diligence and public oversight. Relevant requirements are found in the Constitution, the PPP Code, procurement law, foreign-borrowing and ODA laws, trade law, the EIS System, the Local Government Code and IPRA.

The principal issue is that these mechanisms:

- apply to different transactions;
- examine different impact categories;
- operate at different stages;
- use inconsistent participation and disclosure rules;
- may place greater emphasis on projects than on the legal and economic effects of the agreements that govern them;
- do not uniformly provide for independent assessment;
- do not consistently address long-term regulatory and intergenerational effects; and
- may operate only after the Government has already made a material political, financial or contractual commitment.

A more coherent legal framework could therefore establish an overarching principle:

Before the Government assumes a significant, long-term or difficult-to-reverse public commitment, the public objective should be clearly defined, reasonable alternatives should be assessed, the agreement's long-term impacts should be independently evaluated, affected sectors should be given a meaningful opportunity to participate, the material terms and risks should be disclosed to the extent consistent with legitimate confidentiality, and the final decision should remain with the constitutionally or statutorily authorized authority.

A standalone law along these lines would not replace existing sectoral laws. It could connect them, address sequencing and contractual gaps, and provide a common process through which major government agreements are examined before commitments become difficult or costly to reverse.