

Key Changes Under the 2023 NEDA JV Guidelines (Part 3 of 3)

Approved on 24 April 2023, the National Economic Development Authority (“NEDA”) released the *2023 Revised Guidelines and Procedures for Entering into Joint Venture (“JV”) Agreements Between Government and Private Entities* (the “*2023 NEDA JV Guidelines*”). These guidelines, which took effect on 25 April 2023, provide an update to the *2013 NEDA JV Guidelines* (the “*2013 Guidelines*”).

Review and Approval of the Draft JV Agreement

Under the *2013 Guidelines*, the approval of the JV Agreement was solely the responsibility of the Head of the Government Entity. Under the *2023 NEDA JV Guidelines*, the Government Entity is required to submit to the Office of the Government Corporate Counsel, the Department of Justice, or any other appropriate entity prescribed by law/issuances as the Statutory Counsel of the relevant Government Entity, a copy of the draft JV Agreement and Instructions to Private Sector Participants, for its review.

Deviations and Amendments to the JV Agreement

Under the new guidelines, amendments may be approved by the Head of the Government Entity provided that: (a) there is no increase in the agreed tolls, fares, fees, rentals, and/or charges or a decrease in the Government Entity’s profit share, except as may be allowed under an approved formula; (b) there is no change in the scope of works or performance standards, no fundamental change in the contractual arrangement, and no extension in the contract term; or (c) there is no additional Government Contribution or undertaking, or increase in the financial exposure of the Government under the project.

Under the new guidelines, an amendment or variation implemented before it is approved by the Head of Government Entity or Approving Authority shall be rendered *void ab initio*.

Transitory Provision

Under the Transitory Provision, these new guidelines shall apply to all JVs, except JVs wherein a JV Agreement between the winning private sector participant and the Government Entity has been executed prior to effectivity of the *2023 NEDA JV Guidelines*.

Consequences of Non-Compliance

A JV Agreement shall be deemed *void ab initio* if it is entered into by the JV Partners with material and/or willful violation of any provision of the *2023 NEDA JV Guidelines*. It is also without prejudice to the filing of an appropriate administrative, civil, and/or criminal case against the liable person. The submission of false or fraudulent information shall also serve as a ground for the immediate rejection of the JV Proposal, disqualification of a Private Entity, or grounds to terminate the JV without prejudice to other civil, criminal, or other legal charges.

A copy of the 2023 NEDA JV Guidelines may be accessed here: <https://neda.gov.ph/2023-neda-jv-guidelines/>

This article is intended for informational purposes only and should not be construed as legal advice.