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.

[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)