Key Changes Under the 2023 NEDA JV Guidelines (Part 1 of 3)

Author: *Franchette M. Acosta* | *Mely Ann Emerie A. Cristobal*

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*").

New Scope

Unlike the *2013 Guidelines*, the *2023 NEDA JV Guidelines* exclude from its coverage (a) JVs of government entities in the exercise of their primary mandate to undertake exploration of energy resources such as oil and gas reserves; and (b) JVs which are purely operations and maintenance contracts having no initial capital expenditures. It has also expanded on the various principles applicable to the JVs.

Time-bound JV undertaking

The definition of a JV has been updated to add "time-bound" on the investment activity undertaken by the JV. The JV shall now be undertaken either for a fixed period or upon accomplishment of the purpose of the JV prior to the end of the fixed period, stipulated in the JV Agreement. The JV Agreement must stipulate a fixed period for a term of existence not to exceed a maximum of 25 years, renewable for not more than 25 years.

Government Contribution Threshold

The *2023 NEDA JV Guidelines* further clarify that the government contribution to JV undertakings shall not exceed 50% of the project cost for Contractual JVs, or 50% of the outstanding capital stock of the JV Company. This means that the Private Sector Partner must contribute at least 50% of the project cost or outstanding capital stock, as may be applicable.

Changes in Control to or Composition of the Private Sector Partner

The *2023 NEDA JV Guidelines* also introduce new restrictions to any change in control of the Private Sector Partner to the JV. Under a new provision, Government Entities may require a lock-in or holding period in the JV agreement which prevents any change in ownership or control of the Private Sector Partner within a specified term. After such period, there is an express legal requirement to seek approval from the Government Entity for any change in control or composition of the Private Sector Partner at least 30 working days prior to the effectivity of such change.

Approval Thresholds of NEDA Board—ICC

The *2013 Guidelines* required NEDA Board—Investment Coordination Committee ("ICC") approval for projects falling under the following categories if the government contribution exceeds PhP150 Million: (a) Infrastructure Projects; (b) Projects that are public utilities; (c) Negotiated JVs initiated by a private entity; and (d) projects that are not related to the primary corporate mandate of the Government Entity.

Under the new guidelines, NEDA-ICC approval is now required for categories (a) to (d) above if any of the following thresholds are breached: (1) government contribution exceeds PhP150 Million; (2) project cost is at least PhP2.5 Billion; and (3) the contribution of the Government Entity exceeds 50% of the Government Entity's entire assets.

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