NATIONAL PUBLIC–PRIVATE PARTNERSHIP FRAMEWORKS IN ASEAN MEMBER COUNTRIES

- 2015 -

Economic Research Institute for ASEAN and East Asia

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ACKNOWLEDGEMENTS

Public–private partnership (PPP) has been regarded as one of the important tools for leveraging infrastructure development in the Association of Southeast Asian Nations (ASEAN) region. In recent years, policymakers in ASEAN member states have been proactively formulating and reinforcing their national systems on PPP to encourage private participation in infrastructure projects. Although to varying degrees, all 10 ASEAN countries have been developing their national PPP frameworks through the establishment or amendment of their PPP laws or PPP guidelines. International business entities have also been seeing the region as a promising destination for their investments through entering into PPP arrangements with pubic partners.

This report on *National Public–Private Partnership Frameworks in ASEAN Member Countries* provides readers with a gist of the current PPP frameworks of the 10 ASEAN countries. The country profiles, on the one hand, describe country-wise status of institutional and/or regulatory frameworks along with recent highlighted issues, as an introduction to PPP in the individual country. The comparative table, on the other hand, compiles topic-wise information, which serves as a summary illustrating cross-country differences in key components such as government support, law on land acquisition, and treatment of unsolicited proposals. An introductory essay overviewing ASEAN PPP and two case studies serve as supplements for further understanding of this topic. It is hoped that the set of materials will supply useful input to a wide range of readers from the policy side, business sector, and academia who are concerned with PPP in ASEAN.

We would also like to acknowledge that this study would not have come into fruition without input from government officials, PPP specialists, private partners, and researchers who are developing PPP markets or real projects in each ASEAN country. ERIA expresses sincere gratitude for contributions from, including but not limited to the Department of Economic Planning and Development, Prime Minister's Office, Brunei Darussalam; the Ministry of Economy and Finance, Cambodia; the Council for the Development of Cambodia; the Directorate for PPP Development, the National Development Planning Agency, Indonesia; PT Sarana Multi Infrastruktur, Indonesia; PT Penjaminan Infrastruktur Indonesia, Indonesia; the Philippine Institute for Development Studies; and the Ministry of Planning and Investment, Viet Nam. ERIA also thanks the

constant cooperation from the National Economic Research Institute, the Lao People's Democratic Republic; Ministry of National Planning and Economic Development, Myanmar; PPP Center of the Philippines; county representative offices of the Japan Bank for International Cooperation and the Japan International Cooperation Agency in various infrastructure-related activities of ERIA beyond this project.

The papers were written based on information available as of June 2015. We admit that since national PPP frameworks are constantly evolving, we could not reflect some of the important policy initiatives which have been kept as non-public at the time of this writing. The views expressed herein and all errors are solely our own.

ERIA Study Team
July 2015

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List of Acronyms

3PU	Public Private Partnership Unit (Malaysia)
ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
BAPPENAS	National Development Planning Agency (Indonesia)
BLT	Build–Lease–Transfer
BOO	Build–Own–Operate
BOT	Build–Operate–Transfer
BPN	National Land Agency (Indonesia)
BTL	Build–Transfer–Lease
BTO	Build–Transfer–Operate
CAGR	Compound Annual Growth Rate
CDC	Council for the Development of Cambodia
CIB	Cambodian Investment Board
CLUR	Certificate of Land Use Right (Viet Nam)
CMEA	Coordinating Ministry of Economic Affairs (Indonesia)
COI	Certificate of Incorporation
DEPD (or JPKE)	Department of Economic Planning and Development (Brunei Darussalam)
DICA	Directorate of Investment and Company Administration (Myanmar)
DOJ	Department of Justice (Philippines)
DOTC	Department of Transportation and Communication (Philippines)
ECA	Export Credit Agency
EDF	Électricité de France
EGAT	Electricity Generating Authority of Thailand
EIA	Environment Impact Assessment
EPC	Engineering, Procurement, and Construction
ERIA	Economic Research Institute for ASEAN and East Asia
FIL	Foreign Investment Law (Myanmar)
GCA	Government Contracting Agency
GDP	Gross Domestic Product
GIEK	Garanti-instituttet for eksportkreditt
GMCAC	GMR Megawide Cebu Airport Corporation
GOI	Government of Indonesia
ICC	Investment Coordination Committee (Philippines)
IDA	International Development Association
IDR	Issuer Default Rating
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
IIF	Indonesia Infrastructure Finance
IIGF	Indonesia Infrastructure Guarantee Fund
IPD	Investment Promotion Department (Lao People's Democratic Republic)
IPO	Initial Public Offering
IPP	Independent Power Producer
ITPB	Instruction to Prospective Bidders

ITT	Invitation to Tender
JBIC	Japan Bank for International Cooperation
JKK	Working Committee for the National Development Plan (Brunei Darussalam)
JKTR	National Committee for the national development plan (Brunei Darussalam)
JPKE	Department of Economic Planning and Development (Brunei Darussalam)
KPPIP	Committee for Acceleration of Prioritized Infrastructure Development (Indonesia)
Lao PDR	Lao People's Democratic Republic
LGU	Local Government Unit
LRT	Light Rail Transit
MCIA	Mactan–Cebu International Airport
MCIAA	Mactan–Cebu International Airport Authority
MEF	Ministry of Economy and Finance (Cambodia)
MIC	Myanmar Investment Commission
MIGA	Multilateral Investment Guarantee Agency
MLA	Multilateral Agency
MOF	Ministry of Finance
MOT	Modernize–Operate–Transfer
MOT	Ministry of Transportation
MP3EI	Masterplan for the Acceleration and Expansion of Indonesia Economic Development 2011–2025 (Indonesia)
MPI	Ministry of Planning and Investment (Lao People's Democratic Republic, Viet Nam)
MRTA	Mass Rapid Transit Authority (Thailand)
NAIA	Ninoy Aquino International Airport
NEDA	National Economic and Development Authority (Philippines)
NGO	Non-governmental Organization
NOA	Notice of Award
NPED	National Planning and Economic Development (Myanmar)
NT2	Nam Theun 2 Hydroelectric Project
NTPC	Nam Theun 2 Power Company Limited
ODA	Official Development Assistance
OSPD	Outline of Strategies and Policies for Development (Brunei Darussalam)
PAF	Philippine Air Force
PARED	Project Appraisal and Progress Reporting Department (Myanmar)
PDF	Project Development Fund
PDMF	Project Development and Monitoring Facility (Philippines)
PPA	Power Purchase Agreement
PPP	Public–Private Partnership
PPSU	Public Participation in State Undertaking (Thailand)
PTT	Permit to Trade
RFP	Request for Proposal

RKN	National Development Plan (Brunei Darussalam)
RPJMN	National Medium-Term Development Plan (Indonesia)
RPJPN	National Long-Term Development Plan (Indonesia)
SEPO	State Enterprise Policy Office (Thailand)
SMI	Sarana Multi Infrastruktur (Indonesia)
TOR	Terms of Reference
VGF	Viability Gap Funding

Public–Private Partnership in ASEAN Member Countries
- Overview -

1. Objectives and Structure of the Report

The objective of this report is to review the public–private partnership (PPP) regulatory frameworks and other related issues in the 10 ASEAN countries. The ASEAN member states are committed to establishing the ASEAN Economic Community, which envisions ASEAN as a single market and production base by 2015. Business communities continue to see the region as a potential destination for their investment. This report focuses on the ASEAN PPP markets, which are increasingly cited as promising for private sector entities as well as the public sector entities pursuing national or regional infrastructure development through the approach.

While each country has an opportunity to leverage private party participation in its national infrastructure development, this agenda is difficult to simplify in the context of the diverse group of economies. As a snapshot, a world ranking on infrastructure (out of 144 countries) shows the wide variations in the status quo: from Singapore (2nd), Malaysia (25th), to the Lao People's Democratic Republic (94th), Cambodia (107th), and Myanmar (137th). [1] All 10 ASEAN countries have started to adopt the PPP modality in recent years, nevertheless, national regulatory or institutional frameworks in most of the countries are still at a transitional stage. In another ranking among 21 selected jurisdictions in the Asia-Pacific region, only the Philippines is categorized as 'developed' in its PPP environment while Indonesia, Thailand, and Viet Nam are classified as 'emerging'. [2] There is also a great variety in the maturity level of capital markets that support the financing aspect of PPP.[3]

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[1] World Economic Forum (2014), *The Global Competitiveness Report 2014–2015.* Geneva: World Economic Forum. http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf

[2] Economist Intelligence Unit (2015), *Evaluating the Environment for Public Private Partnerships in Asia-Pacific – The 2014 Infrascope*. London: Economist Intelligence Unit.

[3] Zen F. and M. Regan (eds) (2014), 'Financing ASEAN Connectivity', *ERIA Research Project Report* No. 15. Jakarta: Economic Research Institute for ASEAN and East Asia. http://www.eria.org/publications/research_project_reports/FY2013/No.15.html

Given the diversity in the level of development of infrastructure, frameworks for PPP, or its supporting systems, we conducted country-wise research detailing into each ASEAN country's enabling environment for PPP. We developed two kinds of products, Country Profiles and a Comparative Table. The Country Profiles describe the latest PPP developments of individual countries, specifically highlighting topics in relation to a legal and institutional framework. The Comparative Table, meanwhile, provides key elements of the 10 nations' regulatory and/or institutional status on the same sheet for readers to grasp strengths or weaknesses of each economy.

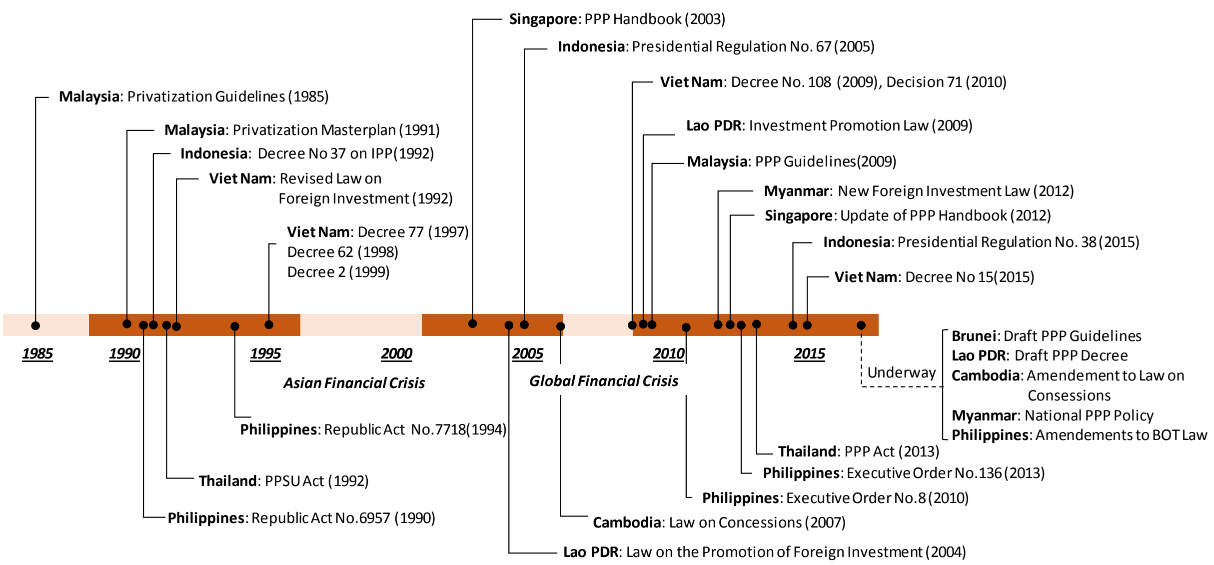
In this report, we also provide two case studies, which have been successfully procured under a PPP scheme at both cross-border and national levels to draw lessons from them. This is from our belief that regulatory or institutional enhancements should occur through a tried and tested approach based on real project implementation experiences.

The rest of this chapter introduces the ASEAN PPP developments as a guide before going into the individual country reports. We will take a look at the development of legal frameworks, key project risks, and government support in ASEAN PPP.

2. ASEAN PPP Trends – Developments of Legal Frameworks

ASEAN countries are seeking to procure greenfield infrastructure or upgrade brownfield infrastructure using PPP schemes. Over the past three decades, there has been increased impetus among governments in the region to develop their policy, legal, and institutional frameworks to facilitate PPP (Figure 1). The first era, which lasted from the mid-1980s to the mid-1990s, was provoked by the privatization movement that prevailed globally. The second moderate phase was from the early to mid-2000s, a short interval between the 1997–1998 Asian financial crisis and the 2008–2009 global financial crisis. The third post global financial crisis phase started from the late 2000s to today when less developed member countries have begun to participate in the market.

Figure 1: History of Developments of Legal Frameworks in ASEAN PPP



BOT = build–operate–transfer, IPP = independent power producer, Lao PDR = Lao People's Democratic Republic, PPP = public-private partnership, PPSU = Private Participation in State Undertakings.
Source: Compiled by authors.

During those periods, one of the key trends in ASEAN PPP developments is the removal of legal impediments to PPP procurement. This has been initiated through (i) reform of foreign investment laws, (ii) amended procurement laws or new PPP enabling legislation, (iii) development of criteria for use of PPP structure (for example, based on sector or size of projects) and stipulation of key concession agreement terms or risk allocation regime, and (iv) development of updated procurement rules, including requirement for competitive and transparent tender procedures.

A typical policy development path in pursing these initiatives is through elaborating principles of PPP or the implementation process in the form of guideline documents. A PPP policy in Malaysia has its origins in the early efforts of the Malaysian government to privatize various aspects of the Malaysian economy starting in 1983. Since then, the country has elaborated a PPP and related model through the issue of Privatization Guidelines (1985), Privatization Masterplan (1991), and PPP Guidelines (2009). Singapore issued a Public Private Partnership Handbook in 2004 followed by the Best Sourcing Framework in 2003. These operational guidelines set out the PPP procurement processes, which are supported by general law or sectoral regulations. Currently, Brunei Darussalam is seeking to take a similar approach to establishing national PPP guidelines aiming to implement PPP projects based on international best practices.

Another route is via the evolution of prototype laws or regulations. The Philippines Congress enacted the build–operate–transfer (BOT) law in 1990, which is the first law concerning PPPs in Asia. The subsequent amendment of the BOT law in 1994 and establishment of Implementing Rules and Regulations have amplified the notion of the PPP. At the time of this writing, amendments to the BOT law are underway, which will further strengthen its PPP framework of the country. The regulatory framework in Thailand has a lineage from corruption prevention starting from the legislation of the Private Participation in State Undertakings Act in 1992, which covers several types of PPP models. Recently, the government has upgraded the Act through the new Private Investment in State Undertaking Act B.E.2556 (2013) (PPP Act). Indonesia developed the first PPP specific national regulation by the issue of Perpres (Presidential Regulation) No. 67 of 2005. In March 2015, the current president replaced it with a new regulation on PPP to enlarge sectoral coverage and flexibilities in existing procurement process. Viet Nam, having a decree covering build–operate–transfer, build–transfer–operate, and build–transfer contracts since 2009, can also fall into this country group. Most recently, the Vietnamese government issued a long-awaited new PPP Decree to replace a pilot PPP Decree issued in 2010 and the Decree 108 of 2009.

The rest of the countries, Cambodia, the Lao People's Democratic Republic (Lao PDR), and Myanmar, are in the middle of transition in terms of the development of a PPP-specific framework. With support of multilateral agencies, initiatives such as the amendment of the Law on Concession in Cambodia, establishment of a PPP Decree in the Lao PDR, and adoption of Myanmar's national PPP policy are actively underway.

3. Key Project Risks in ASEAN PPPs

In principal, the PPP arrangements can be a 'win-win' coalition only if they are carried out through an optimal risk and/or reward sharing among all parties involved: public sector counterparties, sponsors, contractors for engineering, procurement, and construction (EPC), project financing lenders such as commercial banks, export credit agencies (ECA), or multilateral agencies (MLA). A general principle for arriving at the best available structure is to apportion the risks to the stakeholders best able to handle. In order to do so, the nature of inherit project risks in the first place must be identified. Henceforth, we introduce four major risk factors, all of which are indispensable for structuring a bankable PPP project in the ASEAN region.

3.1 Revenue Risk

The revenue stream from a project is the fundamental source for a project company to pay back its debts on schedule and enable equity sponsors to achieve expected investment return via dividends. Thus, risks in future revenue, are arguably the most important in PPP projects.

The level and nature of the risk varies widely according to the characteristics of a project. For instance, a greenfield logistics or transportation project has a high level of uncertainty in realized demand from general users (so-called ridership risk). This is often the case, because it is difficult to reasonably forecast future demand in the absence of reliable information at the planning stage. The situation tends to induce severe revenue shortfall coming from initial demand overestimation. The 'user-pay-based' projects are hard to procure, due to the high demand risk as well as the price risk involved in tariff setting or its adjusting mechanisms (for example, against inflation) controlled by regulators.

On the other hand, energy and/or resource related projects often involve an agreement by an 'offtaker' (usually, a state-owned utility company in the case of ASEAN countries) who commits to purchase a product for a certain price or amount during a specified period. [4] Consequently, the demand fluctuation risk associated with projects is essentially passed through to the offtaker, and therefore, a long-term revenue stream from the operation is secured.

From the point of view of bankability, there is an underlying difference in the user-pay-based projects and those having an offtake arrangement; that is, whether lenders need to bear the demand risk or not. Often, commercial lenders, who are risk averse, are reluctant to accept 100 percent of this market risk coming from user-pay-based projects. Hence, in these PPP projects, some form of subsidy is required from the public sector, through

[4] The basic form of the offtake contracts in energy projects involves a 'take-or-pay' clause where in essence, the offtakers have an obligation to pay for a specified amount regardless of actual service delivery as long as the supply capacity is maintained.

availability payments, minimum revenue guarantees, or viability gap funding (VGF), in order to make projects financially viable.

On the contrary, a project with an offtake contract transfers the revenue risk essentially to the offtaker(s). The lender's attention here is whether the tariff payments are made by the offtaker(s); in other words, creditworthiness of the offtaker(s). The condition makes it easier for commercial lenders to assess the credit risk by isolating it from the demand risk unlike the revenue-based models. That is one of the important reasons that the revenue risk mitigation system via the offtake contract has encouraged the entry of international lenders/ sponsors into the ASEAN PPP markets, particularly in an independent power producer (IPP) form of power plant projects. However, it is always a controversial issue whether commercial lenders can take a stand-alone credit risk of the offtaker(s) – which depends on subsidies from the government – in many of the ASEAN member states. If not, a project needs to be further backed up by the central government so that a project company can recourse the payments finally to the government in the event of default of the offtaker(s).

3.2 Currency Mismatch Risk

The mismatch risk is brought about by differences in currencies or their compositions between income and loan repayment. Typically, it emerges when a project receives revenue in local currency (like in toll road projects) whereas the majority of the outstanding loan is in a United States (US) dollar basis. In theory, the risk should be eliminated through natural hedge (for example, long-term financing in local currency). Otherwise the currency risk should be curtailed using derivatives, like currency swap.

According to Zen and Regan, five countries in ASEAN have mature capital markets, namely Singapore, Indonesia, Malaysia, Thailand, and the Philippines.[5] Projects in these countries are able to access a variety of instruments to tap into long-term regional or local financial resources. In Thailand, for example, a Bangkok Sky Train operator raised equity funding for the expansion of the rail network through an initial public offering (IPO) in 2013.[6] For brownfield projects, which show a track record of successful operation in particular,

[5] Zen F. and M. Regan (eds) (2014), 'Financing ASEAN Connectivity', *ERIA Research Project Report* No. 15. Jakarta: Economic Research Institute for ASEAN and East Asia. http://www.eria.org/publications/research_project_reports/FY2013/No.15.html

[6] *Bloomberg News* (2015), 'Bangkok Sky Train-Backed Fund Raises $2.1 Billion in IPO', 3 June. http://www.bloomberg.com/news/articles/2013-04-05/bangkok-skytrain-backed-fund-raises-2-1-billion-in-ipo

access to capital markets through an IPO or infrastructure bond can be a suitable refinancing option. However, the rest of the ASEAN countries have yet to develop or are in the early stages of capital market development. In these markets, in addition to a long-term effort in development of the capital market, it is necessary at this moment that the government takes necessary measures to match offtaking or availability payment (in local currency) with the value of the funding currency (in US dollar) by embedding adjusting mechanisms into contracts.

3.3 Political Risk

The political risk implies a broad range of insecurities stemming directly or indirectly from a host country. These include, but not limited to a foreign currency exchange risk, a political violence risk (for example, war, terrorism), an expropriation and nationalization risk, or a breach of contract risk. Needless to say, the emergence of the risk is probable in countries with weak political, economic, and social security, or those with a high frequency of regime change and resultant inconsistency in national policy.

A notable measure in this context is undertaken in Indonesia where the Ministry of Finance established the Indonesia Infrastructure Guarantee Fund (IIGF) to guarantee the financial obligations of the government contracting agency in PPP projects. In Viet Nam, government guarantees for foreign currency exchange conversion or a lender’s step-in-right have been long debated issues and a certain guidance was provided in the new PPP decree. In the Philippines, amendments of the BOT law will cover the institutionalization of the Contingent Liability Fund to cover the risks. In addition to these country-level assurances, political risk may need to be insured by guarantees from ECAs or MLAs when necessary.

3.4. Land Acquisition Risk

Land procurement tends to be an obstacle for extensive infrastructure projects, such as transportation or large-scale plant projects. The difficulties become aggravated by vague and restrictive land tenure systems. Indeed, delays in dispute settlements, strong opposition from citizens, or a significant increase in the land price in the course of the acquisition process are commonly observed in PPP projects in ASEAN countries.

Indonesia has long suffered from land acquisition issues. The country has been having difficulties in achieving financial close in the 2,000 megawatt (MW) Central Java IPP project, which was awarded in June 2011, badged as the first PPP in Indonesia. The project company has reportedly sent a force majeure notice, saying it is unable to acquire the remaining land required for the project site without government support.[7] The important lesson from the case is that land acquisition can be beyond the control of the private sector. Thus, it is crucial for governments to intervene in the cumbersome and complex issue with effective support measures, including compensation arrangements and environmental protection issues. It should also be noted that ASEAN countries can learn from vigorous actions taken by the Government of Indonesia to tackle the problem, such as the establishment of land funds, enactment of a land law, or a recent discussion on setting up a land bank.

In the context of the ASEAN countries, there are other important factors that should be taken into account to structure bankable PPP projects. For example, ASEAN countries have often suffered from natural disasters (for example, the 2011 floods in Thailand and the 2013 typhoon in the Philippines). The natural force majeure risk could affect physical and nonphysical aspects of projects. It is also important to note that any kind of risks, including those mentioned above, are a nexus of various factors. In this way, it is inevitable for private parties to identify country or project specific risks and scrutinize risk scenarios prior to project participation (See Table 1 for examples of mitigation measures that the private sector expects in ASEAN PPP). Comprehensive guides on the basic risk allocation formula are published –in the Philippines, a generic preferred risks allocation matrix and in Indonesia, IIGF's risk allocation guidelines.

Table 1: Summary of Major Risks and Mitigation Measures in ASEAN Public–Private Partnership

Risk Category	Examples of Mitigation Measures that Private Sector Expects
1. Revenue Risk	Offtaking contract by a state-owned utility company, availability or lease payment, minimum revenue guarantees, viability gap funding
2. Currency Mismatch	Access to long-term local currency bond or infrastructure fund, availability of cross-currency derivatives, hard currency denominated offtaking contract
3. Political Risk	The government's supporting letter, guarantees through a contingent liability fund by the central government, political risk guarantees by ECAs or MLAs
4. Land Acquisition Risk	Overall responsibility assumed by the government, funding support from Land Funds, clarification of timeframe or compensation/ dispute resolution mechanisms by Law

ECA = export credit agency, MLA = multilateral agency.
Source: Compiled by authors.

[7] PT Adaro Energy (2014), Press Release, 7 July. http://www.adaro.com/publication/view/announcement-declaration-force-majeure-bpi-2/

4. Government Support for Leveraging PPP

In ASEAN countries with a mature PPP policy, PPP is seen as a modern solution to the infrastructure gap that harnesses private sector efficiency and financing and can potentially offer greater risk transfer and value for money. However, overall, the majority of ASEAN countries where PPP policy development is either at an initial or intermediate level stage, PPP is driven largely by the need for further infrastructure, coupled with public sector funding constraints.[8] These countries, in financially constrained developing countries in particular, tend to perceive the PPP as a tool to save public resources enabling them to attract private capital; however, it might not be always the case. Indeed, as we have discussed, PPPs are all about risk sharing. Private party involvements can be achieved only when governments take effective and sufficient measures to mitigate risks belonging to business-oriented entities.

For assisting in financial aspects of strategically important PPP projects, ASEAN member countries have been exploring frameworks for financing and guarantee facilities or tax incentives provided under certain criteria. Beyond financing aspects, recognizing the importance of structuring bankable projects, a project development fund (PDF) has recently been widely used and considered to be established, which is illustrated by PT Sarana Multi Infrastruktur (SMI) in Indonesia, the Project Development and Monitoring Facility (PDMF) in the Philippines, or recently formalized PDFs in Thailand and Viet Nam. It is also understood that the setup of the PDF is currently being discussed in Cambodia and the Lao PDR. The effective use of a PDF potentially creates a positive cycle – tapping into expertise from the beginning contributes to the improvement of technical specifications, risk allocation, or the transaction process in a PPP project; enhancement of the quality of a pipeline of PPP projects increases the successful tenders; and reimbursement from winning bidders supports sustainability of the revolving fund.

Another policy crucial for soliciting PPP to business communities is the establishment of a central organization, which will serve as the champion of the national PPP programme. This organization functions as a 'one-stop organization on PPP' which disseminates information on national PPP projects (Figure 2 shows examples of potential PPP projects in

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[8] Zen F. and M. Regan (eds) (2014), *ASEAN PPP Guidelines.* Jakarta: Economic Research Institute for ASEAN and East Asia. http://www.eria.org/publications/key_reports/asean-ppp-guidelines.html

some member countries), advocates policy directions, streamlines project implementation, and conducts capacity building to implementing agencies. Zen and Regan[9] pointed out that 'the location of the PPP unit within government institutions is important. The need for strong political leadership, a clearly defined role, and technical and transactional skills and experience, suggest that the PPP unit should be proximate to a central policy-making agency of government.'

In this respect, the Public–Private Partnership (PPP) Center of the Philippines stands out in the region. The center directly reports to a policymaking body (the PPP Governing Board) and has effectively developed a robust pipeline of PPP projects through management of the PDMF. The status of pipeline projects is frequently updated and published on its website. The central agency for planning and coordinating PPP is also in place in Thailand (the State Enterprise Policy Office (SEPO)) and in Malaysia (the Public Private Partnership Unit (3PU)). In Indonesia, the National Development Planning Agency (BAPPENAS) periodically publishes a PPP Book containing information on national PPP projects in the pipeline. Information on these focal points in each ASEAN member state are listed in the comparative table.

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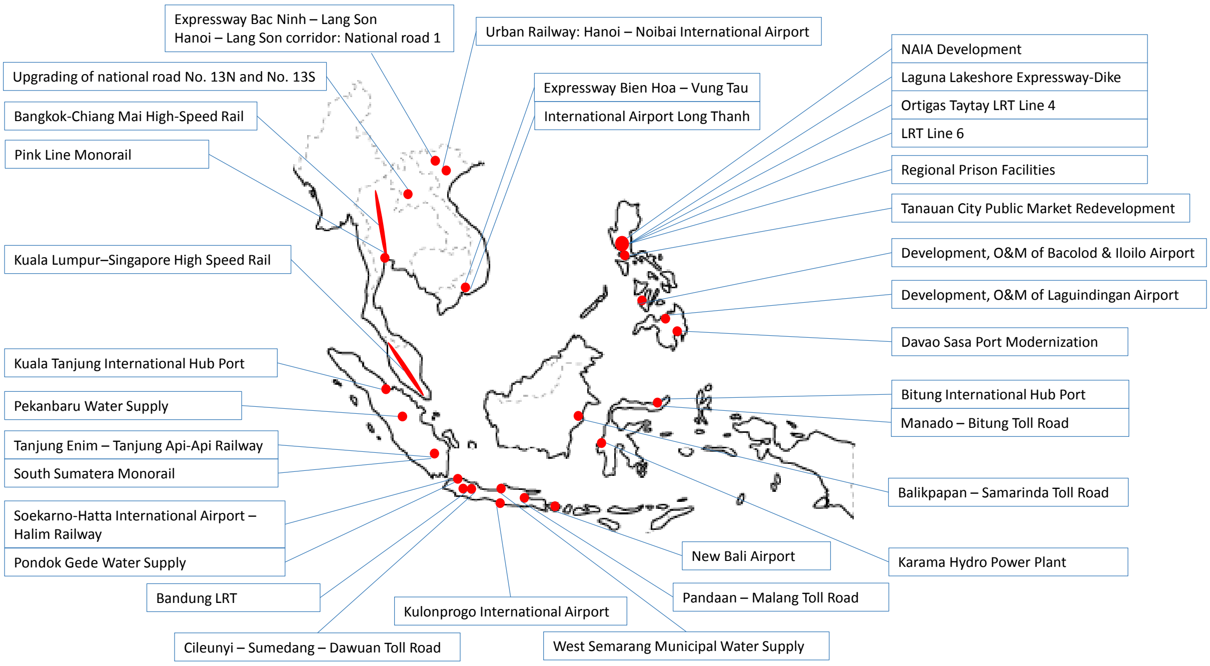
[9] Zen F. and M. Regan (eds) (2014), *ASEAN PPP Guidelines*. Jakarta: Economic Research Institute for ASEAN and East Asia. http://www.eria.org/publications/key_reports/asean-ppp-guidelines.html

Figure 2: Examples of Potential PPP Projects in Some of the ASEAN Member Countries



LRT = Light Rail Transit, O&M = Operation & Maintenance, NAIA = Ninoy Aquino International Airport.
Note: The definition of PPP as well as the extent to which the private sector is expected to play a role in each project vary from one country to another. Procurement modality will be changed in the future. Not all potential projects are listed here.
Sources: Compiled by authors from: The PPP Center of the Philippines (2015), Status of PPP Projects, 9 June. http://ppp.gov.ph/?page_id=26075 (accessed 9 June 2015); The National Development Planning Agency (BAPPENAS) Indonesia Decree No. 82 /M.PPN /HK /05 /2015; A presentation by the Ministry of Planning and Investment of Vietnam at ASEAN PPP Networking Forum in Manila on 16 December 2015; A presentation by the Ministry of Public Works and Transport of Lao PDR on a Pilot PPP of National Road 13 project at the ERIA's PPP Technical Workshop in Vientiane, August 2014; *Bangkok Post* (2015), 'Private Sector Set to Play Bigger Role in Megaprojects', 24 March. http://www.bangkokpost.com/business/news/506051/private-sector-set-to-play-bigger-role-in-megaprojects (accessed 9 June 2015); 'Case Study of Cross-border PPP Project: Kuala Lumpur to Singapore High Speed Rail Link (Ongoing Project)' in Zen F. and M. Regan (eds) (2014), *ASEAN PPP Guidelines*. Jakarta: Economic Research Institute for ASEAN and East Asia, pp. 73–77. http://www.eria.org/publications/key_reports/asean-ppp-guidelines.html

PPP COUNTRY PROFILE

Last Revised: June 2015

Brunei Darussalam

1. Overview

Brunei Darussalam, with a gross domestic product (GDP) per capita of US$38,563 in 2013, is the second richest country in the ASEAN region on a per capita basis.[10] The economy depends heavily on revenues from the oil and gas sector whose contribution to the national total gross value added reached about 60 percent in the fourth quarter 2014. [11] Given the budget surplus created by the sector, as well as its well-developed infrastructure, funding of Brunei Darussalam's infrastructure is not an urgent issue.

Having said that, the government's concerns about the economy's unhealthy dependence on oil and gas led to the launch of a long-term development vision, Wawasan Brunei 2035, in January 2008.[12] The vision seeks to find a sustainable path for the non-oil economy aiming to achieve three key goals: educated, highly skilled, and accomplished people; a high quality of life; and a dynamic and sustainable economy. The infrastructure development strategy is identified as one of the eight policy focuses in this vision.

Under Wawasan 2035, a five-year National Development Plan (RKN) and 10-year Outline of Strategies and Policies for Development (OSPD) elaborate and support its implementation. In particular, the current OSPD 2007–2017 provides rationales for PPP in some of its policy directions. Policy Direction No. 6 mentions 'promoting research, development and innovation both in government-funded institutions and through public-private and international partnerships.' Policy Direction No. 40 touches on the 'adoption of legal and regulatory frameworks to promote investment in social and industrial infrastructure, including privatization and PPP in line with international best practice'.

As such, it is understood that the government is becoming supportive of the PPP or privatization to tackle long-term fundamental economic challenges. These alternative

[10] World Bank, *World Development Indicators, GDP Per Capita (current US$).* http://data.worldbank.org/indicator/NY.GDP.PCAP.CD (accessed 26 June 2015).
[11] Brunei Darussalam. Prime Minister's Office. Department of Statistics Department of Economic Planning and Development, Gross Domestic Product Fourth Quarter 2014.
[12] *Economist* (2009), 'Brunei Gets Ready for When the Oil and Gas Run Out', 19 March. http://www.economist.com/node/10881541 (accessed 26 June 2015)

approaches would have potential to strengthen the sustainability of the economy by enabling the country to attract more foreign investment or to diversify its economic base.

2. Institutional and Regulatory Frameworks

The Department of Economic Planning and Development (known as JPKE), Prime Minister's Office, is the key government agency assigned to oversee PPP projects in Brunei Darussalam. For all the national development (RKN) projects, which can either by traditional procurement or PPP, JPKE is in charge of evaluation and endorsement based on submitted proposals. Currently, JPKE is taking a leading role in developing national PPP guidelines to further clarify its institutional and project development framework specific to PPP.

A set of criteria for PPP projects shall be proposed in the national PPP guidelines. These will cover standards such as consistency with Wawasan Brunei 2035 (only solicited projects are considered), minimum thresholds of project value set separately for economic and social infrastructure projects, indication of bankability of the project, and better value for money to the government if it is developed through PPP. The PPP guidelines will also define the value for money coming from PPP as a set of elements such as innovative design, risk transfer, efficient utilization of assets, output specification, whole life integrated service, and possible third party income, based on international best practices.

The PPP guidelines will also streamline project development process for PPP. Basic steps will be (i) the Department of Planning of JPKE conducts paper work for initial evaluation based on submitted proposals, (ii) a working committee for the National Development Plan (JKK) reviews a project, (iii) after comprehensive analysis and market testing, the JKK submits the proposal to the National Committee for the national development plan for its approval, and (iv) a core project team conducts drafting of tender documents or request for proposal (RFP), evaluation, or contract signing with concerned agencies. It should be noted that the duration for each process has not been defined due to complexities inherent in PPP.

3. Recent Developments in PPP

Since Brunei Darussalam's legal system is based on English common law, all relevant laws robustly support the process for PPP projects by nature. The national PPP guidelines, which JPKE has currently been developing, are expected to be published as a guidance material rather than a legal document.

In general, although foreign companies may have the capacity and wherewithal, and would be welcomed to participate in PPP, they may be put off by the limitations of scale, which reduces returns.[13] There is a project being implemented out of the guidelines, Ong Sum Ping (government buildings), a rehabilitate–operate–transfer project, but its investment size for refurbishment was just BND9.2 million. The challenge would be how to develop a pipeline of projects with sufficient investment scale in the situation where there is little room for greenfield projects, rather than brownfields.

[13] Jones, D.S. (2014), 'Brunei Country Report ', in F. Zen and M. Regan (eds), *Financing ASEAN Connectivity*, *ERIA Research Project Report FY2103.* No 15. Jakarta: Economic Research Institute for ASEAN and East Asia, pp. 39–62. http://www.eria.org/RPR_FY2013_No.15_Chapter_1.pdf

Last Revised: June 2015

Cambodia

1. Overview

Cambodia has 15 million population with US$1,000 GDP per capita. After it became an ASEAN member in 1999, Cambodia has moved towards a free market economy and has continued to grow solidly. Although the economy was influenced by the global financial crisis in 2009, GDP growth has recovered after 2010, being above 7 percent between 2011 and 2013.

PPP in Cambodia is at a relatively undeveloped stage. Most overseas investment in infrastructure projects to date has occurred in the power sector, in particular hydropower projects, with China historically being the most active investor.

Although the power sector remains, and is likely to continue to be, the leading infrastructure sector in Cambodia, telecommunications and information technology infrastructure, tourism, and transportation facilities have recently emerged as new infrastructure sectors that are expected to gain further momentum in the near future.

Currently, PPP can be implemented in the following sectors where infrastructure facilities provide direct or indirect services to the public: power generation, power transmission, and power distribution; transportation facilities and systems such as roads, bridges, airports, ports, railways, and man-made canals; water supply and water treatment; infrastructure for telecommunications and information technology; infrastructure facilities for tourism projects such as tourism sites and museums; infrastructure for the gas and oil sectors such as oil and gas pipelines; sewerage, drainage and dredging; solid waste management and treatment; public infrastructure related to health, education, and sport sectors; infrastructure related to special economic zones and social housing; irrigation and agriculture related infrastructure; and other sectors for which a specific law allows for the granting of concessions.

Cambodia as yet has little in the way of formal policies or guidelines on the use or implementation of PPP for infrastructure procurement. There have been some recent initiatives by institutions such as ADB and ERIA[14] to foster capacity building and institutional

[14] ERIA website news (2014), 'Public Private Partnership (PPP) Technical Workshop in Cambodia: PPP Implementation Requires Human Resource Development', 21 August. http://www.eria.org/news/FY2014/09/public-

development by way of technical assistance programmes and seminars. These initiatives are, however, still at an early stage.

2 Institutional and Regulatory Frameworks

There is no specific PPP law in Cambodia. Although Cambodia has started to develop some of the legal frameworks necessary to stimulate infrastructure investment, such as the Law on Concessions and the Law on Investment, these are laws designed to serve investment generally rather than PPP specifically.

- The Law on Concessions, enacted in October 2007, provides the main legal framework related to infrastructure investment in Cambodia. Its purpose is to promote the development of privately financed infrastructure projects in the country. The concession contract in the framework is defined to include build–operate–transfer (BOT), build–transfer–operate (BTO), modernize–operate–transfer (MOT), lease or management contract, or other forms. The above mentioned sectors are regarded as eligible sectors for the granting of concessions. The law also prescribes the selection procedure and organization of concessionaire, or concession period termination.

  Significant legal restrictions on PPP projects are the term of the concession and the governing law of the concession contract. The term of the concession is limited to 30 years from the signing of the concession contract. However, the government is entitled to grant a longer concession period if the nature of the infrastructure project requires a longer term. The concession agreement must be governed by Cambodian law.

- The Law on Investment 1994 ensures that the Cambodian government will provide incentives to encourage investments in sectors such as high technology industries, job creation, export-oriented industry, tourism industry, agro-industry and transformation industry, physical infrastructure and energy, provincial and rural development, environmental protection, and investments in the special economic zones.

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private-partnership-ppp-technical-workshop-in-cambodia-ppp-implementation-requires-human-reso.html (accessed 26 June 2015).

A PPP project in Cambodia currently would need to be carried out under this legislation, rather than under more specific PPP type laws or regulations. Recognizing this, the government has been drafting a specific legal framework and procedural guidelines as discussed in the next section.

As for its institutional settings, there is currently no specific central PPP agency in Cambodia. The following are some of the agencies that are responsible for infrastructure projects.

Ministry of Economy and Finance (MEF)

The MEF is responsible for assessing and approving the liabilities of the government under proposed projects. It is now in the process of institutionalizing the operation of centralized agencies in the MEF, the PPP Unit in the Department of Investment of the General Department of Budget, and the Risk Management Unit (in the Department of Cooperation and Debt Management). The main role of the PPP unit is to coordinate feasibility studies, provide human assistance to line ministries, and manage the procurement procedure, negotiation, and evaluation of projects. The main function of the Risk Management Unit, meanwhile, will be to assess the contingent liability which results from government guarantees as well as risk assessment in project investment for line ministries' consideration.

Council for the Development of Cambodia (CDC)

The CDC is the one-stop service organization, which is the highest decision-making body of the government on private and public investments. The CDC is chaired by the prime minister and is composed of senior ministers from related government ministries. The Cambodian Investment Board (CIB) under the CDC takes coordination and implementation roles in evaluating and approving applications for private investments except for special economic zones (SEZ).

Ministry of Commerce

The Ministry of Commerce is responsible for regulating business enterprise law, commercial registration law and regulations, and secured transaction law.

3. Recent Developments in PPP

There have been more than 30 PPP projects implemented since 1990, among which projects in the power sector account for more than 50 percent in terms of numbers and values. Hydropower generation, coal-power generation, and transmissions are included in those projects. Other than the power sector, PPP projects have also been formulated in the transportation sector (airports and roads, among others). The BOT scheme (not under the Law on Concessions) has often been adopted as a method of implementing PPP.

As mentioned, the Law on Concessions only provides a general legal framework and currently is under-utilized. It is understood that there are several initiatives ongoing to upgrade its enabling regulatory environment for PPP with the support of multilateral agencies. This would include an amendment of the Law on Concessions, enactment of comprehensive regulations (that is, implementing sub decrees), and the establishment of PPP procedural guidelines.

Currently, there are several projects which are expected to be procured under a PPP scheme. The establishment of a Project Development Fund (PDF), which would be a component of future initiatives, will increase the quality and quantity of pipeline projects, and eventually demonstrate the effectiveness of these efforts.

Last Revised: June 2015

Indonesia

1. Overview

ASEAN's largest economy, Indonesia, has grown at a robust real GDP growth rate within a range of 5.0–6.5 percent from 2004 to 2014, with an exception of a slight decline in 2009. Despite the economy's vulnerability to global market fluctuations, a small public debt burden and fiscal deficit can be seen as positive fundamentals for long-run economic performance.[15] The future growth sustainability would be underpinned by policy initiatives of the newly elected president, Joko Widodo, particularly to eliminate fuel subsidies to redirect government spending to infrastructure development and poverty alleviation.

The grand design of national development is mapped out in the Masterplan for the Acceleration and Expansion of Indonesia Economic Development 2011–2025 (MP3EI) and the National Medium-Term Development Plan (RPJMN 2015–2019), as well as by the National Long-Term Development Plan (RPJPN 2005–2025). The MP3EI was announced in May 2011, during the second term of the former president. It addresses the importance of infrastructure development in six economic corridors in the acceleration and expansion of the country's economic growth toward a GDP per capita level of US$15,000 by 2025.[16] The RPJMN 2015–2019, the third stage of the RPJPN 2005–2025, was published in January 2015, in which the new government describes strategies and targets for infrastructure development aiming to achieve food sovereignty, energy sufficiency, management of maritime resources, and overall welfare improvement.

Both these development plans identify the huge infrastructure financing needs to achieve the ambitious development targets. The RPJMN 2015–2019, for instance, reckons that the financing requirement for the next 5 years will be around IDR5,300 trillion (approx. US$440 billion), out of which the state budget and local budget may cover around 44 percent of it. The remaining portion, meanwhile, is expected to be fulfilled by private sector (34

[15] Fitch Ratings and Moody's Investor Service have assigned the government's long-term sovereign rating to BBB- and Baa3 (slightly above the investment/speculative grade threshold) with a stable outlook, since December 2011 and January 2012, respectively. In May 2015, Standard and Poor's upgraded its outlook to positive, though it has kept the rating at BB+.

[16] ERIA made a significant contribution to the identification of the six corridors, known collectively as the Indonesia Economic Development Corridor.

percent) as well as state-owned enterprises (22 percent).[17] In meeting the massive requirements, the Government of Indonesia, both under the current and former presidents, has considered PPP as one of the key approaches, and thus, has taken steps to streamline its institutional and regulatory frameworks as below.

2. Institutional and Regulatory Frameworks

2.1 Institutional Framework

The overall inter-ministerial issues in prioritized infrastructure plan are determined through the Committee for Acceleration of Prioritized Infrastructure Development (KPPIP), a steering committee recently reactivated and formulated based on the Presidential Regulation (Perpres) No. 75 of 2014. It will function in the establishment of strategies and policy, capacity enhancement of officials, setting quality standards of pre-feasibility studies and evaluation procedure, or other facilitative roles in the implementation of PPP projects. The KPPIP is chaired by the Minister of the Coordinating Ministry of Economic Affairs (CMEA), with members comprising the Minister of the National Development Planning Agency (BAPPENAS), the Minister of Finance, and Head of the National Land Agency (BPN).

BAPPENAS, a directorate under the president, is in charge of project screening and/or prioritization, provision of guidance, and dissemination of information. A key role of BAPPENAS, led by its PPP unit of the Directorate for PPP Development (PKPS), is the publication of a PPP book presenting information to prospective investors on national PPP projects in the pipeline. The Ministry of Finance (MOF) is also a key body in assessing the necessity for government support (tax incentives, finance, or guarantees) for PPP projects. In the MOF, a PPP Unit has been set up under the Directorate General of Debt and Risk Management on the basis of a finance minister's decree signed in October 2014. As the champion for project preparation and enabling environment to accelerate the PPP agenda, the unit is to act for improving the quality of project selection under KPPIP, supporting the project preparation through the Project Development Fund (PDF), or coordination for a public financing and/or guarantee support package.[18] The BPN is the key body in the process of land

[17] Presentation by PKPS at the Asian Infrastructure PPP Summit in Kuala Lumpur, Malaysia, 10 March 2015.
[18] Presentation by the MOF at the Tropical Landscape Summit in Jakarta on 28 April 2015. The establishment of the PPP Centre in the MOF was mandated as a pilot project at the 2013 APEC Finance Ministers' Meeting.

acquisition for public interest. In consultation with these agencies, government contracting agencies (GCAs or PJPK) (for example, a line ministry, government institution, provincial government, or state-owned enterprise) identify and implement PPP projects under contract agreements with project companies.

In order to support the financial aspects of PPP projects, the government has launched several special purpose institutions, which offer guarantees, financing, or project development services. PT PII, also known as the Indonesia Infrastructure Guarantee Fund (IIGF), was established by the MOF in December 2009 under the PP (Government Regulation) No. 35 of 2009. The IIGF provides guarantees for obligations of GCAs under contractual agreements to mitigate risks stemming from the government's actions and inaction. These include breach of contract, delays in obtaining permits and/or licences, changes in the law, GCA's obligation in contractually agreed revenue payments, and so forth. [19] The government has committed to increase the fund's capital, but depending on the size of a project, the guarantees can be backed up by co-guarantors, the World Bank, or the MOF itself. [20]

PT Sarana Multi Infrastruktur (SMI) is a nonbank financial institution established in February 2009 and wholly owned by the MOF. As a catalyst in the acceleration of infrastructure development, its business scope covers the provision of project financing (senior, mezzanine, and equity), advisory services, and project preparation services. For PPP projects in particular, PT SMI has mainly acted in an advisory role to help GCAs in project preparation activities, such as pre-feasibility studies, market sounding, bidding process or contract settlement. Indonesia Infrastructure Finance (IIF) was established by the MOF through the PT SMI in January 2010.[21] Focusing on commercially viable infrastructure projects, it offers fund-based products (for example, long-term financing in rupiah and mezzanine financing), non-fund based, and fee-based services (for example, guarantees and syndication).

The Government of Indonesia has also prepared other types of fiscal support to early stage PPP projects. For instance, the Viability Gap Fund can be allocated as a cash contribution

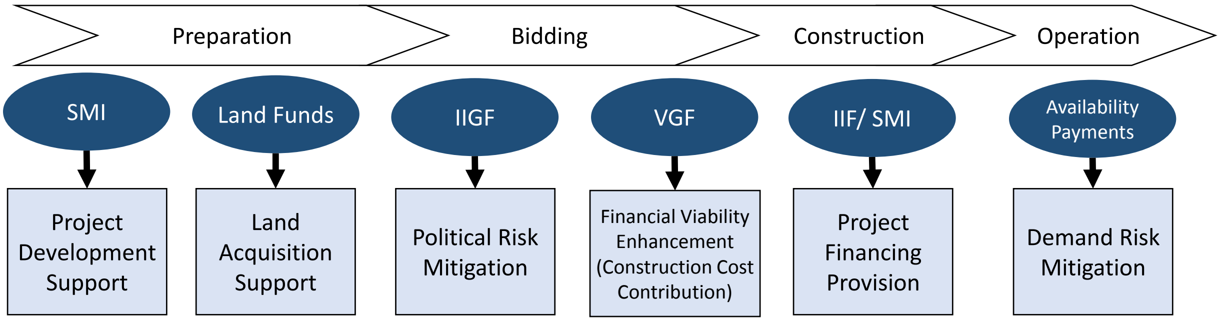
[19] The IIGF periodically publishes 'Risk Allocation Guidelines' (based on the MOF Regulation No. 260 of 2010), which illustrate basic risk allocation between GCAs and business entities in each sector/structure as a reference to guarantee proposals from the GCAs. Guidance notes on appraisal process or criteria can be found in the IIGF's 'Infrastructure Guarantee Provision Guidelines' and other documents.

[20] For IPP projects undertaken under the Electricity Law (not under a PPP framework) in particular, the MOF may issue a Business Viability Guarantee Letter to guarantee obligations of a state-owned electricity offtaker, PLN.

[21] The IIF is currently funded through equity participation by the SMI, Asian Development Bank (ADB), the International Finance Corporation (IFC), Deutsche Investitions-und Entwicklungsgesellschaft mbH, and Sumitomo Mitsui Banking Corporation.

to a part (not dominant) of the construction cost of well-prepared PPP projects (which are economically feasible but not financially viable) under the approval of the MOF.[22] Several forms of land funds for land acquisition or clearance mainly in toll road projects (not necessarily PPP) are also in place, such as the Land Capping Fund for protection against a significant increase in land prices, or the Land Revolving Fund which temporarily covers acquisition costs to be reimbursed by the project's investors.

Figure 3: Forms of Fiscal Supports for PPPs in Indonesia



IIF = Indonesia Infrastructure Finance, IIGF = Indonesia Infrastructure Guarantee Fund, SMI = Sarana Multi Infrastruktur, VGF = Viability Gap fund.
Source: Extension of a presentation material by the MOF at the Tropical Landscape Summit in Jakarta on 28 April 2015.

2.2 Regulatory Framework

During the period of the former president, Susilo Bambang Yudhoyono, Perpres (Presidential Regulation) No. 67 of 2005 as amended by Perpres No. 13 of 2010, No. 56 of 2011, No. 66 of 2013 on Cooperation between Government and Business Entity in Infrastructure Provision set out the provisions necessary for implementation of PPP. Today, the set of regulations is considered to have been replaced by a new cross-sector regulation on PPP promulgated in March 2015, Perpres No. 38 of 2015.

Perpres No. 38 of 2015 covers topics such as the core purposes and principals, applicable sectors, land acquisition, sources of investment return, unsolicited projects, government support and guarantees, project identification and budgeting, and transaction and contract signing. As for its sectoral outreach, the regulation specifies not only economic infrastructure (including transportation, roads, water resources and irrigation, water and

[22] Eligible criteria, such as a minimum investment expenses of IDR100 billion, or user pays principal, are stipulated in the MOF Regulation No. 223 of 2012. Further technical guidelines are elaborated in the FM Decree No 340/KMK.011/2013, and the FM Regulation No. 143/PMK.011/2013.

waste management, ICT, electricity, oil and gas, and renewable energy), but also social infrastructure (including urban, educational, tourism, sports, health facilities, and public housing) as types of infrastructure that can be implemented under sectoral legislations and guidelines. The regulation also enables two types of infrastructure to be bundled as one PPP project.

This new regulation introduced an availability payment model as a source of investment return, in addition to traditional user payments. Also, as in the previous regulations, unsolicited proposals can be submitted by business entities under the condition that the projects are economically and financially feasible. [23] In this unsolicited mode, proponents are entitled to obtain one out of three possible forms of compensation: (i) additional points in the evaluation (10 percent), (ii) a right to match the offer of the first-ranked bidder, and (iii) financial compensation for intellectual property rights (related to a feasibility study made by the proponent) by the government or winning bidders. Regarding the government support and/or guarantees, it stipulates that the MOF approves government support by way of fiscal contributions as well as tax incentives under its criteria of risk management. Additionally, financing may be provided partially from GCAs. Notably, the selection of project companies may now be conducted through direct appointment as well as competitive bidding under specific conditions. [24] It further clarifies that financial closure should be achieved within 12 months after PPP agreements are met, but the deadline may be extendable at most 6 months from time to time in accordance with criteria and approval by the government.

Procedural guidelines for the PPP arrangement are provided through a newly-issued BAPPENAS Regulation No. 4 of 2015 which further details requirements in each procurement stage, namely, (i) planning (identification, budgeting, categorization), (ii) preparation (pre-feasibility study, government support, guarantees), and (iii) transaction (market sounding, public tender, agreement, financial close). The Regulation also specifies the roles and

[23] In addition, the proponents are required to have sufficient financial capacity to implement the project; and projects are technically integrated with the master plan in each sector. If the proponent is a Foreign Legal Entity, it is required to establish a local business entity to sign cooperation agreements with a GCA once it is awarded a project. Foreign equity investment in each detailed sector is restricted by its Negative Investment List.

[24] The direct appointment is applicable only if either (i) a project involves development or expansion of a infrastructure which was built and/or operated by the same enterprise; (ii) the use of a new technology, which can be provided by only one enterprise, is required; (iii) the entity already controls most or all of the land; or (iv) only one entity is qualified through the prequalification process.

responsibilities of PPP nodes, PPP teams and procurement committees that shall be established under regional governments and sectoral ministries.

A legal framework pertaining to land acquisition has been stipulated through Law No. 2 of 2012; Land Procurement for Public Interest, Perpres No. 71 of 2012 as amended by Perpres No. 40 of 2014, No. 99 of 2014, and No. 30 of 2015; Land Acquisition for Public Projects, and Regulation of National Land Agency (BPN) No. 5 of 2012; Technical Guidelines for Implementation of Land Procurement. Law No. 2 of 2012 sets out that land procurement for public interest shall be conducted by the government in line with spatial or development plans and with adequate and fair compensation. Its implementing regulation, Perpres No. 71 of 2012, defines and provides details of a four-stage process, consisting of (i) planning, (ii) preparation, (iii) implementation, and (iv) handover stages. Under this framework, a maximum duration for land acquisition is estimated to be 583 working days. The compensation, determined with an independent appraiser, shall be sourced from the national budget and/or the regional budget, although if a project is financially feasible, a winning bidder shall pay back some or the entire cost of land (according to Perpres No. 38 of 2015).[25]

Perpres No. 40 of 2014 is mainly for raising the amount of land to be acquired directly without the four-stage procedure from the previous 1 hectare to 5 hectares. The latest amendment, through Perpres No. 30 of 2015, articulates that the projects which have obtained location approval while not finishing acquisition to adhere to the abovementioned procedure, but it can start from the implementation stage. To further speed up the process, the Perpres also makes it possible that the private sector first finances the land procurement and seeks reimbursement from the government afterwards.

3. Recent Developments in PPP

3.1 Highlighted Projects

According to the PPP Book 2013, through the years 2009 to 2013, a total of 21 projects proceeded to the tendering process. Among them, an internationally structured 'symbolic' deal is the Central Java 2 x 1,000MW power plant project, sponsored by PT Adaro Energy (Indonesia), J-Power Ltd (Japan), and Itochu Corporation (Japan). In October 2011, the project

[25] In the case where a GCA is a state-owned enterprise or regional enterprise, funding for land acquisition can be sourced from these entities or business entities.

agreements, including a 25-year power purchase agreement (PPA) with PT PLN and a guarantee agreement with the MOF and IIGF (joint guarantee), were signed as the first PPP project under the country's PPP framework. However, due to difficulty in land acquisition, financial close has been extended from original October 2012. In June 2014, the consortium declared force majeure to seek government support for the issue.[26]

The Express Railway project connecting Soekarno-Hatta International Airport and Halim Perdanakusuma Airport is categorized as a 'ready-to-offer project' in recently published 'List of Infrastructure Project Plan Year 2015', up from 'prospective' status in the 2013 PPP Book. The SMI has been playing an advisory role to the Ministry of Transportation for the project promised to alleviate traffic congestion in the metropolitan area, which has been a major constraint to economic growth of the country. The other major railway projects expected to be conducted under PPP will include Bandung LRT, Tanjung Enim – Tanjung Api-Api Railway, or South Sumatera Monorail.

The other projects in the List of Infrastructure Project Plan Year 2015 are 12 airports (new airports in Bali and Yogyakarta, and expansion of 10 regional airports), 7 sea ports (including Kuala Tanjung and Bitung International Hub Port); 8 toll roads (including Manado-Bitung, Tanjung Priok Access, Balikpapan- Samarinda); and 3 water supply projects (including West Semarang, Pondok Gede, Pekanbaru).

3.2 Regulatory and Institutional Issues

The recent issuance of Perpres No. 38 of 2015 has upgraded its PPP framework in the following respects: (i) accelerated process through allowing for direct appointment; (ii) more flexible criteria for unsolicited projects; (iii) clarification of the government's support in land acquisition, guarantees, or project budgeting; (iv) expansion of sectorial coverage to social infrastructure; or (v) introduction of availability payment scheme.

Most recently, the SMI is reportedly in the process of transforming into an infrastructure bank. The government will submit the Indonesian Infrastructure Financing Agency bill to provide a legal basis to merge a MOF fund, the Centre for Government

[26] PT Adaro Energy (2014), News Release. 7 July.

Investment, into the SMI. [27] In line with the direction, the SMI has started to play a role as a Regional Infrastructure Development Fund for local government projects. [28]

The issue of land acquisition has been one of the biggest bottlenecks despite all the law and regulations in place. Other proposals currently under consideration, the institutionalization of a Land Bank[29] or strengthening of the Land Law[30], are expected to expedite the process. All these efforts and initiatives in regulatory and institutional enhancements are considered to be in the right direction; nevertheless it is worthless unless the government agencies collectively will put them into action with strong decisiveness and authority.

[27] *The Jakarta Post* (2015) 'SMI to get more power in channeling funds' 19 June.
[28] Presentation by SMI at the Indonesia Green Infrastructure Summit in Jakarta, Indonesia on 10 June 2015.
[29] Presentation by PKPS at the Asian Infrastructure PPP Summit in Kuala Lumpur, Malaysia on 10 March 2015.
[30] *The Jakarta Post* (2015) 'Mega power project gets legal backing' 26 June.

Last Revised: June 2015

Lao People's Democratic Republic

1. Overview

The Lao People's Democratic Republic (Lao PDR) has a population of only 6.7 million people, of which nearly 80 percent is engaged in the agricultural industry, with US$1,500 GDP per capita. Under the socialist regime, its economic growth has been slow and is one of the least developed countries in Asia.

Most manufactured products are imported, while major sources of foreign currency are hydropower export and tourism. There are big potential in mineral resources and agricultural products export, but the development is hampered by the poor transportation infrastructure primarily attributable to its mountainous landscape. Even river transportation to and from the Mekong river mouth is difficult due to the series of falls along the Mekong River.

A PPP regime with government policies or regulations is not established in the Lao PDR yet. Infrastructure projects have historically concentrated in power, telecommunications, airports, and railways in the form of limited companies, where the government or designated state company holds voting equity interest as a shareholder. However, recent developments, including the development of a PPP decree and pilot PPP projects, show that the government may be taking an interest in developing its PPP sector. But it is still a challenge for the government to develop policy and legal frameworks for PPP.

2. Institutional and Regulatory Frameworks

Although there is no specific regulation or any legal framework setting out a clear PPP policy or concept, some infrastructure projects have been completed through joint ventures between the public and private sector in the form of limited companies (project companies established in the Lao PDR) under the Law on the Promotion of Foreign Investment introduced in 2004, where the government equity percentage is subject to negotiation but should be good enough to have the voting power.

Infrastructure projects under PPP framework, if any, shall be implemented in line with the Seventh Five-year National Socioeconomic Development Plan and under the framework of Foreign Investment Law, which focuses on hydropower stations and renewal energy, power transmission networks, telecommunications, roads, and railways.

The government encourages foreign investment providing incentives such as:

- income tax holidays
- special rates for import duty on the necessary equipment and materials in need for the project
- tax exemptions on dividends
- guarantees against nationalization or expropriation without compensation

Other benefits available for foreign investors are:

- majority shareholding by foreign investors
- collateral securitization on project assets including leasehold on lands
- neutral arbitration, ratification of international treaties such as New York Convention 1958, ICC 500 Paris agreements on avoidance of double taxation
- facilitation of entry and exit visa and work permit for expatriates
- concession period of 25–30 years

The atmosphere is favourable to foreign investors in that the incentives and benefits mostly conform to world normal practice in infrastructure projects, as well as the availability of a 'One Stop Service Unit' under the Investment Promotion Department (IPD) to facilitate foreign investors through the whole process of relevant applications.

One major exception to the world standard conformity is that the land law prohibits foreign ownership of land, and only leasing or receiving land concessions from the states is allowed as is practiced in many countries under a socialist regime, where maximum leasing term is 30 years in cases from private entity and 50 years from the government. However these can be extended upon government approval. Concession periods is said to be a maximum 50 years, but this still is subject to extension by government approval.

Certain approvals are required for a project finance transaction depending on the sector concerned. Generally required approvals, which are also consistent with world standards, are:

- use of International Financial Reporting Standards
- use of offshore bank accounts, foreign source loans, foreign exchange activities
- water source development
- construction work
- forestry activities
- import, possession, and use of wood processing and wood exploitation machinery
- disposition of aquatic animals and wildlife
- use of land for industrial purpose
- factory establishment
- mining, exploration, and survey

Also, under the Secured Transaction Law 2005, a foreign lender should obtain a licence or registration to take a security over assets in the Lao PDR or a guarantee from any entity incorporated in the Lao PDR.

As to the establishment of a joint venture, several registrations and approvals, usually required in other countries as well, such as investment licences, articles of association, enterprise registration licences, tax registration certificates, capital importation certificates, and business operation licences, are required under the Foreign Investment Law.

There is currently no central PPP agency in Laos. Agencies that may be relevant to PPP projects in Lao PDR are:

Ministry of Finance (MOF): The MOF is the designated representative of the government in projects with mixed public and private ownership. In addition, there are several state-owned enterprises that commonly hold shares on behalf of the MOF in project companies in Lao PDR.

Ministry of Planning and Investment (MPI): The MPI is a key actor involving management of investment project. Investment Promotion Department (IPD) under the MPI administers the foreign investment system and reviews investment applications in accordance with the Investment Promotion Law (2009). The Law stipulates principles, regulations and measures/ incentives regarding the promotion and management of domestic and foreign investments.

3. Recent Developments in PPP

The Lao PDR government is currently developing the framework for PPP with support of the Asian Development Bank (ADB). The initiative focuses on three main areas: (i) institutional capacity building, (ii) policy and legislation framework development, and (iii) demonstration of model and/or pilot projects in social sectors, education, and healthcare. [31]

The initiative on policy and legislation framework includes development of a Prime Minister's PPP decree. Some of the main articles in its fourth draft dated on 14 September 2014 can be summarized as follows:

- PPP may not be undertaken in the sectors specified in the Negative List updated from time to time.
- The Investment Committee is responsible for adopting the necessary PPP regulations and standard documents and supervising and approving PPP initiatives prior to tendering and contracting.
- A PPP Unit shall be established as the Secretariat of the Investment Committee, for the purpose of supervision, facilitation, and promotion of the PPP programme and improving skills and knowledge in PPP.
- A Project Preparation Facility shall be set up as a revolving fund managed by the PPP Unit to cover the cost of advisory and support services related to the preparation, structuring, tendering, award, and financial close.
- PPP contract may include direct payments and/or guarantees from the government to the private party.
- Direct negotiations may be applied subject to approval of the Investment Committee based on a recommendation from the PPP Unit.

[31] Ministry of Planning and Investment website. http://www.investlaos.gov.la/index.php/public-private-partnership (accessed 10 June 2015)

- Unsolicited proposals may be proposed to the project executing agency, which may either compensate the initiator for the proposal or give the initiator the right to match the winning bid that results from a tendering process.

At a project level, the Ministry of Public Works and Transport, supported by the World Bank and IFC, is seeking to attract private sector interest in a proposed PPP scheme to enhance the traffic capacity of National Road 13, which serves as the main north–south highway in the Lao PDR. In addition to the project, ADB is assisting in a feasibility study of the Savannakhet University project.[32]

[32] ADB Project Preparatory Technical Assistance. http://www.adb.org/sites/default/files/project-document/152878/48127-001-pptar.pdf (accessed 10 June 2015)

Last Revised: June 2015

Malaysia

1. Overview

Malaysia has continued to grow solidly since 2000. Although the economy was hit by the global financial crisis in 2009, it was recovered rapidly, posting real gross domestic product (GDP) growth rates averaging 5.8 percent from 2010 to 2014. The GDP annual growth rate in 2014 was 6.0 percent, driven by private sector consumption and investment as well as strong export growth.

Malaysia's economic outlook is expected to remain solid although there are some risks from the weakening global environment (especially the slowdown in China), tightening fiscal policy, and falling oil prices. The Malaysian fiscal reform programme initiated in 2013 is considered a supporting factor partly to the government's credit. Moody's Investors Service has affirmed the Malaysian government's bond and issuer rating at 'A3' with a positive outlook in January 2015 considering the fiscal reforms and its fundamental credit strengths.[33]

The Public Private Partnership (PPP) programme in Malaysia is an important component of the Malaysia Incorporated concept – a development approach introduced in 1983. PPP in Malaysia is defined broadly as an arrangement where the private sector provides services and invests in infrastructure assets, which would traditionally have been undertaken by the government. At the crux of this arrangement there is an optimal risk sharing among the parties involved, mutually pre-agreed performance parameters that govern the conduct of the business, and a definite duration for the service concession. Another important characteristic is the continuing interest of the government, directly in the form of an equity holding or indirectly in the form of operational oversight in the projects. These features differentiate PPP projects from the privatization model, whereby the government no longer has control or interest in the entity. To date the PPP model has been applied in a wide range of public projects, such as the development of administration complexes, university campuses (including student residential buildings), hospitals, highways and bridges, integrated transport terminals, port facilities, medical equipment and supplies, solid waste treatment and public cleaning, power generation, and a 'guest worker' monitoring system.

[33] Fitch Rating Agency, meanwhile, has maintained a negative outlook on Malaysia's sovereign rating 'A-', considering the uncertainty in the country's macro economy and credit weakness.

In the Malaysian context, apart from budgetary considerations, PPP is seen as an avenue to benefit from private sector innovation and efficiency. It is also a way to promote shared responsibility and accountability in the provision of public services, as well as to bring about optimal utilization of the nation's resources.

In 2009, the Public Private Partnership Unit (3PU)[34] was established via administrative arrangement. It is accountable to the prime minister. This re-affirms its position as a central agency within Malaysia's administrative framework and reflects a strong political commitment to the PPP programme by the country's top leadership.

2. Institutional and Regulatory Frameworks

Malaysia adopts a centralized approach in the implementation of the PPP programme, whereby 3PU, a dedicated unit under the Prime Minister's Department, is entrusted with the responsibility of spearheading the development and execution of PPP projects. While projects may originate from line ministries, state and local authorities, or the private sector, 3PU is responsible for screening, evaluating, recommending, and negotiating, as well as structuring the contractual obligations of the projects. 3PU also manages the Facilitation Fund – a budgetary allocation in the form of a grant – to bridge the viability gap in high impact private investment projects. With regard to contract management of PPP projects, the responsibility is assigned to relevant line ministries. This includes monitoring of asset development and/or construction, enforcement of contractual and payment obligations, as well as public and community relations.

3PU is structured along sectoral and functional lines. In addition, it has in-house legal and technical teams to assist in the evaluation and structuring of deals, an integrity unit to ensure good governance, and a centre of excellence to focus on best practices.

The Public Private Partnership Committee, chaired by the director general of 3PU, supervises the evaluation of PPP projects. Permanent members of the committee are drawn from the Ministry of Finance, the Attorney-General's Chambers, the Economic Planning Unit, the Federal Land Commissioner, and the Valuation and Property Services Department.

[34] 3PU is also known as Unit Kerjasama Awan Swasta (UKAS).

Representatives of relevant line ministries are co-opted onto the committee for projects that fall under their jurisdiction. This is to ensure their early participation in project development.

When the PPP programme was first introduced, there was no clear distinction between PPP and privatization. In order to facilitate its implementation, the government published Guidelines on Privatisation in 1985. These guidelines were subsequently superseded by the Privatisation Master Plan in 1991. The Master Plan contains an overall policy framework for privatization: its objectives, models, guidelines on asset and equity valuation, staffing and ownership structure, as well as changes to relevant laws and regulations. In the light of further refinement to the partnership concept, the government introduced a new guideline in 2009 entitled PPP Guideline. This guideline complements the Privatisation Master Plan, particularly for projects where a government entity is the paying party. It also provides greater clarity as to the types of project suitable for the PPP approach, procedures to follow when making proposals, qualifying criteria for bidders of projects, operating models, payment mechanisms, and process flow for project approvals. This guideline is provided on 3PU's website.[35]

In order to facilitate further implementation of PPP projects (including those under privatization), amendments were made to relevant laws. These include the Telecommunications Act 1950, the Port Authorities Act 1963, and the Electricity Act 1949, especially for provisions concerning the government's role and functions. The Land Acquisition Act 1960 was also amended in 1991 to empower authorities to acquire private land for use by persons or corporations to implement projects which are beneficial to economic development. Previously, acquisition was restricted to utilization for public use or public utility. In 2010, with the objective of encouraging the participation of private entities in the PPP programme, an amendment was made to Schedule 3 of the Income Tax Act 1967. This amendment allows privatization and PPP projects implemented using the build–lease–maintain–transfer model to enjoy the benefit of the Industrial Building Allowance. In short, the projects will enjoy lower tax burdens, as the building allowance, which effectively is the depreciation expense, can be deducted from taxable income before arriving at tax payable. Apart from this, stamp duties[36] remission has been accorded on service agreements signed

[35] 3PU website. http://www.ukas.gov.my/en/garis-panduan
[36] Stamp duty is a tax that is levied on documents.

between companies and the government, thus reducing transaction cost, based on the Stamp Duty (Remission) Order issued in 2010.

Also, Facilitation Fund Guidelines were introduced in 2011, under the economic stimulus package in the Ninth Malaysia Plan, as an initiative to encourage implementation of private sector projects. These guidelines contain a definition and objectives of the Facilitation Fund, a negative list, and procedures to apply for the fund. In the revised guidelines, released in May 2014, there are more detailed descriptions regarding the amount to which the financing facilitation fund is limited, according to types of projects. The latest guidelines were released in May 2015. Under the Tenth Malaysia Plan, the government has allocated RM20 billion (approximately US$6.4 billion) to the Facilitation Fund. For selected highways projects, the government provides a subsidy for the interest cost incurred by companies, or extends government soft loans. An allocation of RM5 billion (approximately US$1.6 billion) is set aside within the Facilitation Fund to fund the cost of land acquisition for tolled highways.

3. Recent Developments in PPP

Since the introduction of the PPP approach in 1983, around 700 projects have been implemented using the PPP and/or privatization approach.[37] These projects cut across a variety of sectors, such as transport, highways, communication, health, energy and utilities, education and training, and general administration. Given the differences in output specifications, risk appetite, payment structure, and a host of other factors, four distinct PPP models have been adopted. These are:

a. Concession Model: This model is used for highways and bridges and it is normally structured on the build–operate–transfer (BOT) concept.

b. Accommodation Model: This is used for administration complexes, teaching hospitals, and university branch campus projects. The model is typically structured on the build–lease–maintain–transfer approach. The government has introduced the build–lease–operate–maintain–transfer approach for this model too.

c. Process Plant Model: This particular model is being used for power generating projects. It is structured with two forms of payment, a fixed capacity payment and a utilization payment.

[37] Amongst 700 projects, there are about 600 projects that are broadly considered as PPP.

d. Usage Model: This model is suitable for projects with high risk of technology obsolescence where the government is not planning to take ownership of the underlying asset upon the expiry of the contract, such as for services in sophisticated medical facilities. Investment is recouped from charges imposed on the utilization of the facilities by the ultimate users, that is, user charges.

Examples of ongoing PPP projects in the feasibility study, tender, or construction stages are:

a. Roads:
   - West Coast Expressway
   - Gurney Drive to Bagan Ajam Undersea Tunnel

b. Transport
   - High speed rail link between Kuala Lumpur and Singapore
   - Mass Rapid Transit in Greater Kuala Lumpur

c. Power
   - Prai combined-cycle gas turbine power project

d. Others
   - Development of University Malaysia Kelantan student hostels
   - Waste to energy project at Kepong Solid Waste Transfer Station

Reward allocation is undergoing constant review. The tolled highway concession – the West Coast Expressway project for instance – provides a more favourable revenue sharing arrangement for the government. For this project, during the government provided loan (GSL) tenure, 70 percent of the excess toll revenue will be utilized as repayment or prepayment of the GSL. After settlement of the GSL, revenue will be shared on the basis of 30:70 between the government and the company if the targeted internal rate of return (IRR) is not achieved and 70:30 if the actual IRR is more than the targeted IRR.

The 11th Malaysia Plan was released in May 2015. According to the plan, 'strengthening infrastructure to support economic expansion' is regarded as one of six strategic thrusts that the government has defined to help Malaysia stay ahead of the challenges and opportunities of the fast-changing global and political landscape. The summary of focus areas about 'strengthening infrastructure' in the 11th Malaysia Plan" is as follows:

- Building an integrated need-based transport system.
- Unleashing growth of logistics and enhancing trade facilitation.
- Improving coverage, quality, and affordability of digital infrastructure.
- Continuing the transition to a new water services industry framework.

- Encouraging sustainable energy use to support growth.

PPP is expected to continue to play an important role to promote the above-mentioned strategic development of infrastructure.

Last Revised: June 2015

Myanmar

1. Overview

Since the establishment of the civilian government in March 2011, Myanmar's government has launched numerous ambitious economic reforms to attract foreign investment and reintegrate into the global economy, such as the enactment of a new foreign investment law, and currency exchange reforms.

Due to the government's commitment to reform and the subsequent easing of most sanctions, the economic growth has accelerated since 2012. According to the Asian Development Bank, Myanmar's GDP grew by 7.7 percent in FY2014, driven mainly by expansion of construction, manufacturing, and service sectors.[38]

The expansion of the economy has led to growing demands for supporting infrastructure. However, it has become apparent that public infrastructure delivery alone cannot meet the needs for fulfilling the current massive infrastructure deficit.[39] Myanmar's government lacks the fiscal space to undertake infrastructure projects. Therefore, in the short run, most infrastructure projects will be financed by official development assistance (ODA) loans or through attracting foreign investment. Some foreign investment projects have already been implemented in the power, port, and telecommunications sectors through existing laws. A comprehensive regulatory framework on the PPP scheme has not been established yet, while there exist simple build–operate–transfer (BOT) schemes in each sector.[40]

Myanmar's government is seeking to prepare a new investment law to promote investment, cashing in on the launch of the ASEAN Economic Community later this year. In addition, ADB is in the process of providing a technical assistance programme to help the government strengthen its financial management.

[38] Asian Development Bank (2015), *Myanmar: Economy*. Manila: Asian Development Bank. http://www.adb.org/countries/myanmar/economy (accessed 22 June 2015).
[39] According to the Logistics Performance Index published by the World Bank, Myanmar was ranked 145th out of 160 countries in 2014.
[40] The term 'BOT' is used in different meanings in each sector. For example, in the road sector most projects were just rehabilitation projects, not including construction. In addition, during the term, ownership of the roads belong to the Myanmar government, whereas in the port sector, the private sector is allowed to own the port asset, which is more like BOT that is commonly used.

2. Institutional and Regulatory Frameworks

Although there is no organization which covers overall PPP projects, the Project Appraisal and Progress Reporting Department (PARED) of the National Planning and Economic Development (NPED) is a focal point of the privatization programme, including the promotion of PPP. The NPED is responsible for the formulation of national development plans and the enhancement of the economic development of the state. The NPED also has a Directorate of Investment and Company Administration (DICA), which is a window for individual investment projects through scrutinizing and issuing permits for investment proposals. Other NPED departments that are related to ODA and foreign investments are also a part of the process.

The Myanmar Investment Commission (MIC) is a government-appointed body that appraises and approves investment related proposals in accordance with the Foreign Investment Law. It makes the final decision to provide approval of foreign investment.

Regarding its regulatory framework, there is no PPP-enabling legislation governing contracts between a public sector regulator and a private party, in which the private party provides a public service or project, and assumes substantial financial, technical, and operational risk. Instead, private sector investors in, and lenders to, PPP projects will need to consider a framework of laws that are or may be (depending on the sector) relevant to PPP projects in Myanmar including those set out below:

Foreign Investment Law: The new Foreign Investment Law (FIL) was enacted on 2 November 2012, replacing the 1988 law. The FIL sets out key points relating to foreign investment in Myanmar. In particular, it allows foreign investors to participate in one of three ways:

- establish a wholly foreign-owned enterprise;
- a joint venture enterprise with a Myanmar citizen, a local enterprise, or organization (whether private or state owned); or
- any other form of contractual arrangement. The FIL applies to activities prescribed by the MIC from time to time, and approved by the government.

It also sets out, at a high level, a list of the types of activities in which the MIC may prohibit foreign investment. The FIL requires that all foreign companies seeking to operate in Myanmar do so under an investment permit (MIC permit).

Foreign Investment Rules: The Foreign Investment Rules were also issued on 31 January 2013 and implement the FIL, including the procedure for applying for an MIC permit.

MIC Notification: In 2014, the MIC issued three notifications (Notification No.49/2014, No.50/2014, and No.51/2014). Notification No.49/2014 clarified the activities in which foreign investment is prohibited or restricted which were outlined in Notification No.1/2013. For example, the new notification expands the list of activities required to be undertaken by way of a joint venture with Myanmar citizens, a ministry, or a government department. Notification No.50/2014 prescribed the activities that required an environment impact assessment (EIA) to be undertaken. Notification No.51/2014 listed the activities that do not qualify for customs duty and commercial tax exemptions set out in the FIL or the Myanmar Citizens Investment Law.

Permit to Trade and Certificate of Incorporation: Regardless of whether a foreign investor is seeking a MIC permit, no foreign company can carry on business in Myanmar unless it has obtained a permit to trade (PTT) and a certificate of incorporation (COI). The PTT is a business licence that must be obtained by all businesses, whether or not they are formed under the FIL. The COI is proof of the company's valid existence. The PTT and COI are obtained by application to the DICA.

Land Leases: The Foreign Investment Rules also have provisions relating to the leasing of land (foreigners cannot own land in Myanmar). These provisions vary depending on the location and type of land in question and whether or not the government is the landlord. Notably, the MIC must consent to any foreigner leasing land. The MIC has rights to require a lease to be terminated in certain circumstances, for example, if the investor fails to pay rent or causes environmental damage. In principle, the term of a land lease to a foreigner cannot exceed 50 years although the MIC can agree to an extension of the term by two periods of 10 years, that is, to a total of 70 years.

Foreign Currency: In relation to foreign currency, the Foreign Investment Rules provide that a foreign investor may deposit the amount of foreign currency referred to in its application for a MIC permit in a Myanmar bank authorized to take foreign currency deposits. Any change in the amount of foreign currency required for the investment requires MIC approval. The foreign investor may export foreign currency. In some cases, the consent or approval from the Central Bank of Myanmar is required.

Arbitration: On 5 March 2013, the sixth session of the Parliament voted in favour of Myanmar acceding to the New York Convention. The document of accession was filed without reservations on 16 April 2013. However, before the convention can become effective, Myanmar must pass a new arbitration act which is expected to be passed in 2015 and will be based on the United Nations Commission on International Trade Law (UNCITRAL) model law.

Environment: Relevant legislation includes the Constitution, the Myanmar Special Economic Zone Law (2014), the Environmental Conservation Law (2012), and the Union Parliament Law No. 9, 30 March 2012 (implementing rules are being drafted, which provide for environmental impact assessments (EIA) and MIC notification (requiring EIAs for 34 different types of projects).

Foreign loans: Regulatory approval from the MIC and the Central Bank of Myanmar are required for foreign loans. A 15 percent withholding tax applies on interest from offshore loans.

3. Recent developments in PPP

Some BOT projects have been implemented in sectors such as port, electricity, and road. Nevertheless, most of the projects were under unsolicited mode and appropriate risk sharing has not been taken into account. The main challenges for Myanmar's government to undertake PPP projects with effective foreign participation would be to structure bankable projects with appropriate risk sharing under transparent and equitable investment rules.

Regarding legal framework developments, the DICA is currently preparing a new Myanmar Investment Law to modernize the Myanmar Investment Law with the assistance of the International Finance Corporation (IFC).[41] The new law will be a consolidation of the existing Foreign Investment Law and the Myanmar Citizen's Investment Law. The draft will be submitted to the parliament later in 2015 after ongoing public consultations.[42]

In addition, the Myanmar government is currently developing PPP management capabilities with technical support from ADB. The objectives of the support are (i) to deliver

[41] Directorate of the Investment and Company Administration, 'Consultation on the Modernization of Myanmar Investment Law'. http://dica.gov.mm.x-aas.net/ (accessed 22 June 2015)

[42] *Myanmar Times* (2015), 'DICA Calls for More Local Feedback on Draft Investment Law', 7 May. http://www.mmtimes.com/index.php/business/14334-dica-calls-for-more-local-feedback-on-draft-investment-law.html (accessed 22 June 2015)

to the government sound tendering processes and decision frameworks based on the principles of PPPs; (ii) to promote consistent, objective, and transparent application of PPP project development criteria to an international standard; and (iii) to create recommendations for development of institutional management capacity for PPP.[43]

Within infrastructure developments, the immediate priorities are expected to be in urban transportation systems, upgrading national airports and construction of new airports, and water utilities. Notably, three international airport concessions have recently been procured under a PPP scheme: the New Hanthawaddy (a consortium of Yongnam Holdings Ltd, Changi Airport Planners and Engineers, and JGC Corporation chosen as the preferred bidder), Mandalay (awarded to a consortium led by JALUX Inc. and Mitsubishi Corporation), and Yangon (awarded to a consortium led by local Pioneer Aerodrome Services). Other than these sectors, one of the potential and contentious projects is a special economic zone (SEZ) development in Dawei. As the use of the PPP method in this huge flagship project will be essential in the long run, the development of the SEZ is expected to be a good opportunity for improving Myanmar's PPP environment.

[43] Asian Development Bank, *47267-001: Support for Public-Private Partnership Framework Development*. http://adb.org/projects/details?page=details&proj_id=47267-001 (accessed 22 June 2015)

Last Revised: June 2015

The Philippines

1. Overview

The Philippine economy has been growing steadily since President Benigno Aquino, Jr. was elected in 2010. The economy was one of the top performing economies in ASEAN in 2014, with a real GDP growth rate of 6.1 percent.[44] The country's strong economic performance is reflected in high growth, low and stable inflation, sustainable fiscal and external positions, and a strong financial sector. The Philippines continues to work in a favourable investment climate and a stable political environment, which give rise to abundant economic opportunities that have attracted major investors.

In December 2014, the international credit rating agency, Moody's Investors Service, raised the country's credit ratings to Baa2 (which was Ba3, four notches below in July 2010), citing the country's ongoing debt reduction and improvements in fiscal management, continued favourable prospects for strong economic growth and limited vulnerability to the common risks currently affecting emerging markets.[45] The other two international credit rating agencies, Standard & Poor's and Fitch have also upgraded their credit ratings of the Philippines to investment grade.

The Aquino administration has identified public–private partnership (PPP) as a key component of its overall strategy for inclusive growth. In the words of Executive Order No. 8 (2010) the Philippine PPP programme is a 'cornerstone strategy to accelerate the infrastructure development of the country.' Using the country's long experience with partnership arrangements with the private sector in the provision of infrastructure, the Aquino administration is utilizing the PPP programme more vigorously to improve the country's infrastructure through more transparent and competitive processes, efficient project implementation, monitoring and evaluation.

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[44] Bangko Sentral ng Pilipinas, Selected Economic Indicators. http://www.bsp.gov.ph/statistics/spei_new/tab48_sas.htm

[45] Moody's Investors Service (2014), '*Rating Action: Moody's Upgrades Philippines to Baa2, Outlook Stable'*, 11 December. (accessed June 20 2015)

2. Institutional and Regulatory Frameworks

The basic legal framework for the PPP program is the Build–Operate–Transfer Law, Republic Act No. 6957 (1990) as amended by Republic Act No. 7718 (1994). The Philippines Congress enacted the first build–operate–transfer (BOT) law in Asia in 1990 that institutionalized private sector participation in infrastructure and development projects.

Other pertinent laws and regulations that strengthen the policy and institutional environment for PPP projects are:

- Republic Act No. 7160 (1991) (known as Local Government Code of 1991) describes the powers and authority of local government units to promote local development, among other functions. The Department of the Interior and Local Government Memorandum Circular No. 2010-16, provides for the creation of PPP Units/subcommittees at the local development councils to assist in the formulation of action plans and strategies for PPP projects at the local level.
- Republic Act No. 8974 (2000) facilitates the acquisition of right-of-way, site, or location for national government infrastructure projects.[46]
- Republic Act No. 8975 (2000) prohibits lower courts from issuing temporary restraining orders, preliminary injunctions, or preliminary mandatory injunctions, so as to ensure expeditious completion of government infrastructure projects.
- Executive Order No. 423 (2005) prescribes the rules and procedures for the review and approval of government contracts to conform to Republic Act No. 9184 (the Government Procurement Act). Section 8 of Executive Order 423 mandated the National Economic and Development Authority (NEDA) to issue guidelines regarding joint venture agreements with private entities. The NEDA released the guidelines in 2008, which provide the framework for PPPs that are pursued through the joint venture mode. The guidelines were revised in 2013, in which NEDA stipulated that the NEDA Investment Coordination Committee (ICC) acts as the approving authority for joint venture proposals for infrastructure projects which involve government

contributions amounting to PHP150 million and above. Under the 2008 guidelines, the joint venture proposal only had to be approved by the head of the government agency.

- Executive Order No. 8 (2010) reorganized and renamed the Build–Operate–Transfer (BOT) Center to the Public–Private Partnership (PPP) Center of the Philippines and transferred its attachment from the Department of Trade and Industry to the NEDA to improve the institutional framework for PPP.
- Executive Order No. 78 (2012) mandated the inclusion of provisions on the use of alternative dispute resolution mechanisms in all contracts involving PPP, BOT, and joint venture agreements between government and private entities, and those entered into by local government units.
- The amended BOT Law – Implementing Rules and Regulations (2012) was for promoting an accelerated processing of PPP projects, with clearer transparency measures in the bidding for and award of projects. It also put in place improvements in governance and accountability mechanisms. Guidelines on unsolicited proposals have also been improved.
- Executive Order No. 136 (2013) amended several sections of the Executive Order No. 8 series of 2010. The Executive Order appointed a PPP governing board, which shall function as the overall policymaking body for all PPP-related matters. It also clarified that the PPP Center shall be the Secretariat of the governing board. Further, the Executive Director of the PPP Center shall become a member of both the NEDA Infrastructure Committee-Technical Board and the NEDA Investment Coordination Committee-Technical Board. By this Executive Order, the creation of a committee to properly administer and manage the Project Development and Monitoring Facility (PDMF) was also stipulated.

The 1987 Constitution describes the nationality limitations on land ownership. Corporations at least 60 percent of whose capital is owned by Filipino citizens may acquire private lands. Such corporations cannot own public land and can only hold the same by way of lease. However, these apparent limitations have not discouraged PPPs in transportation and road networks.

The Public–Private Partnership (PPP) Center, an agency attached to the NEDA, is the main government coordinating and monitoring agency for the PPP programme. The center provides advisory services to facilitate development of PPP projects, build capacity of national implementing agencies and local government units (LGUs), advocate policy reforms, and monitor implementation of PPP projects. The PPP Center directly reports to the PPP Governing Board, which sets the strategic direction of the PPP programme and creation an enabling policy and institutional environment for PPP. The Board is represented by the NEDA as the chairperson; the Department of Finance (DOF) as the vice-chairperson; with members from the Department of Budget and Management (DBM), the Department of Justice (DOJ), the Department of Trade and Industry (DTI), Office of the Executive Secretary, and the private sector co-chairperson of the National Competitiveness Council.

Government support for PPPs is provided via two funds: first, the Project Development and Monitoring Facility (PDMF), and second, the Strategic Support Fund. The PDMF was established with assistance from development partners, the Australian Agency for International Development and ADB. The fund is managed by the PDMF Committee (NEDA, DOF, DBM, and the PPP Center) with an aim to develop a robust pipeline of properly prepared and well-structured PPP projects. It can be tapped to finance pre-investment studies, to prepare tender documents and draft contracts, bidding processes, and contract negotiations to bid award stage as well as to ensure effective monitoring of project implementation. External advisors from a PDMF panel of pre-qualified consulting firms may assist in the structuring of PPP projects, conducting business case or pre-feasibility studies or feasibility studies for PPPs, and preparing detailed engineering. As a revolving fund, reimbursement of the PDMF support is a condition precedent for contract award to the winning project proponent.[47]

Under the Strategic Support Fund, the government provides a lump sum appropriation in the annual budgets of implementing agencies engaged in PPP to fund the government's share for PPP project components. The budget will be used for right-of-way acquisition, resettlement, government's counterpart fund for the construction, and other related costs

[47] As of September 2014, the PDMF funds amounting to about US$75.7 million includes reflows of approx. US$6.2 million in addition to about US$18 million from the Australian Agency for International Development administered by the Asian Development Bank, and about US$51.5 million from the Philippine Government (Source: Presentation by the PPP Center at the first PPP Networking Forum in Manila, Philippines. http://ppp.gov.ph/wp-content/uploads/2014/12/Day-01-Session-02-02-Cosette-Canilao-PHILIPPINES.pdf (accessed 20 June 2015)).

for actual and potential PPP projects identified by the implementing agency, provided that these do not exceed 50 percent of total project costs.[48]

Under the BOT Law, as amended, the implementing agency and/or local government units can implement their PPP/BOT projects through any of the following implementation modes: public bidding (*solicited mode*) or *unsolicited mode*. Private investors and/or proponents engaged in PPP projects under the solicited mode may receive fiscal incentives, for example, tax exemptions, tax reliefs, government undertakings such as credit enhancements, and other incentives. Upon registration with the Board of Investments of the Department of Trade and Industry and compliance with existing rules, such private proponents may also benefit from incentives provided under certain laws, for example, the Omnibus Investment Code as amended by Republic Act 7918, the Investment Incentives Act, the Tourism Incentives Program of 1974, and the Mini-Hydroelectric Power Incentives Act.

Under the solicited mode, the implementing agency or local government unit chooses to procure priority infrastructure and development projects through transparent and competitive public bidding processes. Under the unsolicited mode the implementing agency or local government unit may accept proposals from project proponents to undertake projects on a negotiated basis provided that: i) the project involves a new concept or technology and is not part of the list of priority projects, ii) no direct government guarantee, subsidy, or equity is required, and iii) the implementing agency or local government unit has invited by publication, for 3 consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals. The unsolicited proposal will be subjected to challenge and may be awarded to a competitor who submits a lower price than the original proponent. The original proponent has the right to match the better price proposal submitted by a comparable proponent.[49]

3. Recent Developments in PPP

At the time of this writing, Congress is deliberating on the proposed amendments to the BOT Law seeking to expand the coverage of Republic Act 7718 into a PPP Act, which

[48] Department of Budget and Management National Budget Circular No. 538, 22 March 2012.
[49] Philstar (2015), 'The Swiss Challenge is Going to be Applied to an Unsolicited Toll Road Project, NLEx-SLEx Connector Road', 28 April. http://www.philstar.com/business/2015/04/28/1448548/mpic-unit-starts-talks-dpwh-swiss-challenge (accessed 20 June 2015)

includes joint ventures as an additional form of the PPP scheme. The proposed amendments to the law also aims to provide improved guidelines on handling unsolicited proposals from interested private proponents, and on facilitating their competitive challenge. Other proposed amendments include the institutionalization of the PDMF, the PPP Governing Board and the contingent liability fund. The PPP Act is expected to further improve and streamline the PPP processes and encourage private sector participation. [50]

As of 9 June 2015, there are 46 PPP projects in the pipeline with 10 PPP projects having been awarded by the Aquino administration, with an estimated cost of PHP189 billion (approx. US$4.2 billion).[51] These are the Daang Hari – SLEX Link Road Project, the PPP for School Infrastructure Project Phase I and Phase II, the Ninoy Aquino International Airport (NAIA) Expressway (Phase II), Modernization of the Philippine Orthopedic Center; Automatic Fare Collection System, Mactan–Cebu International Airport passenger terminal building, the operation and maintenance of LRT Line 1 Cavite Extension, the Integrated Transport System–Southwest Terminal Project, and the Cavite–Laguna Expressway.

In addition, according to the same pipeline data, 16 PPP projects are under bidding stage, 2 are under NEDA Board approval, and 4 are under ICC approval. Projects with estimated cost over PHP50 billion include the Laguna Lakeshore Expressway Dike Project, the Regional Prison Facilities through PPP, the North–South Railway Project (South Line), the LRT Line 6 Project, the NAIA Development Project, and the Ortigas Taytay LRT Line 4 Project.

Another notable project under bidding stage is the Tanauan City Public Market Redevelopment Project, which became the first LGU PPP project approved by the Investment Coordination Committee – Cabinet Committee (ICC-CC) under the current PPP programme. Likewise, LGUs are expected to roll out more local projects.

[50] *Business World* (2015), 'House Completion of BOT Law Amendments seen in June', 3 March. http://www.bworldonline.com/content.php?section=Economy&title=house-completion-of-bot-law-amendments-seen-in-june&id=103702 (accessed 20 June 2015)
[51] PPP Center, Status of PPP Projects (as of 9 June 2015)

Last Revised: June 2015

Singapore

1. Overview

The Singapore government has been interested in the PPP model for a number of years. The Best Sourcing Framework of 2003 stated that the public sector is to engage private sector providers to deliver non-core government services where the private sector can do so more effectively and efficiently. According to the Ministry of Finance's Public Private Partnership Handbook, published in October 2004 and updated in March 2012 (the PPP Handbook), the PPP procurement model is to be considered for public infrastructure projects with a value in excess of SGD50 million (approximately US$40 million). The 2004 version of the PPP Handbook lists sectors where the PPP model can be applied as including sports facilities; incineration plants, water and sewerage treatment works; major information technology infrastructure projects; education facilities, including student accommodation facilities; hospitals and polyclinics; expressways; and government office buildings.

Over the last 10 years, there have been more than 10 infrastructure projects that have been procured in Singapore under the PPP model. These projects have been in a variety of sectors, including education, leisure, water, and waste incineration. The Public Utilities Board, which manages the water sector, and the National Environment Agency, which manages the waste sector, have been the most active government agencies in using a PPP type concession structure for major infrastructure projects.

The Singapore government has been supportive of PPP, although it has fewer funding constraints than many other countries that have used PPP. Given its strong economy, stable regulatory environment, and robust public sector creditworthiness, the Singapore PPP sector has attracted considerable interest from international developers, contractors, and lenders. In addition, major local infrastructure companies (such as Keppel Corporation and Hyflux Ltd) and local banks (such as DBS Bank and OCBC Bank) have been active in the PPP market in Singapore.

2. Institutional and Regulatory Frameworks

There are no specific laws or regulations governing PPP in Singapore. Having a sound and solid regulatory framework, PPP projects follow general laws together with guidance provided in the Public Private Partnership Handbook (PPP Handbook). The PPP Handbook sets out general policies and guidelines for the use of PPP in Singapore. In relation to general public procurement, the main legislation in Singapore is the Government Procurement Act 1997. There is also no model concession agreement and PPP projects in Singapore have to date largely drawn upon United Kingdom and Australian precedents for contract structure and risk allocation.

The PPP Handbook was published by Ministry of Finance in 2004 and revised in 2012. The Handbook presents definition of PPP, principals on structuring of PPP, and PPP management issues.

It also sets out the detailed PPP procurement process which should be followed for PPP projects. This process follows established PPP market practice of having a number of competitive bidding stages. A preliminary 'pre-qualification' stage is intended to ensure that only properly qualified bidders will submit full bids for the concession. This will be followed by an invitation to tender (ITT) stage. At the ITT stage, the short-listed bidders will be issued with the full project documentation, including scope of work and contract terms. The bidders will be required to submit detailed technical and pricing proposals and indicate their acceptance or otherwise of the proposed contract terms. The ITT stage may also include a process of clarification with the procuring authority. Following submission of bids, a preferred bidder will be selected based on the overall evaluation of each bid. During the final 'preferred bidder' stage, the project and finance documents will be finalized.

There is currently no central PPP agency in Singapore (although see below on the PPP Advisory Council). Relevant government ministries and agencies include:

Ministry of Finance

The Ministry of Finance regulates PPP projects in Singapore. The Ministry of Finance's role is to formulate PPP policies, raise awareness amongst public agencies to increase knowledge of PPP, and to work closely with public agencies on specific projects. The Ministry of Finance also pre-selects the potential PPP sectors and then approaches the relevant authorizing ministries to seek their cooperation in the promotion and execution of PPP contracts.

Implementation departments

Other government departments are involved in the PPP procurement process where the project falls within their remit. For example, the Ministry of Community Development, Youth and Sports was involved in the procurement of the Sports Hub PPP Project and the Ministry of Defence was the procuring authority for several defence sector PPP projects.

Statutory boards

The Singapore government has established a number of statutory boards to manage specific public sector services. Examples include the Public Utilities Board, the National Environment Agency, and the Singapore Sports Council, all of which have procured PPP projects as the public sector authority and counterparty to the private sector project company. Statutory boards in Singapore are bodies corporate which are created by statute (for example, the National Environment Agency Act 2002).

PPP Advisory Council

The Ministry of Finance set up a PPP Advisory Council at the same time it published its PPP Handbook in 2004. The stated objective of the PPP Advisory Council was to provide advice to public agencies exploring PPP and to facilitate resolution of cross-agency issues. However, this agency has not been particularly visible in the market and has not functioned as a proactive 'PPP champion' within government.

3. Recent Developments in PPP

Since the introduction of the PPP model in 2004, more than 10 projects have been implemented using the model. These projects have been in a variety of sectors, including education (ITE College West), leisure (Sports Hub), water (several water treatment and desalination plants), technology, defence and waste incineration (Keppel Seghers Tuas Plant).

A high speed rail link covering a route of around 300 kilometres between Kuala Lumpur in Malaysia and Singapore, which is intended to shorten the journey between the two cities to 90 minutes, is one of the prospective cross-border infrastructure projects in the region. This project is ongoing and currently at the stage of a feasibility study with the inter-government and procurement arrangements not finalized yet. A PPP structure is being actively considered for the implementation of the project and construction is scheduled to be completed after 2020.

Last Revised: June 2015

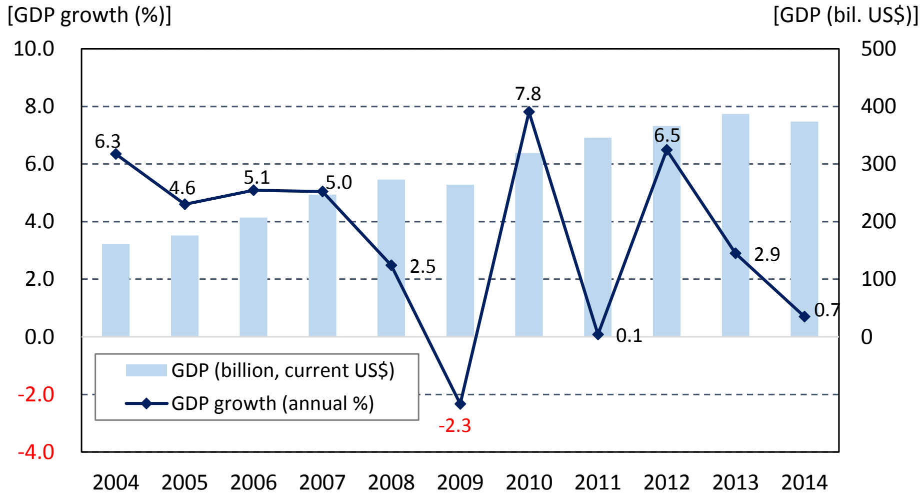
Thailand

1. Overview

Thailand has a population of more than 66 million, and a total area of 513,120 km^2. With a well-developed infrastructure, a free-enterprise economy, generally pro-investment policies, and strong export industries, Thailand enjoyed solid growth from 2000 to 2007 – averaging more than 4 percent per year – as it recovered from the Asian financial crisis of 1997–1998. The global economic downturn in 2008, however, cut Thailand's exports severely, which in turn caused economic growth to fall to 2.5 percent in 2008 and –2.3 percent in 2009 (Figure 4). Economic growth in 2011 was low due mainly to severe floods. In 2014 there was political confusion caused by a military coup, however influence on the market was limited and a recession was avoided. The international credit rating agency, Standard & Poor's, maintained Thailand's existing credit rating for 2014 at BBB+ (long-term foreign currency) with a stable outlook. In an effort to maintain strong growth, the government intends to expedite major investments in both ongoing and new projects in order to raise the quality of life and increase national competitiveness. This strategy will require national fiscal discipline, transparency, and accountability.

In Thailand, PPP is a term that has historically been used in a broad sense to cover concession-based private investment in public infrastructure, made on the basis of traditional project finance structure. These traditional forms of project financing have played a major role in many sectors of the Thai economy for more than a decade, most notably in the energy, telecommunications, and transport sectors. According to the Global Competitiveness Report 2014–2015, Thailand's infrastructure is ranked 48th out of 144 countries indicating that infrastructure is developing, but that there remains room for improvement.

Figure 4: Thailand Economy



Source: International Monetary Fund, World Economic Outlook Database.
https://www.imf.org/external/pubs/ft/weo/2015/01/weodata/index.aspx (accessed 20 June 2015)

2. Institutional and Regulatory Frameworks

The first PPP law enacted by the Thai government to guide public–private participation and investment was the Public Participation in State Undertaking Act B.E. 2535 (1992) also known as the PPSU Act. This act was brought in to regulate PPP activities utilizing public assets in projects exceeding B1 billion (approximately US$33.3 million) in value. However, since the main purpose of this PPSU Act was to prevent government corruption in granting rights to private investors for operation or use of state properties, rather than to provide an enabling environment for PPP projects, only certain types of PPP project involving state properties (for example, build–operate–transfer (BOT) and build–transfer–operate (BTO) schemes) are covered by the Act. Several other types of scheme such as build–own–operate (BOO) and management contracts are not covered.

The new PPP Act, the Private Investments in State Undertakings Act B.E. 2556 (2013), took effect on 4 April 2013 to replace the old PPSU Act. The new act aims to streamline the project approval process through the PPP Policy Committee, chaired by the Prime Minister with the Minister of Finance acting as Vice Chairperson. The State Enterprise Policy Office (SEPO) is to act as the PPP secretariat office. The SEPO is responsible for preparing a draft national PPP strategic plan for approval by the PPP Policy Committee and the Cabinet respectively. The PPP strategic plan must be set out as a 5-year investment and policy plan, including priority sectors and pilot projects, as well as investment budgets. For the time being, the PPP Act still covers investment projects exceeding B1 billion. However, the PPP Policy Committee is given authority to consider broadening the act to cover projects which have values under this threshold (See section on 'Recent Developments in PPP' below). For a project exceeding B1 billion, an external consultant who is in the SEPO's list of qualified consultants must conduct a feasibility study. The feasibility study is to be submitted to the responsible ministry, the SEPO, and the PPP Policy Committee for approval respectively. If the project requires government's budget, agency's budget, or debt guaranteed by the Ministry of Finance, after the Committee approves such a project, the feasibility study must be submitted to the Cabinet for final approval.

In Thailand, a long-term concession agreement between the relevant government authority and an investor is seen as a common feature of almost all project financing. The type of structure used depends on the nature of the project being implemented and the relevant government authority. The most common structures for project financing are:

- Build–Own–Operate (BOO)
- Build–Transfer–Operate (BTO)
- Build–Operate–Transfer (BOT)

The government usually finances all civil works either through the fiscal budget or through borrowing from multilateral institutions. Other kinds of government contribution, for example, equity, are also allowed under each project agency's establishment act. However, the Thai government cannot provide any guarantee for funding to the private sector. Its funding guarantees are only provided for government agencies and state-owned enterprises.

Thai citizens are allowed to own immovable assets, while foreigners can obtain ownership for land and buildings under conditions specified in the Land Law, the Private, Commonly-owned Housing Act, the Investment Promotion Act, and the Industrial Estate Authority of Thailand Act. In the case of PPP projects, the ownership of assets depends on the particular project agency's establishment act. For example, the Mass Rapid Transit Authority (MRTA) Act specifies that the ownership of assets will be transferred to the MRTA once construction is completed. Ownership of land and buildings therefore adheres to government policies. The government is allowed to acquire land or immovable assets for public utilities, or in the public interest, according to the Expropriation of Immovable Property Act B.E. 2530 (1987). However, the objectives of land use and the boundary of the required lands of each project must be specified and issued in a royal decree. A compensation committee will then be appointed to set the property value and amount of compensation.

3. Key Features of the PPP Act

The 2013 PPP Act provides a fundamental change in the project identification and approval process by introducing clear systematic guidelines for the implementation of PPP projects. The act contains the following key provisions:

- A PPP Policy Committee, chaired by the prime minister, is appointed to set up a 5-year strategic plan and to approve the PPP project.
- The PPP strategic plan must be set out as a 5-year investment and policy plan, identifying priority sectors and pilot projects. The target contribution from each financial source such as national budget or private funds must also be defined in order to ensure accountability and fiscal discipline.
- The State Enterprise Policy Office (SEPO) is to act as a secretariat office for the above committee as a central PPP unit. The key roles of this unit are to prepare PPP strategic plans, provide recommendations on project feasibility, and provide a database of, and information about, PPP schemes.
- The host agency must hire external consultants to conduct a feasibility study. A feasibility study must at least cover project costs, comparison of costs and values among national or agency budgets and PPP, PPP types, project impacts, risk identification and risk management. The proposal, including a feasibility study, must then be submitted to the responsible ministry, the SEPO, and the PPP policy committee for approval respectively.
- The procedure of consideration will be shortened, and the time period for the relevant government organizations to fulfil their duties will be set within a reasonable time. The entire process for a PPP project approval is expected to be shortened to approximately 7 to 12 months instead of 2 years previously. It is now possible, for example, for the project development phase to be started without consulting the Cabinet.
- After the project is approved by the PPP policy committee, the host agency must set up a selection committee consisting of a representative of the host agency as

chairperson, and members from the Bureau of the Budget, the SEPO, the Office of the Attorney General, or a maximum of four qualified persons. The role of the committee is to approve terms of reference and a draft contract, and to select the desired private entity. The selection result must be submitted to the responsible minister for comment and then submitted to the cabinet for approval.

- A PPP procurement procedure and a standard PPP contract will be also developed by the SEPO to standardize and facilitate negotiations, and to strengthen project management. Contract management matters, such as criteria and standard clauses to amend or renew an agreement between the public and private sectors will be provided.
- The MOF is to establish a Private Investment Promotion Fund to provide 'seed money' for new investment projects. This fund will be used to support the preparation of a PPP strategic plan and to support state agencies in making project proposals and conducting feasibility studies. This fund is to be managed by a committee chaired by the Permanent Secretary of the Ministry of Finance.
- The host agency will rank PPP alternatives and justify non-PPP options by comparing the value for money among alternatives.

4. Recent Developments in PPP

The PPP Policy Committee has been appointed and is currently chaired by Deputy Prime Minister Pridiyathorn Devakula. It is reported that this Committee had a meeting on 11 February 2015 and agreed that relevant organic laws and regulations need to be issued soon.[52] The organic laws include governing the calculation of the project value, the method to evaluate the projects, procedures to invite firms into joint ventures, the screening process, contract standards, and joint investment by private firms in projects worth less than B1 billion. Meanwhile, the new regulations allow the ministries responsible to approve projects worth less than B1 billion. Only projects worth more than B5 billion are required to be voted by the PPP Policy Committee. For projects valued from B1 billion to B5 billion, only those involving

[52] Bangkok Post (2015), 'State Mulls Raising PPP Value Plan Awaiting Organic Laws, Regulations', 12 February.

infrastructure and public services must go through the committee, while the other projects are approved by the relevant ministries.

The PPP strategic plan is also considered to be under a finalizing process by the PPP Committee through public hearing, and approval by the Cabinet.[53] The areas open to the private sector in the plan will cover not only conventional economic infrastructure such as mass transit, sea ports, airports, water management, but also social infrastructure in the fields of education, public health, science, or technology.

An overall national development plan, an 8-year transportation infrastructure programme for 2015–2022, was approved by the Cabinet in October 2014. Total project cost in the programme is B3.3 trillion. The private sector is allowed and expected to play a large role in the programme through the new PPP scheme. Development projects to be implemented this year include digital economy, water management, and social infrastructure projects for education and public health.

[53] The Nation (2015), 'Transparency, Accelerated Process Key to PPP Plan: Sommai', 10 February.

Last Revised: June 2015

Viet Nam

1. Overview

The economy of Viet Nam has been growing steadily since 1988. Its GDP growth rate has been in the range of 5.0 percent to 9.5 percent per annum, despite various fluctuations in the international economy such as the 1997–1998 Asian financial crisis and the 2008–2009 global financial crisis. Currently, according to Fitch Ratings, Viet Nam's long-term foreign and local currency issuer default ratings (IDRs) are at 'BB-' and the country ceiling is at 'BB-' upgraded in November 2014 from the previous 'B+'. The short-term foreign-currency IDR is at 'B', showing no change compared to the rating at the beginning of 2013.

The government has a target to be an industrialized country by 2020. In order to achieve the target, various policies have been adopted and are under implementation. One of the most important policies relates to building necessary infrastructure to boost economic development. According to the Ministry of Planning and Investment (MPI), the estimated necessary capital for infrastructure construction in Viet Nam by 2020 is calculated as US$400 billion, of which half is planned to be mobilized from the private sector.

The national policy of mobilizing private funds for infrastructure development can be seen in the Socio-Economic Development Strategy 2011–2020, adopted in the general assembly XI of the Party held in January 2011 (general assembly of the party is held every 5 years to decide the basic direction of the country). The Socio-Economic Development Strategy 2011–2020 stipulates clearly the recommendation of involvement by various economic organizations, including foreign investment, in infrastructure development.

After long discussions on PPP investment form, Viet Nam has been rushing to complete the new legal framework since 2014, to call private sector for public investment project by series of issuance of new and amended regulations. The government issued the new Decree 15 on PPP Investment Form on 14 February 2015 (Decree 15) and Decree 30 on PPP Investor Selection on 17 March 2015 (Decree 30). Relevant ministries are now drafting circulars related to the newly issued laws and decrees.

2. Institutional and Regulatory Frameworks

2.1 History

The history of PPP regulation began in 1992 when the definition of BOT firstly appeared in the revised Law on Foreign Investment 1992. The first Decree on BOT guidelines was promulgated in 1993. The Decree on BOT was revised three times in 1998, 2007, and 2009. In the meantime, in 2010, the government issued Decision 71 on the trial regulation on PPP Investment Form to promote more PPP projects for infrastructure construction. From the preparation of Decision 71, many issues on PPP have been discussed among ministries and now the National Assembly and the government is going to complete the new legal framework for the new era of infrastructure construction.

2.2 Institutional framework

Recent changes of the institutional framework are the following:

1) Amended the Law on Tendering in 2013, effective from 1 July 2014

   Before the amendment, there were only two types of tendering for public procurement: tendering for goods and tendering for contractor for construction. The amended Law on Tendering in 2013 added a third type of tendering, which is tendering for the PPP investor. As a result, choosing a PPP investor is regarded as one of normal public procurement.

2) The new Law on Public Investment in 2014, effective from 1 January 2015

   Before the issuance of the Law on Public Investment, public investment was implemented under many kinds of law and there was no comprehensive law to instruct public investment. The rule on public investment is made clearer by the issuance of the Law on Public Investment.

3) The amended Law on Construction in 2014, effective from 1 January 2015

Some concepts of the Law on Construction were amended to harmonize with the new Law on Public Investment.

4) The amended Law on Investment in 2014, effective from 1 July 2015

   Before the Law on Public Investment, the Law on Investment was the principal law for PPP projects, including BOT. Some concepts of the Law on Investment were amended to harmonize with the new Law on Public Investment.

5) Decree 15 on PPP Investment Form dated 14 February 2015

   Decree 15 is the principal regulation on implementation of PPP investment form, which is the most important regulation for PPP.

6) Decree 30 on PPP Investor Selection dated 17 March 2015

   Decree 30 is issued under the amended Law on Tendering to provide guidance on tendering of PPP investor selection.

7) Relevant circulars are going to be issued in 2015 and 2016, namely:
   a. Circular on Project Development Fund
   b. Circular on Preparation and Appraisal of Feasibility Study
   c. Circular on PPP Contracts
   d. Circular on forms of submission documents and official documents related to PPP
   e. Circular on Viability Gap Fund
   f. Circulars on guidelines of each sector by each ministry

The new legal framework shows the commitment of the government to focus on infrastructure construction and their will to mobilize private funds for infrastructure construction.

2.3 Steps of PPP project formulation and implementation

Decree 15 defines the steps of PPP project formulation and implementation as the following:

1) The project is consistent with the approved master plan
2) Project proposal: Preparation – Evaluation – Approval
3) Announce in public the list of PPP projects calling for investors
4) Feasibility study report: Preparation – Evaluation – Approval
5) Preparation of bidding documents
6) Bidding
7) Contract negotiation
8) Issuance of investment registration certificate
9) Implementation of project
10) Supervision
11) Accounting finalization of investment capital within 6 months after completion of construction
12) Transfer of project facility according to contract

2.4 The concept of Decree 15

Coordinating agency

The Ministry of Planning and Investment (MPI) is the coordinating ministry for the execution of PPP projects and assists the government to uniformly administer investment activities in the PPP form on a nationwide basis. The MPI is expected to advise investors preparing a PPP project.

The government has established the State Steering Committee for PPP, to assist the authorized state body to formulate and commence projects. Decision No. 1624/QD-TTg of the prime minister dated 29 October 2012, assigns Vice Prime Minister Hoang Trung Hai to chair the committee. Deputy chairpersons are the Minister of Planning and Investment and the Deputy Minister of Finance. The group also includes representatives of the Government Office, the State Bank of Viet Nam, the Ministry of Justice, the Ministry of Industry and Trade, the Ministry of Transport, the Ministry of Construction, and other relevant bodies.

Decree 15 affirms that the State Steering Committee for PPP has the role of managing PPP projects. Decree 15 also requests each ministry and the provincial-level People's Committee to assign an internal agency to act as coordinator to manage PPP activities or establish a new unit specialized for PPP project coordination. Currently, the Ministry of Transportation established the Management Board of PPP Project Investment; the board is active in managing BOT transportation infrastructure projects. This board could be a model unit to manage PPP projects as most ministries and the People's Committee have not managed PPP projects well in the past.

Sectors for PPP investment form

The sectors include the following:

1. Transportation and logistics infrastructure facilities and related services
2. Lighting systems, water supply systems, water discharge systems, water collection systems, wastewater treatment, solid waste treatment, social housing, resettlement housing, cemeteries
3. Power plants, power transmission lines
4. Infrastructure facilities for healthcare, education, training, vocational training, culture, sport and related services, office building of state agencies
5. Infrastructure facilities for trade, science and technology, hydrometeorology, economic zones, industrial zones, high-tech zones and ICT zones, IT applications
6. Infrastructure facilities for agriculture, rural areas and services for agricultural products processing and consumption
7. Other sectors as decided by the prime minister

Type of PPP investment form

Decree 15 defines seven types of PPP investment: build–operate–transfer (BOT), build–transfer–operate (BTO), build–transfer (BT), build–own–operate (BOO), build–transfer–lease (BTL), build–lease–transfer (BLT), and operate & manage (O&M). BOO, BTL, BLT, and O&M are newly defined by Decree 15.

Minimum equity capital raised by investor

Decree 15 provides minimum equity capital ratio to total investment capital, which is not lower than 15 percent for total investment capital up to VND1,500 billion (approximately US$69 million) and is not lower than 10 percent for the portion on total investment capital above VND1,500 billion This total investment capital includes the capital contributed by investor only and doesn't include the capital contributed by the state.

State capital participation

There is no universal limited percentage of the state capital portion to the investment capital. The state capital portion will be decided project-by-project based on project proposal and feasibility study.

Project Development Facility

There is a concept of Project Development Facility (PDF). ADB and the French Development Agency (AFD) have provided about US$30 million for PDF to the government. The circular on the use of PDF is expected to be issued in 2015. The investor shall reimburse the cost incurred for project formulation by the authority to the PDF.

Government guarantee

A government guarantee, such as minimum revenue guarantee, foreign currency conversion guarantee, or a certain level of foreign exchange rate guarantee, may be provided based on the results of the feasibility study and negotiation between the investor and the authority. So far, there is no written rule about what conditions are eligible for applying a government guarantee.

Unsolicited proposal

An unsolicited proposal is accepted with 5 percent cost advantage in bidding. If a proposing investor failed in the bidding, the proposing investor can claim the cost, including the feasibility study, from the winner of the bidding, subject to agreement with the authority in advance. Unsolicited proposals will not be contributed state capital but can be contributed capital from ODA and concessional loans by foreign donors if the project is within the category eligible to use such capital by foreign donors.

Land matters

Land is public property. The state will allocate or lease land to individuals or organizations. Holding a Certificate of Land Use Right (CLUR) is the evidence of registration of the land use right. Ownership of houses and other assets attached to land such as construction works is acknowledged in the CLUR and the owner registers its ownership of assets in accordance with the provisions of the Law on Land 2013 and other relevant laws. The provincial-level People's Committee issues the CLUR. Foreign invested organizations established under the laws of Viet Nam are entitled to be issued a CLUR. Foreign organizations established under foreign laws are not given a CLUR.

The provincial People's Committee is responsible for site clearance and for completing procedures for allocation or lease of land to implement the project in accordance with the Law on Land, the project contract, and related contracts. As part of the investment incentives granted by the government, the investors are exempt from, or are entitled to, a reduction of land use fees with respect to that area of land allocated by the state, or are exempt from, or entitled to, a reduction of land rent for the duration of project implementation consistent with the Law on Land.

Mortgage of assets and step-in right

The investors are permitted to mortgage assets, land use rights, and the right to commercially operate the project facility with the lender. Step-in right is secured for lenders.

Foreign law applicability

The governing law can be the foreign law if one of the signing parties is a foreign investor.

Tax incentives

Tax incentives are given to certain infrastructure projects such as water treatment plants, power, bridges, roads, railways, airports, seaports, river ports, and terminals at the rate of 10 percent corporate income tax for 15 years with 4 years exemption, and for 9 years at 50 percent reduction although the standard corporate income tax rate is 22 percent until the end of 2015 and 20 percent onward.

PPP investor selection under Decree 30

International tendering will apply to the selection of investors for PPP projects except the following:

1) Investment sector of the project is restricted for foreign investors under the laws of Viet Nam and international treaties that Viet Nam takes part in;
2) There are no foreign investors that pass international pre-qualification; and
3) The project is categorized in Group C projects under the Law on Public Investment. Group C projects include the total investment capital of less than VND120 billion for sectors such as airport, railroad, national highway, power, oil, gas, chemical, and mining; less than VND80 billion for sectors such as irrigation, water supply, drainage, communication, and pharmaceutical; less than VND60 billion for sectors such as agriculture, forestry aquaculture, and national parks; VND45 billion for sectors such as health care, culture, education, scientific research, broadcasting, tourism, and so on. If the project needs progressive technology or international managerial experience, the local tenderer will have to partner with a foreign tenderer or use the foreign partner as a foreign contractor.

Decree 30 provides the following direct appointment conditions:

1) Only one investor registers and satisfies the requirements set out in the pre-qualification invitation documents, or only one investor passes the pre-qualification.
2) Only one investor has the capacity to implement the project in regards to intellectual property, commercial secrets, technology, or arranging capital funding.
3) As for an unsolicited proposal, the project satisfies the requirements for project implementation with the highest feasibility and efficiency. The prime minister will decide on the highest project feasibility and efficiency on satisfaction under the following conditions:
    a. There is an approved feasibility study report.
    b. The proposed service price, state contributed capital, social benefits, and state benefits are reasonable.

c. The requirements for protection of national sovereignty, national borders, or islands have been satisfied.

3. Recent Developments in PPP

According to the Ministry of Transportation (MOT), there are 68 BOT projects formulated under the management of MOT in the sectors of road, highway, airport, canal, or railway with fund mobilization of about US$8 billion from the private sector, out of which most of the projects were procured after 2012. For example, 16 projects in Road No 1 expansion and Road No 14 expansion were formulated in 2013. 4 BOT highway projects are under construction. 2 BOT airports have just been procured in early 2015. Most lenders in these projects are local banks. The MOT is currently studying 62 new BOT projects (36 for road, 10 for highway, 6 for airport, 5 for canal, 4 for railway, and 1 for sea line). It is expected that more BOT projects will be developed and mobilize private funds into public projects.

Foreign investors are seeking investment opportunities in the power, water supply, wastewater treatment, and airport sectors. As for BOT power projects, the Mong Duong 2 project reached financial closure in 2011 as the third foreign BOT power project after the first BOT project, Phu My 2.2 and the second BOT project, Phu My 3 in 2001. Other BOT power projects with Japan, Thailand, and Malaysia are in the negotiation stage. There are 20 BOT power projects, three of which are under operation, two are signed, and others under negotiation.

PPP COMPARATIVE TABLE

Contents of the Comparative Table

Category		Key Considerations
A. Regulatory and Institutional Setting		
	Laws and Regulations for PPP	*Is there a legal/regulatory framework specific to PPP? What are some of the important related regulations (e.g., land law, foreign investment law, etc.)?*
	Government Organizations for Promoting PPP	*Which government agencies are assigned tasks to promote PPP? Is there a special PPP unit? With whom do private parties need to consult?*
B. Financial Support		
	Project Development Fund	*Is there an institutionalized fund which supports project preparation?*
	Government Support (Guarantees and Subsidies)	*Is there a mechanism to disburse the government's budget (including from a separate fund) for financing support or risk mitigation in PPP projects?*
C. Land and Buildings		
	Foreign Ownership for Land and Buildings	*Is the ownership of land or buildings granted to foreign enterprises?*
	Land Acquisition Support by Government	*Is there a framework to support land acquisition for infrastructure project for public interest?*
D. Selection Process		
	Project Process and Guidelines	*How are projects approved by the government as PPP? Is there a streamlined procedure for pre-qualification, bidding, or negotiation?*
	Project Lists	*Is there any published list targeting to potential investors?*
	Unsolicited Proposal	*Is there any guidance on how to treat unsolicited proposals (including incentives)?*
E. Examples of PPP Projects		
	Examples of PPP Projects	*What kinds of projects were already awarded as PPP projects (definition of PPP varies from country to country)?*

	Description	1. Brunei Darussalam	2. Cambodia
A. Regulatory/ Institutional Setting	Laws and Regulations for PPP	**Major Related Regulations** **National Vision (Wawasan Brunei) 2035** launched in 2008 depicted a long-term development vision which is supported by a 5-year **National Development Plan (RKN)** and 10-year **Outline of Strategies and Policies for Development (OSPD)**. The OSPD provides rationales for promoting PPP based on international standards in its infrastructure development. Procurement of PPP projects is generally supported by the English common law which the country adopts. Currently, the Department of Economic Planning and Development has been developing **National PPP Guidelines** to streamline the procurement process.	**Major Related Regulations** There is no specific regulatory framework for PPP. Several laws and regulations designed to serve general investment cover PPP projects. • **Law on Concessions (2007)** governs and facilitates infrastructure projects via concessions. The concession contract is defined to include build–operate–transfer, build–transfer–operate, modernize–operate–transfer, lease or management contract, or some other forms. Eligible sectors for the concessions under the law are: power, transportation, water supply/sanitation, telecommunication/information technology, tourism related projects, gas/oil, sewerage/drainage, solid waste management/treatment, health/education/sport facilities, special economic zones, and agricultural related infrastructure. The law also prescribes selection procedure and organization of concessionaire, or concession period termination. • **Law on Investment (1994), as amended (2003)** stipulates procedures, guarantees, or incentives for investment projects made by foreign as well as domestic investors. • **Sub-Decree on Build Operate and Transfer (BOT) (1998)** • **Sub-Decree on the implementation of the Amended Law of Investment (2005)** (*There are several initiatives underway to upgrade its enabling regulatory environment for PPP with the support of multilateral agencies, including an amendment to the Law on Concessions, enactment of comprehensive regulations, and the establishment of PPP procedural guidelines.)
	Government Organizations for Promoting PPP	**Department of Economic Planning and Development (DEPD, JPKE), Prime Minister's Office** **Brunei Economic Development Board (BEDB)** • JPKE is in charge of evaluation and endorsement of National Development Projects. It is assinged to take a leading role in overseeing PPP projects. • BEDB of the Prime Minister's Office is responsible for developing new economic opportunities through attracting foreign and domestic investments or delivering infrastructure projects.	**Ministry of Economy and Finance (MEF)** **Council for Development of Cambodia (CDC)** **Ministry of Commerce** • MEF is responsible for assessing and approving the liabilities of the government under proposed projects. It is now under the procedure for the establishment of centralized agencies, PPP Unit and Risk Management Unit, in the MEF.The main role of the PPP unit is going to be feasibility study, human assistance to line ministries, procurement procedure, negotiation and evaluation of projects, while that of the Risk Management Unit will be assessment of contingent liability which result from government guarantees as well as risk assessment from project investment for line ministries' consideration.D7 • CDC is the one-stop service organization for investment activities. The **Cambodian Investment Board (CIB)** under the CDC takes coordination and implementation roles in evaluating and approving application for private investments except for SEZs. • Ministry of Commerce is responsible for regulating business enterprise law, commercial registration law and regulations, and secured transaction law.

3. Indonesia	4. Lao PDR	5. Malaysia
<u>General Regulations on PPP</u> • **Presidential Regulation No. 38 (2015)** Cooperation between Government and Business Entity in the Provision of Infrastructure • **Minister of National Development Planning/ National Development Agency No. 4 (2015)** Procedure for Cooperation between Government and Business Entity in the Provision of Infrastructure <u>Other Major Related Regulations</u> • **Presidential Regulation No. 2 (2015)** National Medium Term Development Plan of 2015–2019. • **Law No. 2 (2012)** Land Procurement for Public Interest • **Presidential Regulation No. 71 (2012)** Land Acquisition for Public Projects, as amended by **Presidential Regulation No. 40 (2014)** & **No. 99 (2014)** & **No. 30 (2015)** • **National Land Agency Regulation No. 5 (2012)** Technical Guidelines for Implementation of Land Procurement • **Presidential Regulation No. 75 (2014)** Acceleration of Priority Infrastructure Provision • **Presidential Regulation No. 78 (2010)** Infrastructure Guarantee for Public Private Partnership Infrastructure Project through Infrastructure Guarantee Entity • **Ministry of Finance Regulation No. 260/PMK.011 (2010)** Implementation Guidelines for Infrastructure Guarantee in Public Private Partnership Projects • **Ministry of Finance Regulation No. 100/PMK.010 (2009)** Infrastructure Financing Company • **Ministry of Finance Regulation No. 223/PMK.011 (2012)** Fiscal Support for Construction Cost in Public Private Partnership Projects • **Ministry of Finance Regulation No. 38/PMK.01 (2006)** Guidance for Controlling and Management of Risks in Provision of Infrastructure • **Government Regulation No. 27 (2012)** Environmental Permit • **Presidential Decree No. 39 (2014)** List of Business Fields Closed and Business Fields Open with Conditions to Investment	<u>Major Related Regulations</u> There exists no specific law concerning PPP. Some related laws provide a basis for the projects under private investments. • **Business Law (first issued in 1994, latest amendment in 2009)** allows investors to establish business enterprises in all economic sectors and ensures their rights and benefits. • **Investment Promotion Law (first issued in 1998, latest amendment in 2009)** stipulates principles, regulations and measures/ incentives regarding the promotion and management of domestic and foreign investments. The law refers to three categories for private investment, namely (i) general business, (ii) concessions, and (iii) development of special economic zones(SEZ). The sectors in the concession transactions include land, resources, energy, aviation, telecommunications, insurance and financial services. Along with these laws, there are pertinent laws and regulations such as **Public Investment Law, Environmental Protection Law, Environmental and Social Impact Assessment Regulation (ESIA), Decree on Competition, Regulation on Bidding,** and **Anti-Corruption Law**. (*The Lao PDR government is currently developing the framework for PPP with support of the Asian Development Bank. The initiative includes development of a **Prime Minister's PPP Decree** and the fourth draft dated on 14 September 2014 was disclosed.)	<u>General Regulations on PPP</u> • **Privatization Guidelines (1985)** This has been superseded by the Privatization Masterplan. • **Privatization Masterplan (March 1991)** Contains overall governing policy, objectives and rationale, implementation issues and constraints, action plan, implementation models and approaches, as well as institutional framework. • **PPP Guidelines (November 2009)** Contains definition and objectives of PPP, criteria, PPP models, and process workflow. <u>Other Major Related Regulations</u> • **Amendment to Land Acquisition Act 1960** Section 3(1) of the Act was amended in 1991 to empower State Authority to acquire private land for use by persons or corporations to implement projects which are beneficial to economic development of Malaysia. Previously, land acquisition was restricted for the purpose of public use or public utility. • **Facilitation Fund Guidelines (Last Updated May 2015)**; Contains definition and objectives of Facilitation Fund, negative list and procedures to apply for the Fund. • **Amendment to Schedule 3, Income Tax Act 1967** The amendment introduced in 2010 allows privatization projects and PPP projects implemented using BLMT model to enjoy the benefits of an Industrial Building Allowance. • **Stamp Duty (Remission) (No. 4) Order** The order issued in 2010 provides remission of stamp duty for service agreements signed between companies and government. This remission helps to reduce transaction cost for PPP projects.
Committee for Acceleration of Prioritized Infrastructure Development (KPPIP) **National Development Planning Agency (BAPPENAS)** **Ministry of Finance (MOF)** **(Coordinating Ministry for Economic Affairs (CMEA)** PPPs are promoted through the collaboration of certain government agencies: • BAPPENAS, through its PPP unit of the **Directorate for PPP Development (PKPS)**, is in charge of PPP policy formulation, provision of guidance, or dissemination of information. • MOF assesses the necessity for government support by way of tax incentives, finance or guarantees. A **PPP unit** under the MOF has been established as the champion for project preparation and enabling environment to accelerate the PPP agenda. • Minister of CMEA chairs an inter-ministerial steering committee, **KPPIP**, with members comprising of the Minister of BAPPENAS, Minister of Finance, and Head of National Land Agency (BPN).	No dedicated PPP unit exists. There are key institutional ministries for investment projects such as: **Ministry of Planning and Investment (MPI)** **Ministry of Finance (MOF)** • MPI is a key actor involving management of investment project. **Investment Promotion Department (IPD)** under the MPI administers the foreign investment system and reviews investment applications in accordance with the Investment Promotion Law. **One-stop-service unit** of the Investment Promotion Department is a window for providing information, undertaking investment consideration, issuing concession registration certificate, and issuing notifications in relation to the investment issues. • MOF is responsible for financial management of projects.	**Public – Private Partnership Unit, Prime Minister's Department** This unit, also known as Unit Kerjasama Awam Swasta (UKAS), is responsible for promoting, planning, coordinating, controlling, monitoring, facilitating and ensuring the effectiveness of PPP projects.

	Description	1. Brunei Darussalam	2. Cambodia
B. Financial Support	Project Development Fund (PDF)	There is no fund acting as a PDF.	There is no fund acting as a PDF. (*Noted that ADB has been supporting the establishment of a PDF.)
	Government Support (Guarantees & Subsidies)	Subsidies may be provided by special investment vehicles of the government such as the Brunei Investment Agency (BIA), Darussalam Assets and Brooketon Sdn Bhd.	Except for power projects with a government guarantee, financial support has not been provided by the government.
C. Land and Buildings	Foreign Ownership for land and buildings	Ownership of land is granted only to citizens of Brunei Darussalam in general. Locally incorporated or registered companies may be registered as a lessee of up to 60 years over an industrial or commercial property. Locally incorporated or registered companies may also submit the application for a temporary occupation permit of state land for industrial or agricultural purposes to the government.	Ownership of land by investors for the purpose of carrying on a Qualified Investment Project (QIP) is restricted to natural persons holding Cambodian citizenship and Cambodian entities only. The use of land shall be permitted to investor, including concessions, unlimited long-term leases and limited short-term leases that are renewable. The investor is also admitted to have the right to own and pledge as security the real and personal property on the land (Article 16, Amended Law on Investment 2003).
	Land Acquisition(LA) Support by Government	Acquisition of lease title by companies is subject to lengthy and opaque procedures. Only limited progress has been made in streamlining these procedures.	There is no set of framework for land acquisition or the right to use land.

3. Indonesia	4. Lao PDR	5. Malaysia
MOF relies on**PT Sarana Multi Infrastruktur (SMI)** for project development funding. PT SMI was established by the Government of Indonesia for facilitating infrastructure project development through advisory and project preparation services, such as an assist in feasibility study/market sounding, preparation of tender documents, or capacity building. The institution is also assigned a function of financing (from senior loans to mezzanine and equity) to infrastructure projects, including regional projects.	There is no fund acting as a PDF. (*A Project Preparation Facility shall be set up, according to the draft Prime Minister's PPP Decree)	There is no fund acting as a PDF so far.
Indonesia Infrastructure Guarantee Fund (IIGF) IIGF provides the guarantee to mitigate the government-related contractual risk (mainly, financial obligations of Government Contracting Agencies) in PPP projects. (*For IPP projects undertaken under the Electricity Law (not under a PPP framework), the MOF may issue a **Business Viability Guarantee Letter (BVGL)** to guarantee obligations of a state-owned electricity offtaker, PLN.) **Viability Gap Funding (VGF)** VGF was established as a program of MOF based on MOF Regulation No. 223 (2012). The fund contributes a part of construction cost of well-prepared PPP projects in the form of cash to enhance the project's financial viability. Other forms of support, such as availability payments, tax incentive, licencing, or land acquisition may be provided in accordance with applicable laws and regulations or the approval by the MOF.	Financial framework for private investments is still under development. As a general procedure foreign-invested companies may be eligible for tax incentives; enterprises engaging in certain promoted activities or investment projects located in certain geographic areas may be eligible for incentives under the Investment Promotion Law.	No government guarantee for long term funding. Corporations participating in PPP programme have to rely on their financial strength and the nature of the concession (some with offtake agreement by the Government) to secure funding. **Facilitation Fund** RM20 billion (approx. USD6.2 billion) is allocated to the Facilitation Fund under the Tenth Malaysia Plan to encourage private investments in Malaysia in strategic areas which have been identified under the National Key Economic Area Policy as well as to undertake land costs in tolled road projects.
Right to own land (Hak Milik or HM) is limited to individuals of Indonesian nationality and certain legal entities (e.g., government banks, religious groups). For this reason, any limited liability companies (Perseroan Terbatas or PT) are not allowed to obtain HM, irrespective of their shareholding structure. Nevertheless, foreign companies (in the form of Penanaman Modal Asing or PMA) as well as domestic companies may hold the following land related rights: • Right to Build (Hak Guna Bangunan or HGB); • Land Cultivation Rights Title (Hak Guna Usaha or HGU); and, • Right to Use (Hak Pakai or HP). Among them, most foreign companies hold HGB to construct and own buildings on land. HGB is granted for a maximum of 80 years (through extension and renewal), and could be sold, transferred, or encumbered by a mortgage.	Ownership of land belongs exclusively to the nation (or national community) and is not granted even to the Lao PDR citizens. Under the Investment Promotion Law, foreign investors with registered investment capital of US$500,000 or above are entitled to buy land use rights from the government according to a certain limit and procedure. Investors who wish to use government-owned land must apply for a concession and then obtain approval by the prime minister or the Council of Ministers.	There is no restriction for foreigners to own land and buildings except for the following categories: • Malay Reserve Land; • Real estate valued less than RM500,000 (approx. US$161,000) per unit; • Low cost houses; and, • Real estate reserved by state authority for bumiputera interest in any development project.
For toll road projects, to ease the land acquisition, several forms of **Land Fund**s (e.g., Land Capping Fund to compensate land price increases) have been set up by the government. The government has provided a basis of land aquisition support by Law No. 2 (2012) and its implementing regulations. These are intended to clarify and speed up the expropriation procedures through stipulating steps/timeframe for the aquisition and assigning BPN (National Land Agency) coordinating roles in compensation or other issues.	There is no set of framework for land acquisition or the right to use land.	Following the 1991 amendment to the Land Acquisition Act, State Authority can acquire private land for use by corporations if it is satisfied that the proposed projects are beneficial to economic development of the country.

	Description	1. Brunei Darussalam	2. Cambodia
D. Selection Process	Project Process and Guidelines	The national PPP Guideline that is being developed will streamline the project development process for PPP. Basic steps will be: (i) the Department of Planning (DOP) of JPKE conduct paper works for initial evaluation based on submitted proposals; (ii) A Working Committee for the National Development Plan (JKK) reviews a project; (iii) After comprehensive analysis and market testing, the JKK submits the proposal to the National Committee for the national development plan (JKTR) for its approval; and (iv) A core project team conducts drafting of tender documents or Request for Proposal (RFP), evaluation, or contract signing with concerned agencies.	The selection and organization procedure stipulated in the Law on Concessions is as follows: 1. Selection of the Concessionaire by Contracting Authority through international/national bidding or by negotiation; 2. Obtaining approvals to the final terms of the Concession Contract (the maximum concession period is 30 years); 3. Issuance of a notification of award to the selected candidate; 4. Establishment of a legal entity under the laws of the Kingdom of Cambodia that will implement the project within 60 days upon receiving the notification of award; and 5. Signing of the Concession Contract within 6 months (extendable by prior agreement) of the notification of award. As a general rule based on the Investment Law, the projects are required to obtain approval from different agencies depending on the scale of capital expenditure: (i) More than U$50 million: the Council of Ministers (ii) Between US$2 million and USD 50 million: CDC (iii) Less than US$2 million: the Provincial Municipal Investment Committee.
	Project lists		-
	Unsolicited Proposal	PPP projects are required to be consistent with the National Vision (Wawasan Brunei) 2035. In general, only solicited projects are considered.	PPP projects in the country have been undertaken essentially on unsolicited basis. A company with 100% foreign equity may propose and implement PPP projects.
E. Examples of PPP Projects (Already awarded projects. *Note that the listed projects are broadly considered as PPP.)		• Ong Sum Ping apartment building project • Upgrading and extension of Brunei's international airport • Major extension of the coastal highway • Expansion of satellite connectivity networks • Development and management of undersea fibre optic cable links	• Hydropower IPP (e.g., Russei Chrum Kraom River, Orussei, Kirirom III) • Airport BOT (e.g., Phnom Penh International, Sihanouk International, New Siem Reap International) • National Road No. 4 • Prek Pnov Bridge
Last Revised		June, 2015	June, 2015

3. Indonesia	4. Lao PDR	5. Malaysia
Identification of PPP projects is first initiated by government contracting agencies (GCAs). A multi-criteria analysis (MCA) is being promoted to evaluate potential projects. Preliminary study reviews factors such as technical and economic rationale, demand sustainability, support from stakeholders (through public consultation), compliance with laws and regulations, conformity with the National Development Plan, spatial plan, value for money, potential revenues, and project financing scheme. BAPPENAS then screens and assesses each project considering the level of readiness and benefits for society in accordance with the national development plan. The final outcome is issued as the list of PPP plan. The project preparation and transaction stage for solicited projects follow the steps below: 1. Preparation study of a PPP by a GCA, which includes: - (Pre-) feasibility study - Submission of a proposal to MOF for government's fiscal support - Obtaining of determination of location (if there is a need for land acquisition) 2. Market sounding 3. Determination location 4. Prequalification, bidding, and contract signing 5. Financial closure The maximum foreign ownership in a company carrying out an infrastructure business is stipulated in the Presidential Regulation No. 39 (2014) concerning List of Business Fields Closed to Investment and Business Fields Open, with Conditions, to Investment.	The Investment Promotion Law requires the Concession business to take the following procedures: 1. Submission of the application to the one-stop-service of the Planning and Investment authority for consideration and then the application will be proposed to the government or provincial authorities for further consideration. 2. Selection of investors through comparison, tender or the assessment by the Planning and Investment authority in collaboration with relevant sectors and local authorities. 3. Issuance of a concession registration certificate to the investors by the Planning and Investment authority. 4. The investor immediately start business operation and shall conduct business operation within 90 days. In addition to this, there is a requirement by the Investment Promotion Law that the registered capital of concession businesses shall not be less than 30% of the total capital (the total capital is equal to the registered capital plus long-term debt plus other equity).	PPP projects have to fulfill the following criteria: • They are in line with strategic needs and priority of the government. • Output specifications can be clearly identified and quantified. • Projects with technological obsolescence risk will not be considered. • Sponsor must be financially strong and able to establish an SPV to undertake PPP project. • For accommodation-based PPP projects, economic life of the underlying assets must not be less than 20 years. Proposals originate from line ministries as well as directly from the private sector. They are screened and evaluated by the PPP Unit based on the criteria above. Decision to undertake PPP projects rests with the Cabinet. Approval of the Cabinet is sought at three stages – agreement in principle; endorsement on successful bidder; and approval for the terms and conditions of the concession. PPP projects are commonly offered on tender basis (open or restricted). Only under special circumstances, such as the critical component of the project involves intellectual property rights or they require urgent implementation, Government may opt for direct negotiation method. PPP projects are evaluated on four aspects – technical, business model, financial, and contractual. The weightage for these components varies according to projects. PPP projects have to undergo value management process. The results of VM process will be incorporated in the final technical specification of the project.
BAPPENAS issues a PPP Book which presents the national PPP pipeline and each project's status.	-	Certain projects may be announced by the government.
Business entities are eligible to propose PPP projects to the implementing agencies or local governments in accordance with the eligibility criteria specified in Article 14 in the Presidential Regulation No. 38 (2015). Under the unsolicited projects, the project proponent is entitled to receive one of the forms of compensation. The compensations include: (i) additional points (10%) in the evaluation, (ii) a right to match the offer of the first-ranked bidder, or (iii) financial compensation for intellectual property (related to feasibility study).	IPP projects, for instance, have been based primarily on unsolicited proposals.	Private sector can propose projects to the government. The procedure of awarding the project ranges from direct negotiation (if it involves IP or no other interested bidders) to restricted tender (limited number of bidders) or open tender.
• Central Java Coal Fired Power Plant • Bali Nusa Dua Benoa Toll Road • Solo - Kertosono Toll Road (a part of Trans-Java toll road) • Six toll roads in Jakarta (e.g., Kemayoran–Kampung Melayu) • Solid Waste Management Improvement Bandung	• Hydropower IPP (e.g., Nam Theun–Hinboun, Nam Theun 2, Nam Ngum 3, Nam Ngiep 1, Xepun–Xenamnoy) • Nam Ngum Bridge	• Tolled Roads (e.g., West Coast Expressway) • Independent Power Producers (IPPs) • SMART tunnel project • Mass Rapid Transit in Greater Kuala Lumpur • Management of Solid Waste
June, 2015	June, 2015	June, 2015

	Description	6. Myanmar	7. Philippines
A. Regulatory/ Institutional Setting	Laws and Regulations for PPP	<u>Major Related Regulations</u> There is no specific law concerning PPP. PPP transactions adhere to the following related regulations. • **Foreign Investment Law (1988)** replaced by **New Foreign Investment Law (promulgated in 2012)** stipulates the forms of investments by a foreigner (includes 100 % foreign capital, joint venture with local capital, and company under a contractual relationship with a local investor), restricted business areas for foreign capital, duties and rights of the investors, etc. The Law is detailed by Notifications such as **Ministry of National Planning and Economic Development Notification No.11 (2013), or Myanmar Investment Commission Notification No.1 (2013) and No. 49/ No. 50/ No .51 (2014)**. • **Myanmar Citizen Investment Law (1994)** replaced by **New Myanmar Citizen Investment Law (2013)** mirrors the Foreign Investment Law and governs investments by Myanmar citizens or contracts between citizens and the government. • **State Law and Order Restoration Council's Notification (10/1995)** Formation of Privatization Commission chaired by Secretary General 1 of State Law and Order Restoration Council (at present, vice president) and SOEs are privatized by auctioning, leasing and joint venture to local and foreign investors. In addition to these, the Law, Regulation, Act, and Notification applied by concerned Ministry govern individual projects.	<u>General Regulations on PPP</u> • **Republic Act No.6957 (1990)** BOT Law • **Republic Act No.7718 (1994)** An Act amending certain sections of Republic Act No. 6957, entitled 'An Act authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector, and for other purposes.' • **Implementing Rules and Regulations of RA No.6957, as amended by RA No.7718** • **Republic Act No. 7160 (1991)** An Act providing for a local government code of 1991. • **Republic Act No.8974 (2000)** An Act to facilitate the acquisition of right-of-way, site or location for national government infrastructure projects and for other purposes. • **Republic Act No.8975 (2000)** An Act to ensure the expeditious implementation and completion of government infrastructure projects by prohibiting lower courts from issuing temporary restraining orders. Preliminary injunctions or preliminary mandatory injunctions, providing penalties for violations thereof, and for other purposes. <u>Other Major Related Regulations</u> • **Executive Order No. 423 (2005)** Repealing executive order No.109-A dated September 18, 2003 prescribing the rules and procedures on the review and approval of all government contracts to conform with Republic Act No.9184, otherwise known as The Government Procurement Reform Act. • **Executive Order No.8 (2010), as amended by Executive Order No.136 (2013)** Reorganizing and renaming the Build–Operate and Transfer (BOT) Center to the Public-Private Partnership (PPP) Center of the Philippines and transferring its attachment from the Department of Trade and Industry to the National Economic and Development Authority and for other purposes. • **Executive Order No.78 (2012)** Mandating the inclusion of provisions on the use of alternative dispute resolution mechanisms in all contracts involving Public-Private Partnership projects, Build-Operate and Transfer projects, Joint Venture agreements between the government and private entities and those entered into by local government unit
	Government Organizations for promoting PPP	No dedicated PPP unit exists. In addition to Concerned Agencies for respective sector/ project, there are key institutional bodies such as: **Ministry of National Planning and Economic Development (MNPED)** **Myanmar Investment Commission (MIC)** **Directorate of Investment and Company Administration (DICA) & Project Appraisal and Progress Reporting Department (PAPRD) under the MNPED** • MNPED is responsible for the formulation of national development plans and the enhancement of the economic development of the state. • MIC is a government-appointed body which appraises and approves investment related proposals in accordance with the Foreign Investment Law. • DICA under the MNPED is a window for individual investment projects through scrutinizing and issuing permits for investment proposals. • PAPRD under the MNPED is a focal point of the Privatization programme.	**Public-Private Partnership (PPP) Center attached to National Economic and Development Authority (NEDA)** The PPP Center is tasked with facilitating the development of PPP projects, providing advisory services and monitoring PPP implementation and contract compliance. The PPP Center directly reports to a **PPP Governing Board** established by EO No. 136 (2013), which sets the strategic direction of the PPP Program and creation an enabling policy and institutional environment for PPP.

8. Singapore	9. Thailand	10. Viet Nam
General Regulations on PPP Having a sound and solid regulatory framework, PPP projects follow general laws together with guidance provided in the Public Private Partnership Handbook. • **The Public Private Partnership Handbook** Followed by the **Best Sourcing** Framework introduced in 2003, the handbook was published by MOF in 2004 and revised in 2012. The handbook presentsa definition of PPP, principals on structuring of PPP, detailed PPP procurement process, and PPP management issues. PPP scope in the handbook broadly includes joint ventures and other strategic partnerships. The main rationale for introducing PPP here is to tap into private sector expertise and competitive advantage and seek value for money in the delivery of public goods and services.	**General Regulations on PPP** • **The new Private Investment in State Undertaking Act B.E. 2556 (2013) (PPP Act)** has been effect since 4 April 2013 to replace the Private Participation in State Undertaking Act B.E. 2535 (1992). The new Act aims to streamline the project approval process through the PPP Policy Committee. **Other Major Related Regulations** • **The Constitution of the Kingdom of Thailand B.E. 2550 (2007)** • **Expropriation of Immovable Property Act B.E. 2530 (1987)** • **Procurement of Immovable Property for Public Transportation Affair Act B.E. 2540 (1997)** for the use of immovable property without transferring of ownership+K7.	**General regulations on PPP** • **Decree 15/2015/ND-CP**: On Public Private Partnership Investment Form. • **Decree 30/2015/ND-CP**: Providing detailed regulations for implementation of the Law on Tendering Regarding Selection of Investor (PPP Investor Selection). Decision 71/2010 on providing pilot regulation on PPP investment form and Decree 108/2009 on BOT, BTO, and BT are unified into Decree 15/2015 for universal application to any PPP investment form. **Other Major Related Regulations** • **Law on Public Investment (2014)** is very first law to provide for the state managment of public investment. • **Law on Investment (2014)** is the amendement of Law on Investment (2005) to provide the investment activity of private sector. • **Law on Construction (2014)** is the amendment of Law on Construction (2003) to provide for the State management of construction • **Law on Tendering (2013)** is the amendment of Law on Tendering (2005) to provide for the state mangement of tendering for public investment and procurement. • **Decree 218/2013/ND-CP** Providing detailed regulations for implementation of Law on Corporate Income Tax.
Ministry of Finance (MOF) **PPP Advisory Council** There is no separate body dedicated to PPP. MOF plays the central coordinating role in relation to PPP. PPP Advisory Council was established by MOF at the same time that the PPP Handbook was published in 2004. The mission of the Council is to promote awareness of PPP, draft policy framework and facilitate cross-agency matters. (However, this agency has not been particularly visible in the market and has not functioned as a proactive 'PPP champion' within government)	**The Committee of Private Investment in State Undertaking** **State Enterprise Policy Office (SEPO)** **Ministry of Finance** • The Committee of Policy on Private Investment in State Undertaking (PPP Policy Committee), chaired by the Prime Minister, is established to define the PPP strategic plan and to approve PPP projects in principle. • The SEPO is a secretariat office for the PPP Policy Committee as a central PPP unit. The key roles of this unit are to prepare strategic plans, provide recommendation on project's feasibility, and provide database and information about PPP scheme.	**Ministry of Planning and Investment (MPI)** MPI is the coordinating ministry among ministries and provincial level people's committee for execution of PPP projects and assist the Government to uniformly administer investment activities in the PPP form on a nation wide basis. MPI is expected to be an advisor for investors preparing a PPP project. The government has established the **State Steering Committee for PPP**, to assist the authorized state body to formulate and commence project. Decision No. 1624/QD-TTg of the Prime Minister dated 29 October 2012, assigns Vice Prime Minister Hoang Trung Hai to chair the committee. Deputy chairpersons are the Minister of Planning and Investment and the Deputy Minister of Finance. The group also includes representatives of the Government Office, the State Bank of Viet Nam, the Ministry of Justice, the Ministry of Industry and Trade, the Ministry of Transport, the Ministry of Construction, and other relevant bodies.

	Description	6. Myanmar	7. Philippines
B. Financial Support	Project Development Fund (PDF)	There is no fund acting as a PDF.	The **Project Development and Monitoring Facility (PDMF)** was established by government and foreign donors as a revolving fund for pre-investment studies, including pre-feasibility studies, feasibility studies, preparation of tender documents, draft contracts, bidding processe,s and contract negotiations to bid award stage as well as for ensuring effective project monitoring. The PDMF Board composed of oversight government agencies sets the policy while the PPP Center is tasked to administer the PDMF.
	Government Supports (Guarantees & Subsidies)	There is no set of framework for PPP projects except for general incentives by way of tax, guarantees for nationalization or termination, or other forms under the Foreign Investment Law.	Case by case approach, but no guarantee is given for unsolicited projects. (*It is recognised that there are onging initiatives to institutionalize a **Viability Gap Funding** or **Contingent Liability Fund**).
C. Land and Buildings	Foreign Ownership for land and buildings	Foreign investors are not allowed to purchase land itself. They may obtain usufruct rights by leasing from the government or by forming a joint venture with a government agency. Under the New Investment Law investors may lease land both from private entity/person as well as the government with permission of the MIC. Lease term can be 50 years and application for 10-year extension may be granted twice (70 years in total) to the foreign investors.	The 1987 Constitution described the nationality limitations on land ownership. Corporations at least 60% of whose capital is owned by Filipino citizens may acquire private lands. Such corporations cannot own public land and can only hold the same by way of lease.
	Land Acquisition(LA) Support by Government	There is no supporting framework for land acquisition or the right to use land specific to PPP.	Department of Public Works and Highways has allocations for public infrastructure project, including allocation for land acquisition. **PPP Strategic Support Fund (PPPSSF)** was established to cover costs for Right-of-Way (ROW) acquisition and related costs (incl. resettlement cost). The fund is a lump-sum appropriation included in an implementing agency's budget.

8. Singapore	9. Thailand	10. Viet Nam
There is no special fund acting as a PDF for domestic projects. (*Aspiring to be a regional infrastructure hub, the government and World Bank established the **Infrastructure Finance Centre of Excellence (IFCOE)** to help support regional governments develop commercially viable infrastructure projects, including through consultancy and feasibility studies to individual projects. Also, IE Singapore, an agency under the Ministry of Trade and Industry, has launched the **Asian Infrastructure Centre of Excellence (AICOE)** with ADB to identify infrastructure needs and create bankable projects in Asia.)	The **Private Investment Promotion Fund** is to be established by the Ministry of Finance in the new PPP Act to support the preparation of PPP strategic plan and project feasibility studies. The PDF is managed under the committee chaired by the Permanent Secretary of Ministry of Finance.	There is the concept of **Project Development Facility (PDF)**. ADB and AFD have provided about US$30 millions for PDF to the Government. The circular on the use of the PDF is expected to be issued in 2nd quarter 2015. The investor shall reimburse the cost incurred for project formulation by the authority to PDF.
It is understood that in certain circumstances, provision of government subvention is permitted. Nevertheless, the government generally prefers a fully self-financing operator. Up to date, favorable financial environment of the country has enabled investors to raise the large portion of funding through debt financing from commercial lenders without government guarantees. (*For overseas infrastructure projects by Singapore-based companies, the government established **Clifford Capital** with various shareholders to provide project financing guaranteed by the government)	Case by case approach. In **PPP Gross** Cost Model in Transportation sector, Government pays the Private for provided services according to rates set as opposed to **PPP Net** Cost Model.	Government guarantee such as minimum revenue guarantee, foreign currency conversion guarantee, a certain level of foreign exchange rate guarantee may be provided based on the result of feasibility study and negotiation between the investor and the authority. So far, there is no written rule what conditions are eligible for applying government guarantee.
There are two types of land tenure: freehold and leasehold. The freehold title is divided into: Grant in Fee Simple (GFS) and Statutory Land Grant (SLG). The freehold under GFS is absolute title whereas SLG is subject to the terms under States Act. The leasehold is mainly 30, 60, 99, and 999 years period and is under the agreement with landlord or the State. Private sector in some of the PPP projects, for instance, obtains land through sub-lease contract with a government body with a head lease between the body and the Singapore Land Authority.	Thai citizens are allowed to own immovable assets while foreigners are able to obtain ownership for land and buildings under conditions specify in the Land Law, Private, Commonly-owned Housing Act, Investment Promotion Act and Industrial Estate Authority of Thailand Act. The Land Code generally prohibits the ownership of land by foreigners in Thailand, except that they are authorized by the Board of Investment (BOI). However, the Condominium Act allows some foreigners to own condominium if they meet one of five criteria: 1) Foreigner who hold a residence permit, 2) Foreigner who bring the entire purchase price from aboard in a foreign currency, 3) Foreigner permitted to enter Thailand under the Investment Promotion Act, 4) Juristic person having some land rights as foreigners as provided in the Land Code, 5) Juristic person having BOI privileges in Thailand.	Land is public property. The state will allocate or lease land to individuals or organizations. Holding a Certificate of Land Use Right (CLUR) is evidence of registration of the Land Use Right. Ownership of houses and other assets attached to land such as construction works is acknowledged in the CLUR and the owner registers its ownership of assets in accordance with the provisions of the Law on Land 2013 and other relevant laws. The provincial-level People's Committee issues the CLUR. Foreign invested organizations established under the laws of Viet Nam are entitled to be issued a CLUR. Foreign organizations established under foreign laws are not given a CLUR.
Land Acquisition Act enables the compulsory acquisition of private land to support major infrastructure projects which meet public benefit and interest through compensations based on market value. If landowners are dissatisfied with the statutory compensation, they can appeal to the Appeals Boards for Land Acquisition.	There are three main laws that govern land acquisition. • The Constitution of the Kingdom of Thailand B.E. 2550 (2007) • Expropriation of Immovable Property Act B.E. 2530 (1987) • Procurement of Immovable Property for Public Transportation Affair Act B.E. 2540 (1997): for the use of immovable property without transferring of ownerships. The Government has responsibility to acquire the land for the project. The pricing is determined by the committee, set up for each project, based on several factors such as market price, location, value.	According to Decree 15 Article 45, the provincial People's Committee is responsible for site clearance and for completing procedures for allocation or lease of land to implement the project in accordance with the Law on Land, the project contract, and related contracts. As part of the investment incentives granted by the government, the investors are exempt from or are entitled to a reduction of land use fees with respect to that area of land allocated by the state, or are exempt from or entitled to a reduction of land rent for the duration of project implementation consistent with the Law on Land.

	Description	6. Myanmar	7. Philippines
D. Selection Process	Project Process and Guidelines	A tender procedure for projects prepared by concerned agencies and can be found in tender form and agency website. Airport concession projects, for instance, have been conducted by two stage procurment procedure, Prequalification and Tender.	Under Republic Act No.7718 and its Implementing Rules and Regulations, the implementing agency/local government units (IAs/LGUs) can implement their PPP/BOT projects through any of the following implementation modes: 1. Public Bidding (Solicited Mode) The IA/LGU chooses to procure their priority infrastructure and development projects through transparent and competitive public bidding process. The IA/LGU requests for bids for its priority infrastructure projects, approved by the approving body, from project proponents that have been pre-qualified through the bidding process. 2. Unsolicited Mode The IA/LGU may accept unsolicited proposals from project proponents to undertake projects on a negotiated basis. There shall be no direct government guarantee, subsidy or equity for unsolicited proposals.
	Project lists	-	The PPP Center publishes and constantly updates a Status of PPP Projects or other publications which present PPP projects in the pipeline.
	Unsolicited Proposal	PPP projects in the country have been undertaken essentially on unsolicited basis. A company with 100% foreign equity, joint venture and BOT system may propose and implement PPP projects.	The unsolicited proposal may be subjected to a challenge by competitors. If no comparative or competitive proposal or no complying bid is received by the IA/LGU, the original proponent shall immediately be awarded the contract. In case a challenger submits a price proposal better than that submitted by the original proponent, the latter shall have the right to match such price proposal within 30 working days. Should the original proponent fail to match the price proposal of the challenger within the specified period, the contract shall be awarded to the challenger. Otherwise, the contract is awarded to the original proponent.
E. Examples of PPP Projects (Already awarded projects. *Note that the listed projects are broadly considered as PPP.)		• BOT power projects • International Airport concessions (Yangon, Mandalay) • Nationwide telecommunications license (ooredoo and telenor groups)	• Daang–Hari SLEX Link Road • NAIA Expressway Phase II • Mactan–Cebu International Airport Passenger Terminal Building • School Infrastructure Project Phases I and II • Modernization of the Philippine Orthopedic Center • Automatic Fare Collection System • LRT Line1 Cavite Extension and O&M • Integrated Transport System-Southwest Terminal Project
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8. Singapore	9. Thailand	10. Viet Nam
The procurement procedure set out in the Public-Private Partnership Handbook is as follows: 1. Invitation for Expressions of Interest 2. Prequalification of Bidders 3. Request for Proposal from Selected Bidders 4. Market Feedback Period 5. Issue of Final Tender 6. Closing of Tender 7. Contract Award/ Financial Close	The new PPP Act provides a fundamental change in project identification and approval process by introducing a systematic guideline as follows: 1. The PPP Policy Committee is to develop a five years strategic plan to define a policy which covers investment policy in state undertakings, types of projects that are suitable for PPP in each sector and priority, investment target and time frame. This PPP strategic plan must be submitted to the Cabinet for approval before announcement in the Government Gazette. 2. For the project exceeding one billion baht, the host Agency must submit the project feasibility study to the managing Ministry for consideration before submitting it to SEPO. The study must include project rational which complies the PPP strategic plan, project costs, cost comparison and value for money between using annual government statement of expenditure and PPP, PPP alternatives, project impacts, and risk management. The study must be conducted by the external consultant who are in the SEPO's list. 3. The consideration process by SEPO must be done within sixty days before submission to the Committee. 4. If the project requires government's budget, agency's budget, or debt guaranteed by the MOF, after the Committee agree with such project, the project must be sent to the Cabinet for final approval.	1. The project is consistent with the approved Master plan 2. Project proposal: Preparation – Evaluation – Approval 3. Announce in public the list of PPP project calling investor 4. Feasibility study report: Preparation – Evaluation – Approval 5. Preparation of bidding documents 6. Bidding 7. Contract negotiation 8. Issuance of Investment Registration Certificate 9. Implementation of project 10. Supervision 11. Accounting finalization of investment capital within 6 months after completion of construction 12. Transfer of project facility according to contract
-	-	Calling investment PPP project list will be in public by each authority.
It is understood that the public sector is basically open to proposals by the private sector.	The unsolicited proposal is prohibited under the PPP law. All projects must be announced for Request for Proposal through the host agency.	Unsolicited proposal is accepted with 5 percent cost advantage in bidding. If the proposing investor failed in bidding, the proposing investor can claim the cost including the feasibility study, from the winner of the bidding, subject to agreement with the authority in advance. Generally, state capital can be used only for site clearance and settlement for unsolicited project although solicited project can be provided viability gap funding (VGF). There is an exception that an unsolicited proposal can use VGF provided by foreign donors if the project is within the category eligible to use the fund by foreign donors.
• Singapore Sports Hub • ITE College West • Tuas Desalination Plant • NEWater Plant (Ulu Pandan, Changi) • TradeXchange	• BTS Sky Train, MRTA Blue Line, MRTA Purple Line • Power IPPs, small power producers (SPPs) • Sri Rat–Bangkok Outer Ring Road Expressway	• Foreign BOT power projects (Phu My 2.2, Phu My 3, Mong Duong 2) • Thu Duc 2, Kenh Dong 2 Water Supply Treatment Plant BOO • Phu My Bridge BOT • Hanoi-Hai Phong Highway • BOT Projects of National Road No 1 and No 14 Expansion
June, 2015	June, 2015	June, 2015

Case Studies

Last Update: June 2015

Nam Theun 2 Hydropower Project

1. Project description

1.1 Overview

The US$1.45 billion Nam Theun 2 Hydroelectric Project (NT2) is a development that began commercial operation in April 2010 and diverts the flow of the Nam Theun River from the Nakai Plateau in Khammouane Province, central Lao People's Democratic Republic (Lao PDR), to the Xe Bang Fai River via a tunnel drilled through karst mountain terrain.[54] Taking advantage of the 350-metre height difference between the Nakai Plateau and the Gnommalath Plain, the water can generate 6,000 gigawatt hours (GWh) of electricity per year. NT2 consists of:

- four 250 megawatt (MW) units for the purpose of supplying power to Thailand;
- two 37.5 MW units for the purpose of domestic power consumption within the Lao PDR; and
- a 138 km 500 kilovolt (kV) transmission line, which transmits power close to Savannakhet on the Thai border.

The majority of the electricity produced by NT2 is exported to Thailand, which over the first 25 years, is anticipated to earn the Lao PDR government an average of US$80 million per annum through taxes and royalties and dividends on its equity interest in NT2.[55]

The revenue for the Lao PDR government in exporting electricity to Thailand, combined with the investments made in the project, will be used to finance poverty reduction and economic and social enterprises across the Lao PDR. Given the small size of the Lao PDR economy, it was expected that NT2 would have significant positive impacts.

[54] NTPC. 'Project in Brief'. http://namtheun2.com/about-nt2/project-in-brief.html (accessed 26 June 2015).
[55] NTPC. 'Project in Brief'. http://namtheun2.com/about-nt2/project-in-brief.html (accessed 26 June 2015).

1.2 Concession Agreement

A 30-year concession agreement was signed in 2002 between the government of the Lao PDR and the Nam Theun 2 Power Company Limited (NTPC) (the Concession Agreement) under which NTPC was to build, own, and operate NT2. The agreement gives NTPC a 25-year period to operate NT2, after which NT2 will be transferred to the Lao PDR government.
NTPC is a Lao PDR company, whose shareholders are:

- EDF International, a subsidiary of Électricité de France (EDF), which holds 35 percent of the NTPC shares;
- Lao Holding State Enterprise, which is a Lao PDR state-owned entity holding 25 percent of the NTPC shares;
- Electricity Generating Public Company Limited, which is a Thai entity holding 25 percent of the NTPC shares; and
- Italian-Thai Development Public Company Limited, which is a Thai entity holding 15 percent of the NTPC shares.

Key terms of the Concession Agreement mean that:

- the responsibility for completing NT2 on time lay with the NTPC;
- EDF was contracted to carry out the main construction works; and
- the Government of the Lao PDR and the NTPC together are responsible for ensuring the social implications of the project are dealt with appropriately. [56]

1.3 Power Purchase Agreement

In 2003, the NTPC, EDF, and the Electricity Generating Authority of Thailand (EGAT) entered into a power purchase agreement (PPA). EGAT is a state-owned enterprise that owns

[56] Asian Development Bank Institute, *Trends in National and Regional Investors Financing Crossborder Infrastructure Projects in Asia* (No. 245, September 2010), page 18.

and manages the majority of Thailand's electricity generation capacity and the nation's transmission network. The main provisions of the PPA were that:

- EGAT should acquire 95 percent of the power produced by NT2 for the first 13 years, after which the power would be sold to the spot market to the extent that there was alternative demand;

- EGAT should be subject to penalties for not reaching the 95 percent power purchasing target; and

- the basis for determining the power price for EGAT is the mid-point between the cost of energy generation and the marginal cost for Thailand in acquiring the same volume of energy being provided by NT2 from other sources (for example, coal or gas) (a principle known as system avoided cost). [57]

1.4 Financing

From a financing perspective, in the private sector in Southeast Asia, NT2 is not only the largest hydropower scheme, but also the largest cross-border project.

The financing of the project closed in 2005. Just under a third of the project cost, being US$450 million, was equity finance (being provided by the shareholders of the NTPC who are listed in Section 1.2 above), with the remainder being debt finance. [58]

The debt finance was provided by a broad base of lenders, including two bilateral and five multilateral lenders, four export credit agencies, as well as the following commercial banks: the Australia and New Zealand Banking Group, BNP Paribas, Crédit Agricole, Fortis Bank, ING, Kredietbank ABB Insurance CERA Bank, Société Génerale, Standard Chartered, which lent under the US dollar, political risk, and export credit agency facilities.

The Bangkok Bank, Bank of Ayudhya, Kasikorn Bank, Krung Thai Bank, Siam City Bank, Siam Commercial Bank, and the Thai Military Bank provided the baht-denominated tranche of debt of US$500 million.

[57] Asian Development Bank Institute, *Trends in National and Regional Investors Financing Crossborder Infrastructure Projects in Asia* (No. 245, September 2010), page 19.
[58] Infrastructure Journal (2014), *'ADB considers Nam Theun 2 for project bonds' 27 May.* http://www.ijonline.com/Articles/91737#article (accessed 26 June 2015).

There was also US$200 million in export credit agency debt, which was fronted by Coface and reinsured by Exportkreditnämnden (Swedish National Export Credits Guarantee Board; EKN) and The Garanti-instituttet for eksportkreditt (Norwegian Guarantee Institute for Export Credits; GIEK). [59]

Particularly noteworthy debt financing contributions with a view to aiding development were from:

a) the Asian Development Bank (ADB), which provided US$50 million loan assistance, US$16.1 million public sector loan to the Lao PDR government, and US$42 million guarantee in respect of political risk;

b) the World Bank's International Development Association (IDA), which provided partial risk guarantee in respect of commercial loans to the value of US$42 million and grant assistance of US$20 million; and

c) the Multilateral Investment Guarantee Agency, which provided a guarantee of US$42 million of debt.

ADB, the World Bank, and the Multilateral Investment Guarantee Agency provided political risk guarantees for loans amounting in total to US$126 million.

In addition to the above, financing was provided by the Lao PDR in the form of a 5-year period where no taxes will be payable in relation to the project, followed by a 10–15 percent rate of tax on corporate profits in the following 5-year period. [60]

ADB was reported in May 2014 to be considering NT2 for a project bond scheme, whereby a subordinated debt tranche would be issued (likely to be either mezzanine debt or a contingent credit line) for up to a fifth of the total senior debt value, with the purpose of allowing the project company to issue bonds at the investment grade level. [61]

[59] Infrastructure Journal (2014), *'ADB considers Nam Theun 2 for project bonds' 27 May.* http://www.ijonline.com/Articles/91737#article (accessed 26 June 2015).
[60] Asian Development Bank Institute, *Trends in National and Regional Investors Financing Crossborder Infrastructure Projects in Asia* (No. 245, September 2010), page 19.
[61] See Infrastructure Journal (2014). *ADB considers Nam Theun 2 for project* bonds. 27 May. http://www.ijonline.com/Articles/91737#article. We have not seen any further update on the status of this proposed bond issue.

2. Regulatory Analysis

2.1 PPP Regime Issues

NT2 is an Independent Power Producer (IPP) project. Although the IPP and PPP sectors share a number of similarities (since both are essentially long-term concessions), they have largely developed separately from each other and consequently have distinctive structures, risk allocations, and documentation. If PPP is given a very broad definition, it could be said that the IPP sector is a subset of the PPP sector. Indeed, both IPP and PPP could be regarded as part of, or having developed from, the project finance sector.

NT2 has a typical structure for an IPP project, with a long-term concession agreement, a PPA, an engineering, procurement, and construction (EPC) contract, and project finance facilities. The PPP regimes in the Lao PDR and Thailand were consequently not fundamental to the structure of the project. The Lao PDR has an underdeveloped PPP sector, with few formal government policies and regulations. Thailand is further advanced, with recent policies and a new PPP law seeking an inception of the market. However, Thailand is still at an early stage in terms of procuring projects on a PPP basis.

A cross-border PPP project (outside the IPP sector) involving the Lao PDR and Thailand would therefore have few reference points for determining its structure and the procurement approach to be used. The intergovernmental arrangements would be critical to pave the way for implementation of such a project. It is likely that significant support from organizations like ADB, both by way of technical assistance and funding, would also be necessary. It might also be necessary to reform or develop the enabling regulatory environment for PPP and the relevant sector in each country as part of this process. These issues would have to be considered in detail in relation to any proposed new cross-border infrastructure project between the Lao PDR and Thailand.

2.2 Sector Issues

The Lao PDR has made significant investment in its power sector, primarily in mining and hydropower and has committed to extending its transmission networks both within and outside the country. In order to exploit its hydropower export potential, the Lao PDR has encouraged investment from the private sector, by updating its regulatory framework and promulgating investment laws, which include incentives for investors in renewable energy projects. Various concession models are encouraged, including the build–operate–own–transfer model of NT2. The government's equity participation in NT2 also reflects the norm in the context of long-term concessions in the power sector.

Thailand has advanced power infrastructure relative to other Southeast Asian countries. While Thailand has projected that it will double its own generation capacity by 2030, it has also looked further afield in recent years, increasing imports of electricity. Under the PPA with the Lao PDR, the Thai government has taken another step towards ensuring energy security. EGAT is the sole purchaser and power transmission provider in Thailand, but major transmission system development is under way in order to connect NT2 with EGAT's power system. EGAT will sell imported electricity to the Metropolitan Electricity Authority and the Provincial Electricity Authority, which will distribute the electricity to end-users.

2.3 Key Challenges

NT2 was a large-scale hydropower project in a relatively undeveloped region within ASEAN. Key challenges to its financing and implementation are set out below.

Social and environmental issues: Social and environmental concerns typical of a hydropower project included downstream impacts, impacts on biodiversity, resettlement, and reservoir sedimentation. A number of critics and activists criticized NT2 for the damage they said that it was causing and had already caused, to the local community and the environment. The main complaints included:

- Communities on the Nakai Plateau had no means for a sustainable livelihood, which threatened their long-term food security.
- Tens of thousands of people living downstream along the Xe Bang Fai River suffered poor water quality, diminished fisheries, and flooding of their riverbank gardens. It was argued that the project's funding was inadequate to restore their livelihoods.
- NT2's reservoir opened up access to the Nakai–Nam Theun National Protected Area, exacerbating logging and poaching and threatening its ecological integrity.

- While the project was supposed to improve standards for hydropower development more generally in the Lao PDR, it was argued that there was little evidence that this actually happened. [62]

Foreign exchange risk: A lesson learnt from the 1997–1998 Asian financial crisis was the importance of minimizing foreign exchange risk. The approach taken with NT2 was to mirror the currency denomination of the project costs and project revenues with the currency denomination of the project financing, in order to remove exposure to currency exchange movements. The consequence of this was that approximately half of the debt, or B20 billion (approximately US$628 million), would need to be baht denominated. Borrowing such a sum from Thai lenders was unprecedented for the Lao PDR projects, and doing so initially seemed like a potential challenge. [63]

Political risks: The political risks associated with NT2 were a concern for both governments of Thailand and the Lao PDR, given the undeveloped regulatory framework in the Lao PDR and the cross-border nature of the project (in particular, the offtake to Thailand from the Lao PDR). There were concerns over whether the project would be able to raise the required large sums of financing required for the sizeable project, given that: (a) Lao PDR was eligible for debt relief under the heavily indebted poor countries initiative; (b) the large value of NT2 compared with the entire the Lao PDR economy; and (c) the Lao PDR had limited foreign exchange reserves. [64]

Regulatory environment: At the time the project was procured, neither the Lao PDR nor Thailand had a developed regulatory framework for PPP projects. Thailand has recently enacted specific PPP legislation and has developed a more coherent enabling policy environment for PPP. For a future cross-border PPP project between the Lao PDR and Thailand, there would consequently be a mismatch between the prevailing regulatory regimes in each country. The main issue to be addressed would be the lack of a specific enabling framework for PPP in the Lao PDR.

[62] Counter Balance (2011). 'Nam Theun II Hydropower Project, Laos' March 1. http://www.counter-balance.org/nan-theun-hydropower-project-laos/ (accessed 26 June 2015)
[63] Ifrasia (2013). 'Nam Theun 2 powers ahead'. 13 March. http://www.ifrasia.com/nam-theun-2-powers-ahead/21073485.article. (accessed 26 June 2015)
[64] Ifrasia (2013). 'Nam Theun 2 powers ahead'. 13 March. http://www.ifrasia.com/nam-theun-2-powers-ahead/21073485.article. (accessed 26 June 2015)

Given that the project was structured as an IPP project, the PPP regimes in each country were of less importance than would have been the case in other sectors such as transport. Both the Lao PDR and Thailand have experience in procuring power projects on a concession basis. The concession structure (in particular, the Concession Agreement, the PPA, and the financing documents) had to take account of differing regulatory regimes for the power sector in the Lao PDR and Thailand.

Natural risks: Due to the nature of the NT2 project, there were a number of concerns over natural risk such as water flow, seismic conditions and earthquake risks, flooding, sediment, and rock and geological conditions. Project research meant that lenders could be provided with technical and historical information and data, showing that the location of NT2 was well suited for such a hydropower project. [65]

Other financing and/or bankability risks: It was necessary to ensure sufficient certainty and protection of revenues in order to guarantee consistently timely and full debt service. The financing of the Lao PDR government's equity contribution of over US$100 million in the project was a potential concern, given the project was large in the overall economy, the country had relatively low levels of foreign exchange reserves, and the government had no previous experience raising commercial indebtedness. [66]

3. Solutions and Mitigation Strategies

Key solutions and mitigation strategies to the challenges outlined above included the following:

Social and environmental concerns: Environmental and social concerns included downstream impacts, impacts on biodiversity, resettlement, and reservoir sedimentation. NT2 has a multilayer environmental and social monitoring and evaluation mechanism consisting of a number of independent panels of experts reporting to the Lao PDR government and/or the World Bank on an ongoing basis. The comprehensive environmental and social measures designed to mitigate potential environmental and social impacts have received praise from some experts who cite the project as a potential 'global model'. However,

[65] Ifrasia (2013). 'Nam Theun 2 powers ahead'. 13 March. http://www.ifrasia.com/nam-theun-2-powers-ahead/21073485.article. (accessed 26 June 2015)

[66] Ifrasia (2013). 'Nam Theun 2 powers ahead'. 13 March. http://www.ifrasia.com/nam-theun-2-powers-ahead/21073485.article. (accessed 26 June 2015)

the project's social and environmental impact has also received criticism from various non-governmental organizations. [67] The NTPC and the Lao PDR government each have a variety of responsibilities to manage and fund environmental and social impacts, with the project being contractually committed under the terms of the Concession Agreement to spend more than US$100 million in mitigating environmental and social impacts during the construction period. The full costs of mitigation to be funded by the NTPC were factored in as part of the project budget to ensure that there would be no funding shortfall. For example, 6,300 people from 17 villages moved from the area that became the NT2 reservoir on the Nakai Plateau to custom-built villages built in consultation with the resettled communities. The NTPC and the Lao PDR have committed to doubling the income of resettled villagers through livelihood programmes within 5 years from the time they were relocated. According to a World Bank report, the health of villagers who have been resettled has significantly improved due to better water and sanitation, regular health check-ups, and the provision of mosquito nets, as documented by various assessments.[68]

Political risk mitigation: Political risk mitigation was a key challenge due to the cross-border nature of the project and an undeveloped regulatory framework. Political risk was dealt with by allocating Thai political risk to EGAT under the PPA (using the framework established previously for Thai IPPs) and the Lao PDR political risk to the government under the Concession Agreement (consistent with precedents for emerging market projects). Thai political risk was further mitigated by the favourable tariff under the PPA which EGAT benefited from and which consequently reduced the risk of breach of contract. Reassurance was also taken from the unbroken 30-year history of cross-border sales between the Lao PDR and Thailand, a memorandum of understanding on electricity exchange between the two countries, and the involvement of several Thai commercial banks and the Export-Import Bank of Thailand. In addition, all debt financing was guaranteed through political risk insurance provided by a number of ECAs and multilateral agencies. These guarantees covered risks such as expropriation, breach of contract, war and civil disturbance, as well as currency

[67] Letter to World Bank Executive Director Regarding Nam Theun 2 Concerns. 30 July 1997. http://www.internationalrivers.org/resources/letter-to-world-bank-executive-director-regarding-nam-theun-2-concerns-3300 (accessed 26 June 2015)
[68] The World Bank, 'Nam Theun Moves Forward; Livelihood Activities Require Acceleration' http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPENERGY/0,,contentMDK:21587429~menuPK:574021~pagePK:2865114~piPK:2865167~theSitePK:574015,00.html (accessed 26 June 2015)

inconvertibility in both the Lao PDR and Thailand. These guarantees further lowered the project's risk profile and enabled the project to attract increased commercial financing and at better rates. [69]

Regulatory environment: The lack of a developed regulatory regime for PPP in the Lao PDR and Thailand at the time the project was procured was not a major impediment, given that the project was structured as an IPP concession. A future cross-border PPP project between the Lao PDR and Thailand (for example, in the transport sector) might require some level of reform of the enabling regulatory environment, including the PPP regime in each country (particularly in the Lao PDR). Technical assistance from institutions such as ADB or International Finance Corporation could facilitate such reform. Alternatively, regulatory issues could be dealt with mainly in the project documents, such as the concession agreement, inter-governmental agreement, and financing documents. The Concession Agreement, PPA, and financing documents for NT2 were structured to address regulatory issues such as requirements for licences and permits and change in law risk. The PPA in particular, could be regarded as containing the key terms of the cross-border aspects of the project, given that its parties included the project company, NTPC, and EGAT.

Revenue protection: The basis upon which Thailand was required to purchase 95 percent of the energy produced, or pay a penalty meant that the revenue stream was, to a large extent, guaranteed, and it was felt that this would be sufficient to cover the debt repayments, of which the debt denominated in US dollars had a 17-year tenor, whilst the baht debt had a tenor of 15.5 years. [70]

Foreign exchange risk: The currency profile of the project funding was developed to match the upfront project costs and the currency of the revenues received under the PPA in order to mitigate currency risk by providing a natural hedge. This was reflected in the long-term debt funding, which was denominated 50 percent in Thai baht and 50 percent in US dollars. Sponsors' equity was largely contributed in US dollars in order to better match funding source currency with project costs and revenues.

Host government funding: A significant proportion of the Lao PDR government's initial equity contribution (US$83 million) was funded by donors, including grants from the

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[69] Water, Power and Dam Construction, Nam Theun 2 - Finance package. 30 April 2008. http://www.waterpowermagazine.com/features/featurenam-theun-2-finance-package/ (accessed June 26 2015)
[70] Infrastructure Journal (2014). *ADB considers Nam Theun 2 for project* bonds. 27 May. http://www.ijonline.com/Articles/91737#article.

International Development Association of the World Bank Group, ADB, France, and the European Investment Bank.

Natural risks: For a hydropower plant, natural risks include hydrology, geological conditions, seismic conditions, sedimentation in the reservoir, and flooding. Lenders relied on historical and technical data, which provided evidence that the site was suited for hydropower development. [71]

[71] Ifrasia (2013). 'Nam Theun 2 powers ahead'. 13 March. http://www.ifrasia.com/nam-theun-2-powers-ahead/21073485.article. (accessed 26 June 2015)

Last Revised: June 2015

Mactan–Cebu International Airport Passenger Terminal Project

1. Project description

1.1 Overview

The Mactan–Cebu International Airport (MCIA) is the second largest airport in the Philippines and serves as the southern hub of the air transportation system of the country. Passenger traffic at the MCIA has significantly grown over the last decade. The number of incoming and outgoing passengers, domestic and international combined, was 2.2 million in 2001 and 6.8 million in 2014, though the current facility is designed to handle 4.5 million per year. [72] Recognizing the urgent need to accommodate the increasing traffic, the Department of Transportation and Communication (DOTC) and its attached agency for management and operation of the MCIA, the Mactan–Cebu International Airport Authority (MCIAA), proposed construction of a new passenger terminal and renovation of the existing terminal under a PPP framework of the Philippines.

The scope of the project mainly consists of:

- construction of a new world class international passenger terminal (Terminal 2) with a capacity of about 8 million passengers per year, along with all associated infrastructure and facilities;
- renovation and expansion of the existing terminal (Terminal 1) along with all associated infrastructure and facilities to handle domestic operations; and
- operation and maintenance of both the passenger terminals (new and existing) during the entire concession period.[73]

[72] Mactan–Cebu International Airport Authority website. 'Passenger Movement'. http://www.mciaa.gov.ph/Passenger%20Movement.html (accessed 26 June 2015).
[73] Department of Transportation and Communication and Mactan–Cebu International Airport Authority. Project Background Sheet.

An invitation to pre-qualification and bid was announced in December 2012. The evaluation results of the pre-qualification documents were notified in May 2013 and the notice of award (NOA) was issued in April 2014.

Among seven pre-qualified bidders, the project was awarded to a consortium comprising India's GMR Infrastructure Limited and the Philippines' Megawide Construction Corporation. The Bangalore-based GMR is a leading global infrastructure player whose business portfolio covers airports, energy, transportation, and urban development. It has experience in the operation, management, and development of Delhi International Airport and Hyderabad International Airport in India. [74] Megawide is a local fast-growing constructor known for its cutting-edge technology, such as precast construction systems. [75] The company is active in the PPP market in the Philippines, having a strong track record in being awarded five PPPs (including PPP for schools and hospital projects) out of 10 projects tendered out as of today.

1.2 Concession Agreement

A 25-year concession agreement was signed in April 2014 between the GMR Megawide Cebu Airport Corporation (GMCAC) and the DOTC. The concession agreement gives the consortium a 25-year period to construct, develop, renovate, expand, and operate the existing and new passenger terminals at the MCIA.

The renovation of the existing terminal (Terminal 1) will be completed in 4 years, while the new terminal (Terminal 2) will be finished in 3 years, along with the completion of the landside development. The landside development shall comprise a road network, car park, commercial assets, and an airport village (meet–greet area). [76]

Since November 2014, the GMCAC has taken over the landside operation and management of the existing terminal and is entitled to receive landside revenues (while the

[74] GMR Group website. http://www.gmrgroup.in/hand-shake.aspx (accessed 26 June 2015).
[75] Megawide Construction Corporation website. http://www.megawide.com.ph/ (accessed 26 June 2015).
[76] Asian Development Bank (2014), 'Draft Initial Environment Examination Report, PHI: Mactan Cebu International Passenger Terminal Project (Philippines)'. http://www.adb.org/sites/default/files/project-document/150366/48271-001-iee-01.pdf (accessed 26 June 2015).

airside is operated and maintained by the MCIAA). Construction of the new international terminal has started in June 2015 and is expected to open in August 2018.[77]

1.3 Financing

The project cost for the entire works is estimated at around PHP17.5 billion (approximately US$380 million). In addition, the GMCAC's premium payment for the concession to the government as the winning bidder amounted to PHP14.4 billion (approximately US$320 million).[78] In total, the GMCAC needs to raise around PHP31.9 billion (approximately US$700 million), which was probably challenging through corporate-based financing (According to Megawide's financial statement, its total asset size is PHP36.6 billion (similar size as the total funding requirement) as of the end of September 2014).

The financial closure of its project-based financing of PHP20 billion from a consortium of six local banks was originally achieved in December 2014. After that, the loan agreement was amended in January 2015 to include the US$75 million direct loan from ADB, which increased the total debt financing of the project to approximately PHP23 billion, 72 percent of the project's total funding requirement. ADB noted that one of the determinants in providing the loan is the view that the project will support tourism, industry, and agricultural activity, thus creating employment opportunities.[79] The remainder of the funding, around PHP10 billion (28 percent) shall be sourced by the equity from each company, out of which GMR participated 40 percent, while Megawide invested 60 percent into the project.

2. Analysis and Lessons

Sector issues

The airport sector is regarded as one of the suitable fields for PPP in that the government can expect greater value for money from private party participation. The main

[77] *The Freeman* (2015), 'Airport's Terminal 2 Construction Starts', 3 June. http://www.philstar.com/cebu-news/2015/06/03/1461713/airports-terminal-2-construction-starts (accessed 26 June 2015).
[78] *Business World* (2015), 'Megawide-led Consortium Borrows P3.3B from ADB to Fund Mactan Airport', 29 January. http://www.bworldonline.com/content.php?section=Corporate&title=megawide-led-consortium-borrows-p3.3b-from-adb-to-fund-mactan-airport&id=101747 (accessed 26 June 2015).
[79] Asian Development Bank (2015), 'ADB Supports Cebu Airport Upgrade in Philippines First Large PPP Project', 27 January. http://www.adb.org/news/adb-supports-cebu-airport-upgrade-philippines-first-large-ppp-project (accessed 26 June 2015)

reason is related to dual income streams coming from the aeronautical and non-aeronautical businesses. The aeronautical revenue, on the one hand, includes aircraft landing and parking fees, terminal fees, and security charges. The non-aeronautical revenues, on the other hand, are created from car parking, retail and duty free, hotel and other commercial activities.

The non-aeronautical component is becoming a key contributor to the financial performance of airports globally. Increasing competition among airports is creating pressure for them to generate the majority of revenue from these 'side' businesses. For this non-aeronautical part of business in particular, the private sector has better ideas and skills to maximize its commercial potential.

In the MCIA Passenger Terminal Project, there is no protection against traffic risk. The master development plan of the concession is based on a traffic demand forecast of 15.8 million in 2024 and 28.3 million in 2039, domestic and international combined.[80] This implies that based on the current level of traffic of 6.8 million, the future growth rate is estimated at 8.8 percent (CAGR) until 2024, and 4.4 percent (CAGR) during 2025–2039. The historical rate of increase in passengers as well as the brownfield nature of this project could support the trajectory, but only if the trend sustains.

The seemingly aggressive concession premium, equal to 80 percent of the project cost, therefore, probably comes from high expectations for the non-aeronautical components as well as increasing traffic. Indeed, apart from the new airport and landside facilities, the GMCAC is planning the development of a commercial complex or hotel in an adjacent area, which would provide another source of revenue.[81] In addition, it is also reported that the consortium was the one that gave one of the highest traffic forecasts; and according to this estimation, it will build an airport terminal that can accommodate 25 million passengers, more than three times the government's requirement.[82] It should be noted here that since in theory, demand for aeronautical and non-aeronautical services are positively correlated, it

[80] Asian Development Bank (2014), 'Draft Initial Environment Examination Report, PHI: Mactan Cebu International Passenger Terminal Project'. http://www.adb.org/sites/default/files/project-document/150366/48271-001-iee-01.pdf (accessed 26 June 2015)

[81] *Philippine Daily Inquirer* (2014), 'DOTC, GMR-Megawide Ink Mactan Airport Deal', 23 April. http://business.inquirer.net/168845/dotc-gmr-megawide-ink-mactan-airport-deal#ixzz3dxnNBxVt (accessed 26 June 2015).

[82] *Infra PPP* (2013), 'MegaProject 137: GMR – Megawide Consortium Wins Mactan Cebu PPP Airport Project', 12 December. http://infrapppworld.com/2013/12/megaproject-137-gmr-megawide-consortium-wins-mactan-cebu-ppp-airport-project.html (accessed 26 June 2015).

would be crucial to see how the consortium will mitigate downside risks through diversifying its revenue portfolio in the project at its operation stage.

Foreign investors' participation

PPP projects in the Philippines have been attracting attention mostly from local investors or banks. Out of 10 projects which have been awarded to the private sector under the current administration, nine projects were given to local investors, and only this MCIA Passenger Terminal Project was won by a consortium with a foreign investor, GMR Infrastructure. In the bidding of the MCIA project, international airport operators or infrastructure investors from Asia-Pacific, Europe, and the United States, participated with local partners. The fact is encouraging to the government which is in the process of opening the market for more airport concessions, including the modernization of five regional airports (New Bohol [Panglao], Laguindingan, Davao, Bacolod, and Iloilo) and the US$1.6 billion Ninoy Aquino International Airport (NAIA) Development Project.[83]

Having said that, one of the structural impediments for international investors has been a limit on foreign investors' equity participation. In the Philippines, in most infrastructure sectors, foreign investors are allowed to participate up to 40 percent of the project company (that is why, GMR could only participate 40 percent of the equity). Therefore, foreign investors need to start with finding the right local partner before participating in a project. Only a project which does not require a public utility 'franchise', the facility operator or concessionaire may be foreign owned.[84] In this respect, a forthcoming project by the Department of Justice on the development and maintenance of regional prison facilities, which does not have a limit on such foreign ownership, will become a milestone to test international investors' enthusiasm in the market apart from such restriction.[85]

There should also be flexibility in concession agreements. One of the important factors that led to the successful tender of the MCIA project, was the adjustment of the concession agreement through one-on-one meetings with the pre-qualified bidders. Some of the crucial

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[83] PPP Center, 'Pipeline of Projects'. http://ppp.gov.ph/?page_id=26075 (accessed 26 June 2015).
[84] PPP Center, 'The Philippine PPP Program'. http://www.iesingapore.gov.sg/~/media/IE%20Singapore/Files/Events/iAdvisory%20Series/Philippines%202014/420Opportunities20in20the20Philippines20Public20Private20Partnership20sector.pdf (accessed 26 June 2015).
[85] *Business Online* (2015), 'Regional PPP Deals Luring Big Investors', 20 March. http://www.bworldonline.com/content.php?section=TopStory&title=regional-ppp-dealsbr-luring-big-investors&id=104769 (accessed 26 June 2015).

amendments include lengthening the concession period from 20 years to 25 years, transferring the operation and maintenance from the grantors to the concessionaire, and increasing the duration of the period for prohibiting competing airports.[86] Since there is a large difference between foreign and local investors in their risk appetite for projects in the Philippines, close consultation with each prospective bidder and subsequent adjustment of commercial terms could create a competitive and attractive tension for both foreign and local investors.

Government's contract obligations

The project background document noted that 'MCIAA will grant right-of-way/usufructuary right/possessory rights over the project site and relevant existing assets in favor of the Project Proponent on the Handover Date.' Although land procurement for the new terminal is not required, since facilities of the Philippine Air Force are located at the project site of the new passenger terminal, on-time removal of these facilities is the major precondition to commence construction. However, due to the delay in this handover process, the company has been unable to start construction and the construction has been pushed backed from the initial schedule of January 2015.[87] It will affect the timely construction and commercial operation of the project, which in turn, are the responsibilities of the project company.

In the meantime, the MCIAA Board has approved an increase of the Passenger Service Charge in line with the contractual obligations of the government with respect to the concession agreement.[88] According to the project background paper, 'Broadly, MCIAA contemplates specifying a base tariff as identified upfront and also specifying modalities on tariff variations over the concession period.' However, there are risks in real implementation of the adjustment as this is not an automatic process and needs to be approved by the appropriate authorities due to its public nature.[89] For the future, it is hoped that potential economic losses from delays in relation to the government's obligations (including protection

[86] *Infra PPP* (2013), 'New Deadline for Cebu Airport PPP Project', 23 September. http://ppp.gov.ph/?in_the_news=new-deadline-for-cebu-airport-ppp-project (accessed 26 June 2015).
[87] *Sun Star Cebu* (2015), 'PAF Urged: Take Off', 22 April. http://www.sunstar.com.ph/cebu/local-news/2015/04/22/paf-urged-take-403683 (accessed 26 June 2015).
[88] *The Freeman* (2014), 'Airport Fee Hike Starts Nov 1', 14 October. http://www.philstar.com/cebu-news/2014/10/14/1380038/airport-fee-hike-starts-nov-1 (accessed 26 June 2015).
[89] For toll road projects, for example, the increase of toll rates must be approved by the Toll Regulatory Board.

from competition) can be guaranteed by a formal mechanism, such as through a contingent liability fund, so that private investors become more comfortable in engaging with governments' contracting agencies in the market.

Pre-qualification and tender issues

The issuance of the notice of award (NOA) was pushed back by issues raised by the second bidder, insisting that GMR did not satisfy financial, legal, and technical qualifications.[90] As a result, together with the delay by the adjustment of concession agreement, it took 16 months from the initial issue of the Instruction to Prospective Bidders in December 2012 and the NOA in April 2014. It was longer than its standard of 5–8 months (PPP Center) or several precedents, such as 10 months for the NAIA Expressway Project (Phase II), 8 months for PPP for School Infrastructure Project (PSIP) – Phase I; and 5 months for the Daang Hari–SLEX Link Road Project.[91]

As a policy initiative, institutionalization of the appointment of third party probity advisors to manage and provide and independent opinion has been planned, which would be a solution to handle such complex projects in a transparent and manageable way. In addition, it must be true that overall capacity enhancement of government contracting agencies in handling these complex issues is still required.

[90] *Manila Bulletin* (2014), 'Understanding the Mactan Airport Fiasco', 19 January. http://www.mb.com.ph/understanding-the-mactan-airport-fiasco/ (accessed 26 June 2015).
[91] PPP Center, The Philippine PPP Program. http://map.org.ph/attachments/article/288/CANILAO,%20COSETTE%20V.%20-%20The%20Philippine%20PPP%20Program.pdf (accessed 26 June 2015).

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