

JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)
NATIONAL ECONOMIC DEVELOPMENT AUTHORITY (NEDA)
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)

**PREPARATORY SURVEY
FOR
PUBLIC-PRIVATE PARTNERSHIP (PPP)
INFRASTRUCTURE DEVELOPMENT PROJECTS
IN
THE REPUBLIC OF THE PHILIPPINES**

FINAL REPORT

EXECUTIVE SUMMARY

DECEMBER 2010

**CTI ENGINEERING INTERNATIONAL CO., LTD.
MITSUBISHI RESEARCH INSTITUTE, INC.**

EXCHANGE RATE

May 2010

1 PhP = 1.97 Japan Yen

1 US\$ = 46.21 Philippine Peso

1 US\$ = 90.85 Japan Yen

Central Bank of the Philippines

PREFACE

The Government of Japan decided to conduct the “Preparatory Survey for Public-Private Partnership (PPP) Infrastructure Development Projects in the Republic of the Philippines” and entrusted the Study to the Japan International Cooperation Agency (JICA).

JICA selected and dispatched a Study Team headed by Mr. Mitsuo Kiuchi of CTI Engineering International Co., Ltd. from February 2010 to November 2010.

The Study Team held discussions with the officials of the Department of Public Works and Highways (DPWH) and other officials of the Philippine Government and conducted field surveys, data gathering and analysis, based on which the Study Team identified bottlenecks in the PPP process and candidate PPP projects. The Study Team recommended possible priority PPP projects for ODA funding, roadmap for promotion of PPP projects and technical support program. The Study Team also held trainings, workshops and stakeholders meetings to solicit opinions from different stakeholders. Upon returning to Japan, the Study Team prepared this final report which summarized the results of the Study.

I hope that this report will contribute to the development and promotion of PPP projects and to the enhancement of friendly relationship between our two countries.

Finally, I wish to express my sincere appreciation to the officials concerned of the Government of the Republic of the Philippines for their close cooperation and assistance extended to this Study.

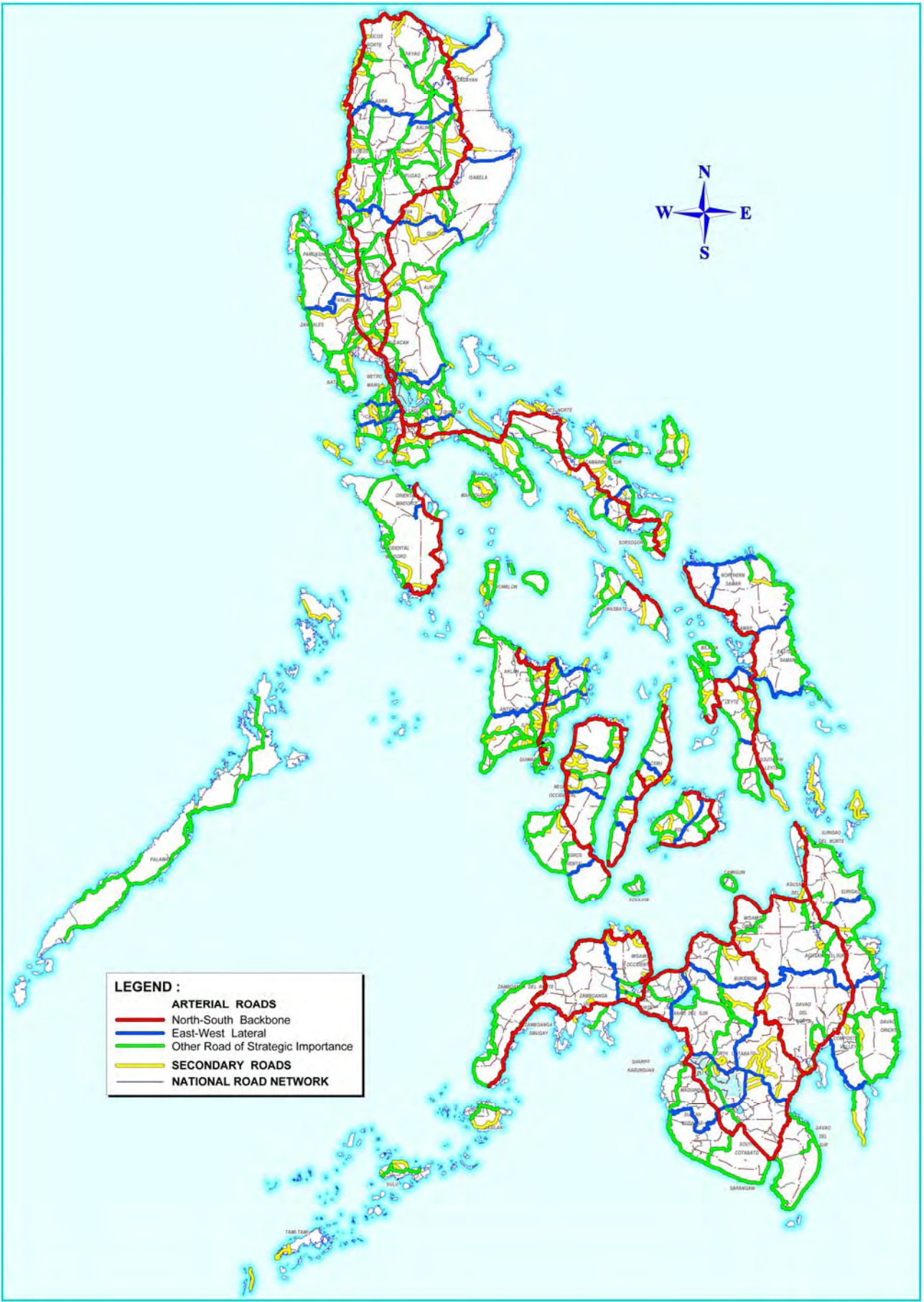
December 2010

KIYOFUMI KONISHI

Director General

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Japan International Cooperation Agency (JICA)



LOCATION MAP OF THE STUDY AREA

EXECUTIVE SUMMARY

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ACRONYMS AND ABBREVIATIONS

ADB	: Asian Development Bank	MRG	: Minimum Revenue Guarantee
B/C	: Benefit/Cost Ratio	MIAA	: Manila International Airport Authority
BCDA	: Bases Conversion Development Authority	MMDA	: Metro Manila Development Agency
BLT	: Build-Lease-Transfer	MRT	: Mass Rail Transit
BOT	: Build-Operate and Transfer	MRTC	: Metro Rail Transit Corporation
CAAP	: Civil Aviation Authority of the Philippines	NCR	: National Capital Region
CDCP	: Construction Development Corporation of the Philippines	NDC	: National Development Corporation
CLEx	: Central Luzon Expressway	NEDA	: National Economic Development Authority
DBFO	: Design, Build, Finance and Operate	NGO	: Non-Governmental Organization
DBP	: Development Bank of the Philippines	NLEx	: North Luzon Expressway
DENR	: Department of Environment and Natural Resources	NPER	: Net Public Expenditure Reduction
DBM	: Department of Budget and Management	NPV	: Net Present Value
DOF	: Department of Finance	O&M	: Operation and Maintenance
DOTC	: Department of Transportation and Communications	ODA	: Official Development Assistance
DPWH	: Department of Public Works and Highways	OSG	: Office of the Solicitor General
DTI	: Department of Trade and Industry	PD	: Presidential Decree
EIA	: Environmental Impact Assessment	PEA	: Philippine Estate Authority
EIRR	: Economic Internal Rate of Return	PEGR	: Philippines-Australia Partnership for Economic Governance Reform
EIS	: Environmental Impact Statement	PIP	: Public Investment Plan
EO	: Executive Order	PMO-	: Project Management Office for
FIRR	: Financial Internal Rate of Return	BOT	: Build-Operate-Transfer
GDP	: Gross Domestic Product	PNCC	: Philippine National Construction Company
GFS	: Government Financing Support	PNR	: Philippine National Railways
GOCCs	: Government-Owned and Controlled Corporations	PPA	: Philippine Port Authority
GOJ	: Government of Japan	PPP	: Public-Private Partnership
GRP	: Government of the Republic of the Philippines	R.A.	: Republic Act
HSH	: High Standard Highway	RAP	: Resettlement Action Plan
ICC	: Investment Coordinating Committee	ROW	: Right of Way
IEE	: Initial Environmental Examination	SC	: Steering Committee
IFC	: International Finance Corporation of World Bank Group	SCTEx	: Subic-Clark-Tarlac Expressway
IRR	: Internal Rate of Return	SLEx	: South Luzon Expressway
JICA	: Japan International Cooperation Agency	SPC	: Special Purpose Company
KOICA	: Korean International Cooperation Agency	STAR	: Southern Tagalog Arterial Road
LAPRAP	: Land Acquisition Plan and Resettlement Action Plan	STOA	: Supplemental Toll Operation Agreement
LGUs	: Local Government Units	TCA	: Toll Concession Agreement
LRTA	: Light Rail Transit Authority	TOA	: Toll Operation Agreement
MARINA	: Maritime Industry Authority	TOC	: Toll Operation Certificate
		TOR	: Terms of Reference
		TPLEx	: Tarlac-Pangasinan-La Union Expressway
		TRB	: Toll Regulatory Board
		TWG	: Technical Working Group
		USAID	: United States Agency for International Development
		WACC	: Weighted Average of Capital Cost
		WB	: World Bank

ACTIVITY PHOTOS



Kick-off Meeting



First TWG Meeting



Second TWG Meeting



Second SC Meeting



First Stakeholders Meeting



Second Stakeholders Meeting



First Stakeholders Meeting (Q & A Session)



Second Stakeholders Meeting (Q & A Session)

1. INTRODUCTION

1) Background

- Since the 1997 Asian Currency Crisis, the Government has been suffering from higher financial deficit than before. Efforts to improve the financial condition of the country were made like reduction of infrastructure investments which stalled infrastructure development. Slow development of infrastructure is now seriously affecting sound development of the country's economy.
- Since the enactment of the BOT Law (R.A. No. 7718) in 1994, many PPP projects were proposed, however, many of them were not realized due to lack of fund, unclear risk allocation between the Public and the Private sector, difficulty of ROW acquisition, improper toll fee setting, etc.
- The current administration is focused on transport infrastructure development; however, it requires huge investment. Under the current financial condition of the country, the Government's fund alone is not sufficient to properly finance transport infrastructure projects, thus the Government is pursuing the participation of Local Government Units (LGUs) and the private sector. In line with this policy, the Government is planning to review and amend the present BOT Law, if necessary, to further attract participation of private sector.
- The Government of Japan has been providing technical assistance for PPP projects, particularly for feasibility studies and legal/institutional development; however, no PPP project was implemented under the Japanese Government's financial assistance.
- Under the above circumstances, needs to formulate priority projects which involve both private and ODA financing are quite high. Also, there are needs to identify bottlenecks in the implementation process of PPP projects and to recommend possible solutions to eliminate these bottlenecks for effective and accelerated development of transport projects.

2) Objectives of the Study

The objectives of the Study are as follows:

- Review and synthesize the current situation and issues surrounding PPP infrastructure development activities and assessment of needs of technical supports.
- Screen and list up high priority road projects, which shall utilize PPP scheme.
- Preparation of draft roadmap for PPP road projects with possible Japanese ODA loan.

3) Study Area

The Study will cover the whole area of the Philippines.

4) Scope of the Study

The Study consists of the following main activities:

- Review and Analysis of Current Status and Issues of the Transport Sector
- Review and Analysis of Current Status and Issues of PPP Projects in Transport Sector
- Screening of the Candidate PPP Road Projects and Selection of the Priority PPP Road Projects
- Preparation of Roadmap for PPP Project Implementation and Demarcation of Responsibility and Role of the Related Organizations
- Assessment of Needs of Technical Supports and Recommendation

5) Final Report Organization

The final report is organized as follows:

- Executive Summary
- Main Text
- Annexes
- Pilot Training Materials

2. PRESENT CONDITION OF TRANSPORT SECTOR

2.1 Road Transport Sub-sector

(a) DPWH Budget

Table 2.1-1 below shows the budget of the DPWH from 2006 to 2010. The increase of budget is rather high - the 2010 budget for instance is 15% higher than the budget in 2009.

TABLE 2.1-1 DPWH CAPITAL OUTLAY BUDGET (2006-2010)

Category	Year (Billion)				
	2006	2007	2008	2009	2010*
Highways	35.5	37.2	57.6	87.2	102.6
Flood control	4.8	8.0	6.6	7.6	6.7
Others	7.3	17.3	27.8	29.5	33.1
Total	47.7	62.6	91.5	124.3	142.5
Growth Rate (%)	-	31	46	36	15

Source: DPWH Atlas 2009; *data from DPWH Planning Service

(b) DPWH Organization (Central Office)

Organization chart of DPWH is shown in Figure 2.1-1. Offices within the DPWH which are related to the development of PPP projects are highlighted and discussed below.

Planning Service (PS)

Tasked to formulate policies, plans and programs for the development of the national road network, which includes expressways; prepare PPP proposals for ODA financing; maintain a national road database; and prepare multi-year and annual budgets for the construction (including right-of-way and engineering) and maintenance of national roads.

PMO-Feasibility Studies (PMO-FS)

Assigned to conduct/supervise FS of major foreign-assisted and locally-funded road and expressway projects; and assist the PS and PMO-BOT in preparing project proposals for ODA financing.

PMO-Built-Operate-Transfer (PMO-BOT)

Tasked to identify and initiate projects for BOT/PPP implementation; prepare/review feasibility studies (FS) and proposals for BOT/PPP projects for approval of the NEDA-Investment Coordinating Committee (ICC); prepare bidding documents; participate in negotiations and finalization of BOT/PPP contracts; and monitor/supervise the implementation of BOT/PPP projects.

Environmental and Social Services Office (ESSO)

Involved in preliminary planning activities related to Environmental Impact Assessment (EIA), Social Impact Assessment (SIA), Rapid Social Assessment, Resettlement Action Plan (RAP); conduct public consultations on PPP projects; conduct Information, Education and Communication (IEC) on environment-related concerns; and compliance and effects monitoring of ECC conditions and Environmental Management Plan (EMP).

PMO-Infrastructure Right-of-Way and Resettlement (PMO-IROWR)

Tasked to consult with LGUs, local communities, project affected persons, and the designer/contractor for PPP projects; coordinate with the Presidential Commission for the Urban Poor (PCUP) and the National Housing Authority (NHA) on the relocation of squatter families; conduct census and tagging of affected lots and improvements; coordinate with the Bureau of Internal Revenue or BIR (for zonal valuation), Registry of Deeds (for titles), Assessor's Office, and DAR (for land conversion); coordinate and negotiate with affected property owners on the sale of their properties; coordinate with the Office of the Solicitor General (OSG) for filing of expropriation proceedings; and effect payment of affected properties.

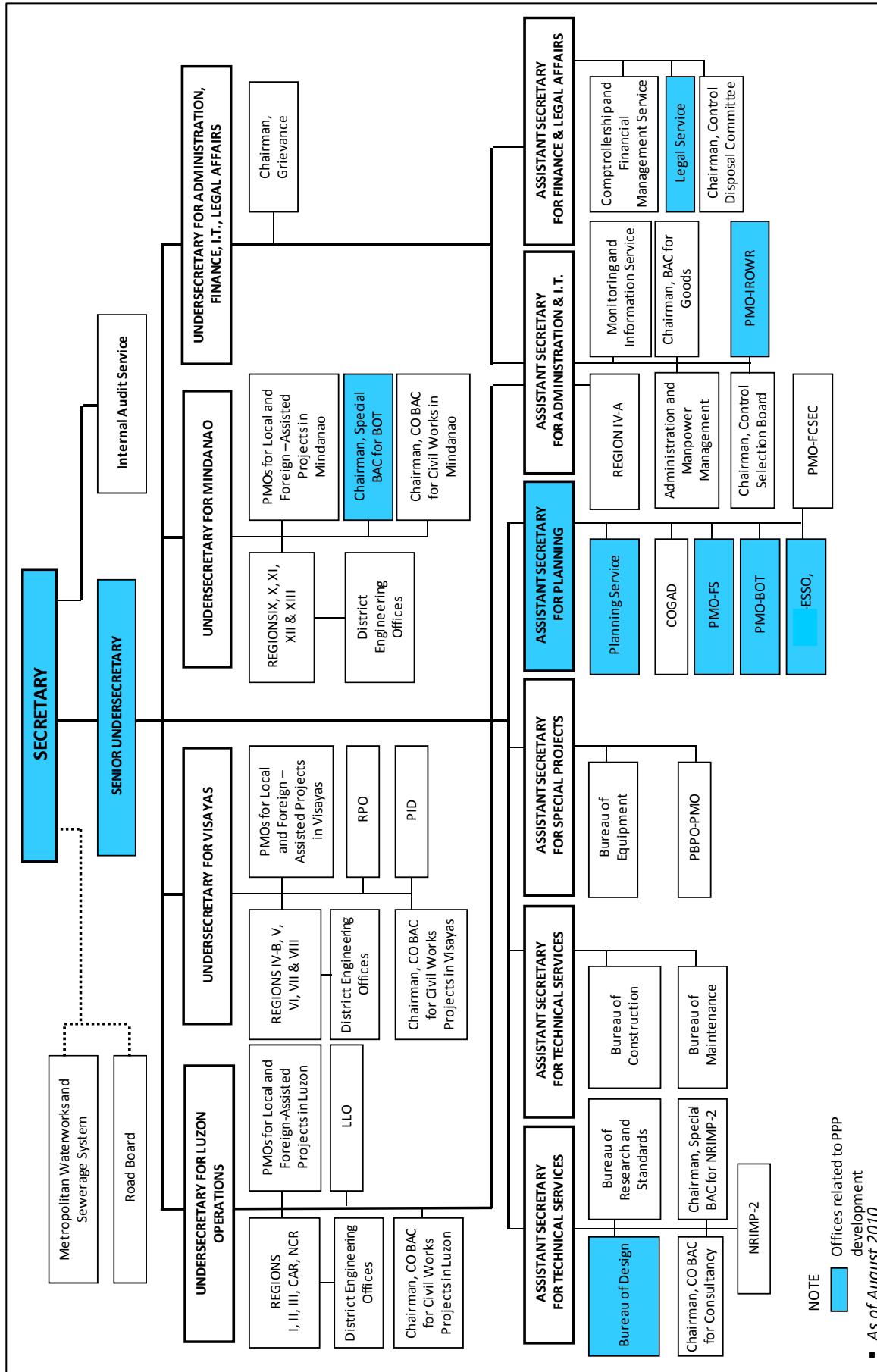


FIGURE 2.1-1 ORGANIZATION CHART OF DPWH

NOTE
 Offices related to PPP development
 ■ As of August 2010

Source: DPWH website

(c) Length and Condition of National Road

The total length of the national road which is composed of the (i) North-South Backbone, (ii) East-West Lateral and (iii) Other Road of Strategic Importance is about 15,730 km.

On the other hand, the National Secondary Road has a length of around 14,167 km. The condition of the national road is shown in the Figure 2.1-2.

(d) Road Transport Problems

Based on the data of DPWH Atlas (2009), the following problems are identified:

- 26.89% which represents 7,973 km of the national road (national primary and national secondary road) is still unpaved; 5,785 km (19.35%) of paved national road is in bad condition.
- Regarding the status of national primary road: 2,510 km (8.48% of the national road) is still unpaved which is either gravel or earth surface; 3,579 km (11.97% of the national road) of paved national primary road is in bad condition.
- Regarding the status of national secondary road: 5,459 km (18.36 of the national road) is still unpaved; 2,206 km (11.97% of the national road) of paved national secondary road is in bad condition.

(e) Road Development Policy

Based on the DWPH’s Draft Medium-Term Public Investment Program (2011-2016), the road development policies are as follows:

- Upgrading the national road network in terms of quality and safety standards with focus on urban centers and strategic tourism destinations;
- Completion of critical bridges along national roads;
- Develop more Public-Private Partnership (PPP) projects for much needed infrastructure and level playing field for investments;
- Address private sector concerns – Transparency, RROW, regulatory risks and government support;
- Pursue contracts for long term maintenance period (5-10 years) in road and bridge construction; and
- Introduce innovative technology such as bio-engineering for road slope protection

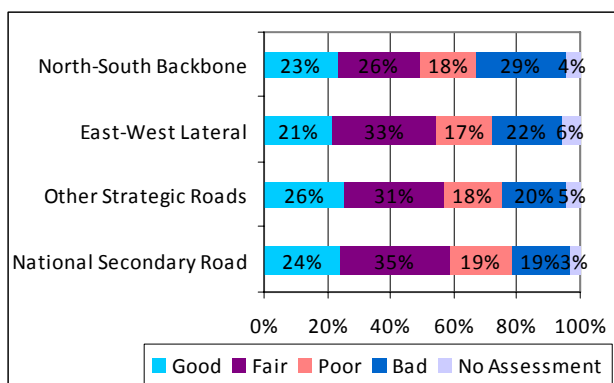
(f) Institutional Policy Reforms - “Doing the Right Projects, Right Price, and Right Quality”

- Full transparency and accountability to the people to curb corruption.
- Change in culture and values of employees and engage the public that deal with DPWH – contractors, politicians, LGUs and general public – to share the new vision and mission of President Aquino.
- Optimize the budget through prudent and objective selection of projects to ensure desired social outcomes.
- Open competitive public bidding/simplify bidding and award process.
- Tighten quality control and assurance in project implementation.
- Engage the public/civil society in governance, monitoring and feedback.

TABLE 2.1-2 LENGTH OF NATIONAL ROAD (2009)

Road Classification	Length (Km)
▪ North-South Backbone	5,297.06
▪ East-West Lateral	2,965.42
▪ Other Strategic Road	7,468.09
▪ National Secondary Road	14,167.44
Total	29,898.01

Source: DPWH Atlas (2009)



Source: DPWH Atlas (2009)

FIGURE 2.1-2 CONDITION OF NATIONAL ROAD (2009)

2.2 Other Transport Sub-sector

1) Department of Transportation and Communication (DOTC)

(a) DOTC Budget

The budget of the DOTC, including its attached agencies and line agencies for the past six (6) years is shown in **Table 2.2-1**.

TABLE 2.2-1 DOTC ANNUAL BUDGET (2004-2009)

Year	Budget (PhP Million)	Growth Rate (%)
2004	8,283	-
2005	8,324	0.5
2006	8,702	4.5
2007	18,041	107.3
2008	21,942	21.6
2009	23,660	7.8

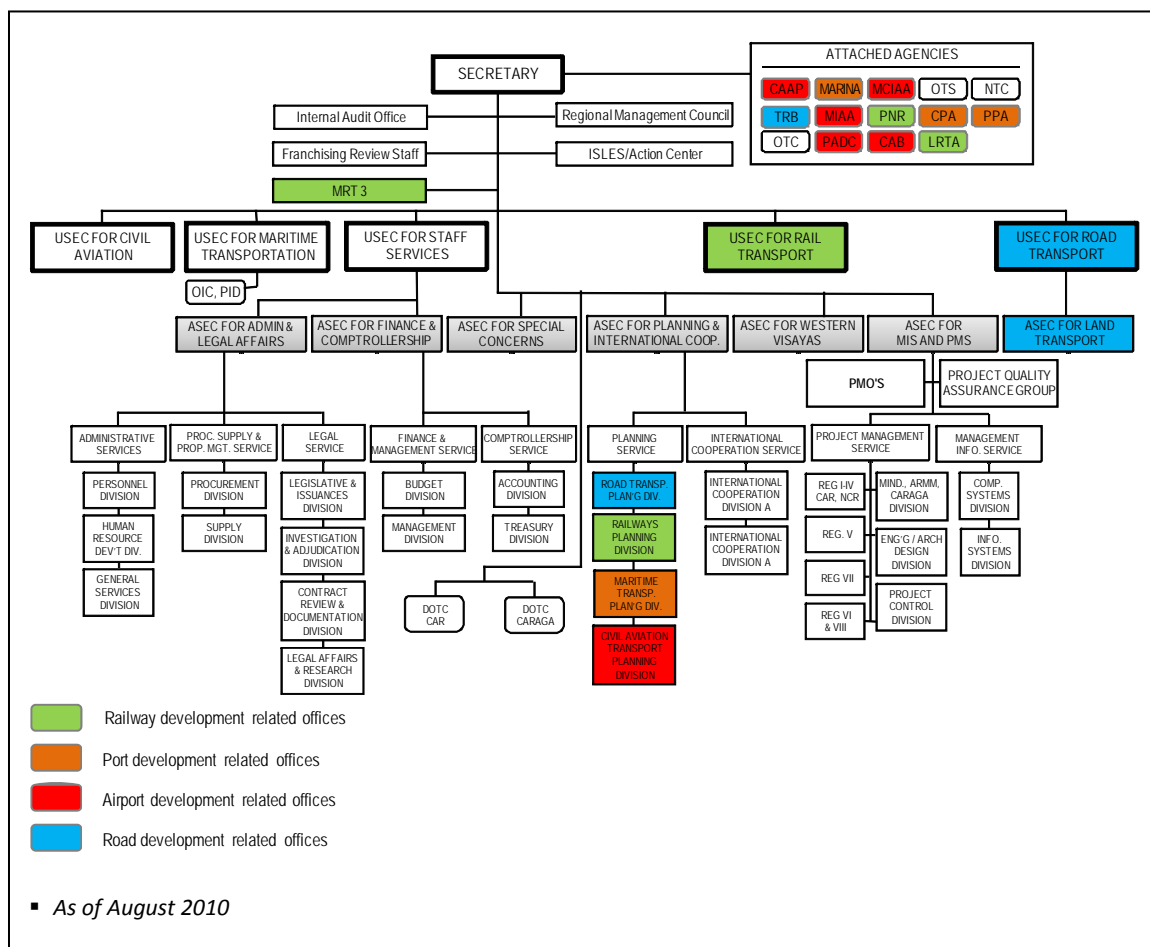
Source: DOTC various records, 2010

(b) Organization Chart

Figure 2.2-1 shows the organizational chart of the DOTC. Highlighted in the chart are those offices involved in the development of PPP projects for road, railway, port and airport. It should be noted that there is no single office dedicated for PPP projects.

(c) Transport Policy

The transport policy of the DOTC is reflected in their Vision 2015: *“Providing integrated transport and communications services, connecting people, islands, families, communities and the nation with the rest of the world, and constantly responding for the environmentally sustainable and globally competitive transport and communications”*.



As of August 2010

Source: DOTC Website

FIGURE 2.2-1 ORGANIZATION CHART OF DOTC

2) Rail Sub-sector

(a) Rail Related Offices Budget

The budget of two attached agencies related to rail transport development to DOTC for the past five (5) years is shown in **Table 2.2-2**.

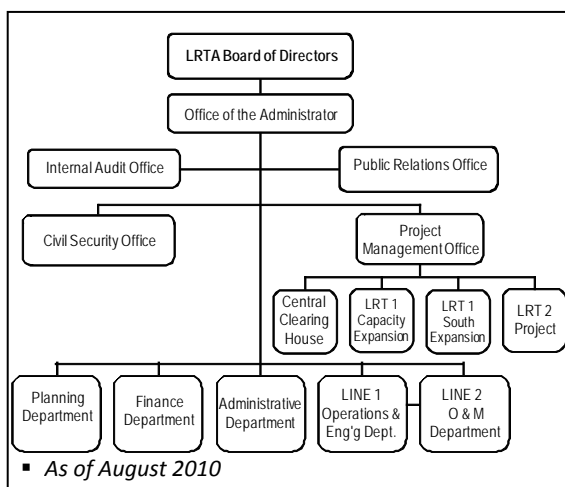
(b) Organization Chart

The organizational structures of Light Rail Transit Authority (LRTA) and Philippine National Railways (PNR) are shown in **Figure 2.2-2** and **Figure 2.2-3** respectively.

TABLE 2.2-2 PNR AND LRTA BUDGET (2005-2009)

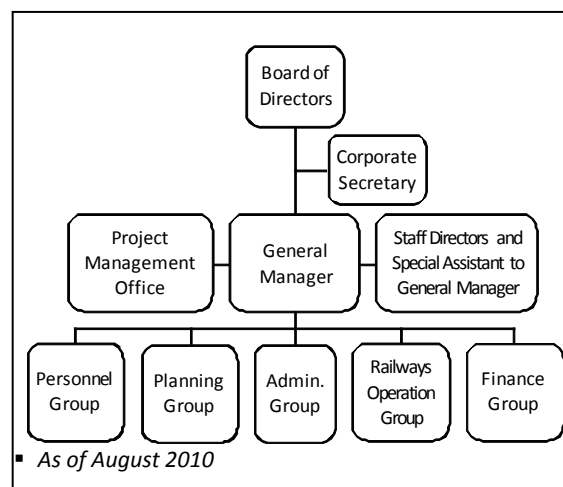
Year	Philippine National Railways (PNR)	Light Rail Transit Authority (LRTA)
	Budget (Php Million)	Budget (Php Million)
2005	135	2,175
2006	135	4,501
2007	135	3,776
2008	135	3,427
2009	100	NA

Source: DOTC, 2010



Source: LRTA Website

FIGURE 2.2-2 ORGANIZATION CHART OF LIGHT RAIL TRANSIT AUTHORITY (LRTA)



Source: DOTC Website

FIGURE 2.2-3 ORGANIZATION CHART OF PHILIPPINE NATIONAL RAILWAY (PNR)

(c) Existing Railway Network

Inter-regional railway services are used to be provided by the Philippine National Railways (PNR). Originally, PNR lines served as far as La Union in the north and Albay in the south. However, due to lack of maintenance and other problems such as issues with informal settlers, the inter-regional operation was stopped. Currently, it operates around 56 km line from Caloocan to Alabang passing through the CBD of Metro Manila.

Urban railway services are operated currently in Metro Manila only. Three railway transit systems are now operational and four more are in the planning stage. LRT Line 1 is operating along a 15 km elevated railway system servicing the Taft Avenue - Rizal Avenue corridor. LRT Line 2, is a 13.8-km line traversing five cities in Metro Manila. The MRT Line 3 is a 16.9-kilometer modern rail system stretching along EDSA from North Ave. in Quezon City to Taft Ave., Pasay City.



Source: DOTC Website

FIGURE 2.2-4 RAILWAYS IN METRO MANILA

3) Sea Transport Sub-sector

(a) Sea Transport Related Offices Budget

The annual budget of agencies related to sea transport which are Philippine Port Authority (PPA), Cebu Port Authority (CPA) and Maritime Industry Authority (MARINA) is shown in **Table 2.2-3**.

TABLE 2.2-3 SEA-RELATED OFFICES BUDGET (2005-2010)

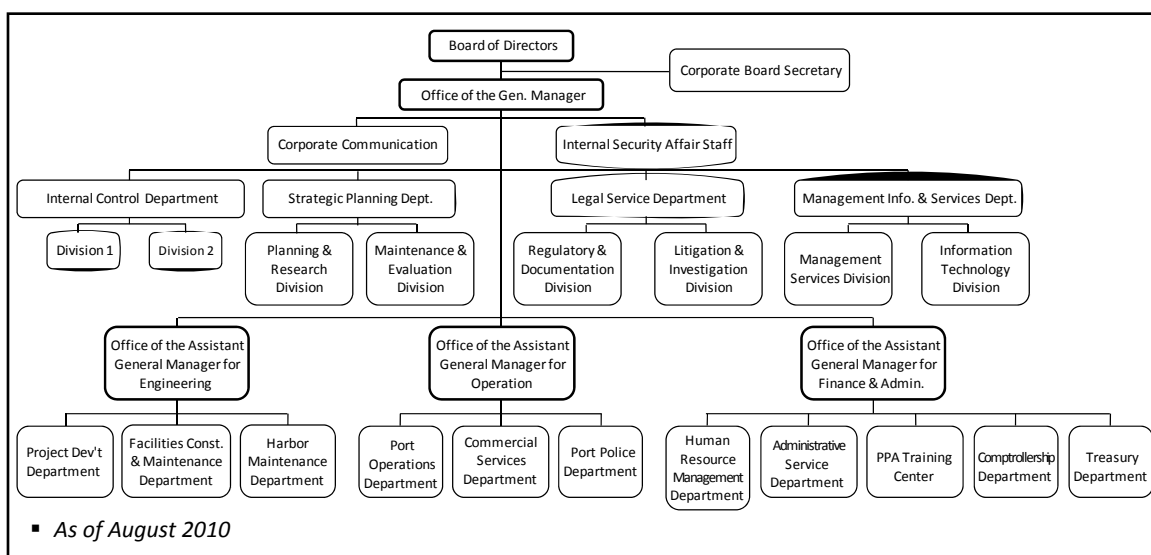
Year	Annual Budget (Php Million)		
	PPA	CPA	MARINA
2005	NA	217	190
2006	NA	274	199
2007	3,566	369	241
2008	4,009	392	296
2009	NA	NA	310
2010	NA	NA	292

Source: DOTC Website

Note: PPA – Phil. Port Authority, CBA – Cebu Port Authority, MARINA - Maritime Industry Authority

(b) Organization Chart

The organization chart of Philippine Port Authority (PPA) is shown in **Figure 2.2-5**.

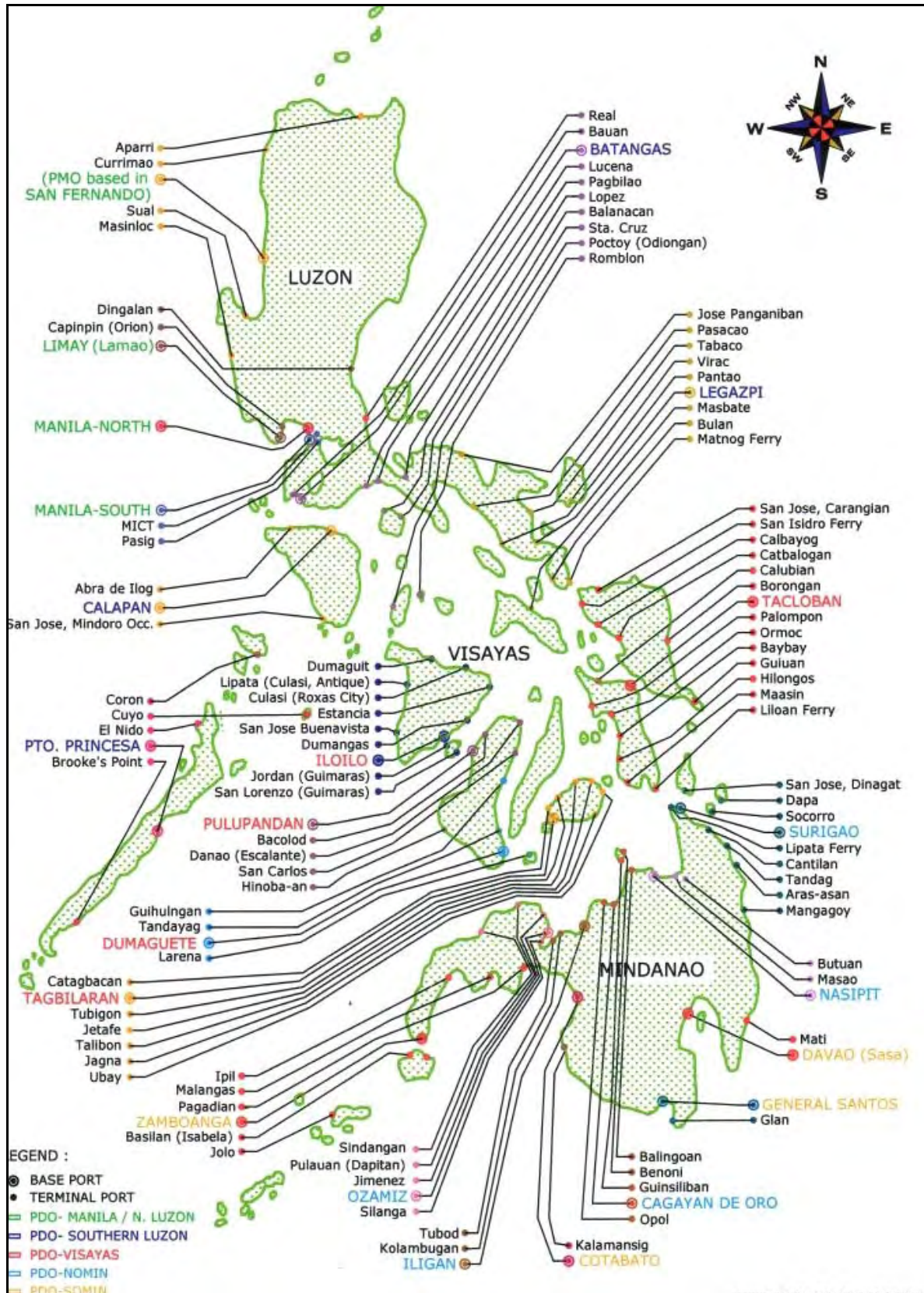


Source: PPA Website

FIGURE 2.2-5 ORGANIZATION CHART OF PHILIPPINE PORT AUTHORITY (PPA)

(c) Existing Ports

The location and type of port is show in **Figure 2.2-6**.



Source: JICA Study on the Master Plan for the Strategic Development of the National Port System, 2004

FIGURE 2.2-6 PORTS LOCATION MAP

4) Air Transport Sub-sector

(a) Air Transport Related Offices Budget

The annual budget of agencies related to air transport is shown in **Table 2.2-4**.

(b) Organization Chart

The organization chart of Manila International Airport Authority (MIAA) is shown in **Figure 2.2-7** while organization chart of the Civil Aviation Authority of the Philippines (CAAP) is shown in **Figure 2.2-8**.

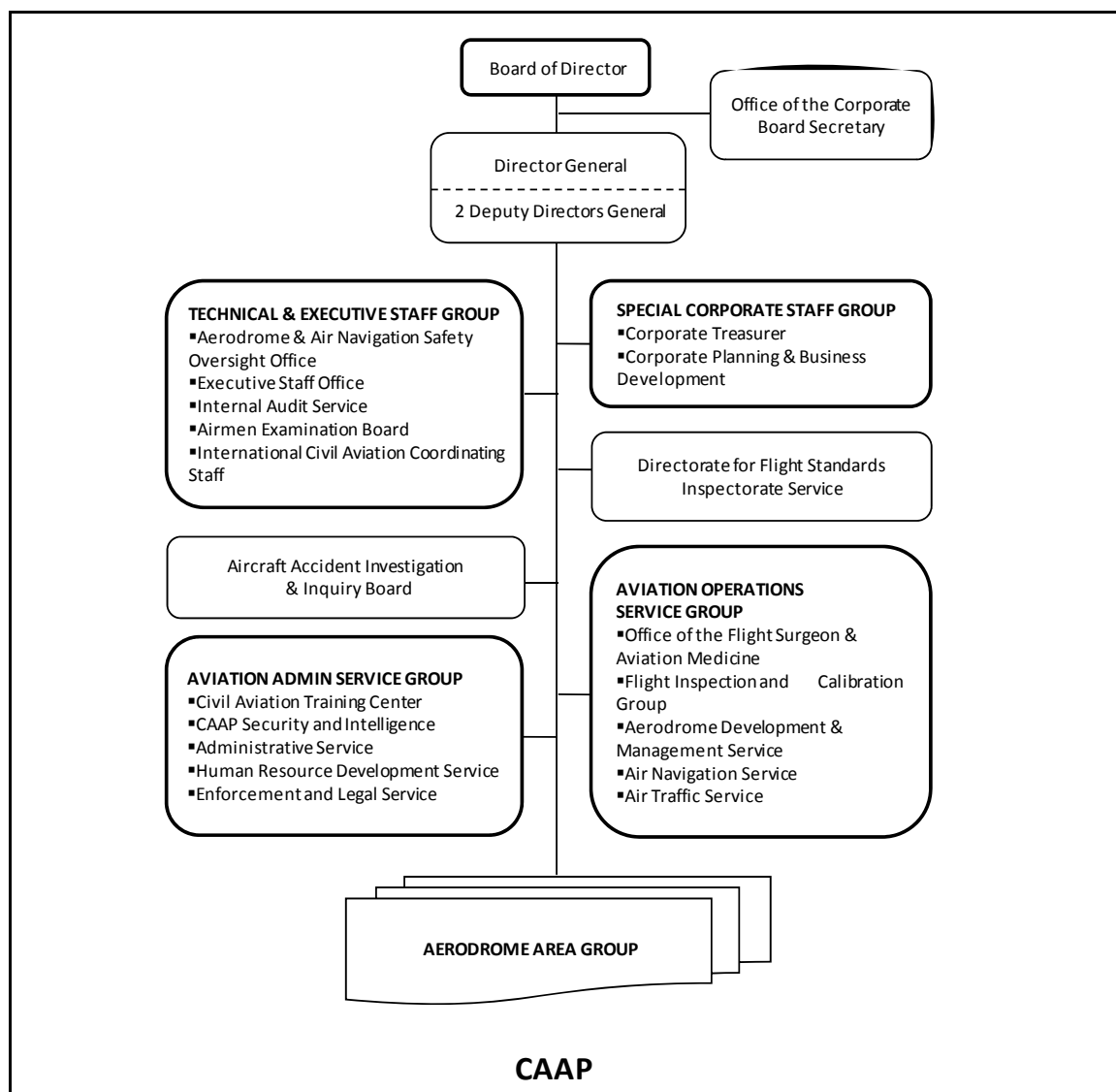
(c) Existing Airports

The location and type of airport is show in **Figure 2.2-9**.

TABLE 2.2-4 AIR-RELATED OFFICES ANNUAL BUDGET (2005-2010)

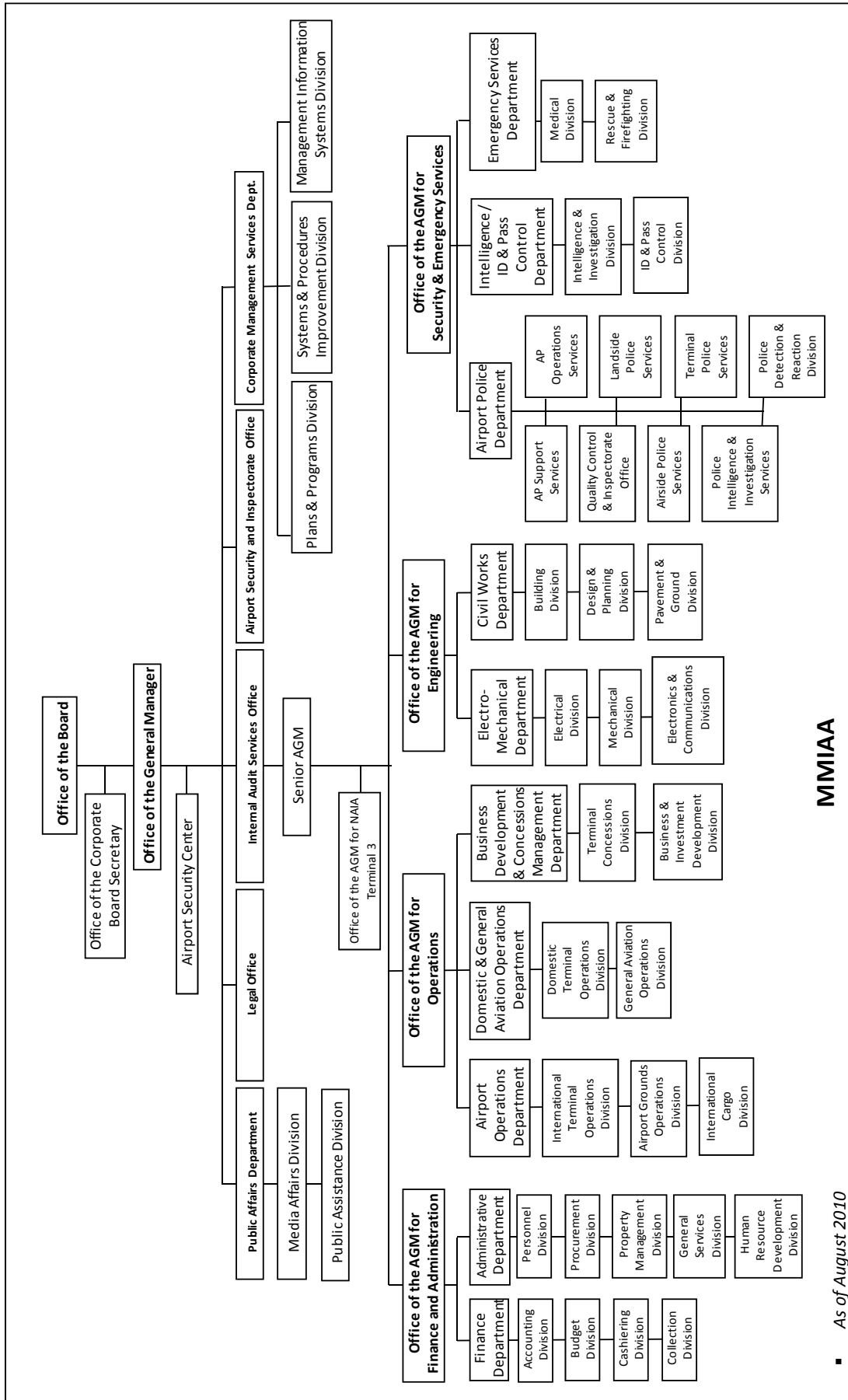
Year	Annual Budget (PhP Million)		
	MIAA	MCIAA	CAAP
2005	NA	465	1,170
2006	23,631	526	1,191
2007	n/s	620	1,292
2008	NA	625	1,628
2009	NA	NA	1,607
2010	NA	NA	NA

Note: MIAA – Manila International Airport Authority, MCIAA – Mactan Cebu International Airport Authority, CAAP – Civil Aviation Authority of the Philippines



Source: CAAP Website

FIGURE 2.2-8 ORGANIZATION CHART OF CIVIL AVIATION AUTHORITY OF THE PHILIPPINES (CAAP)

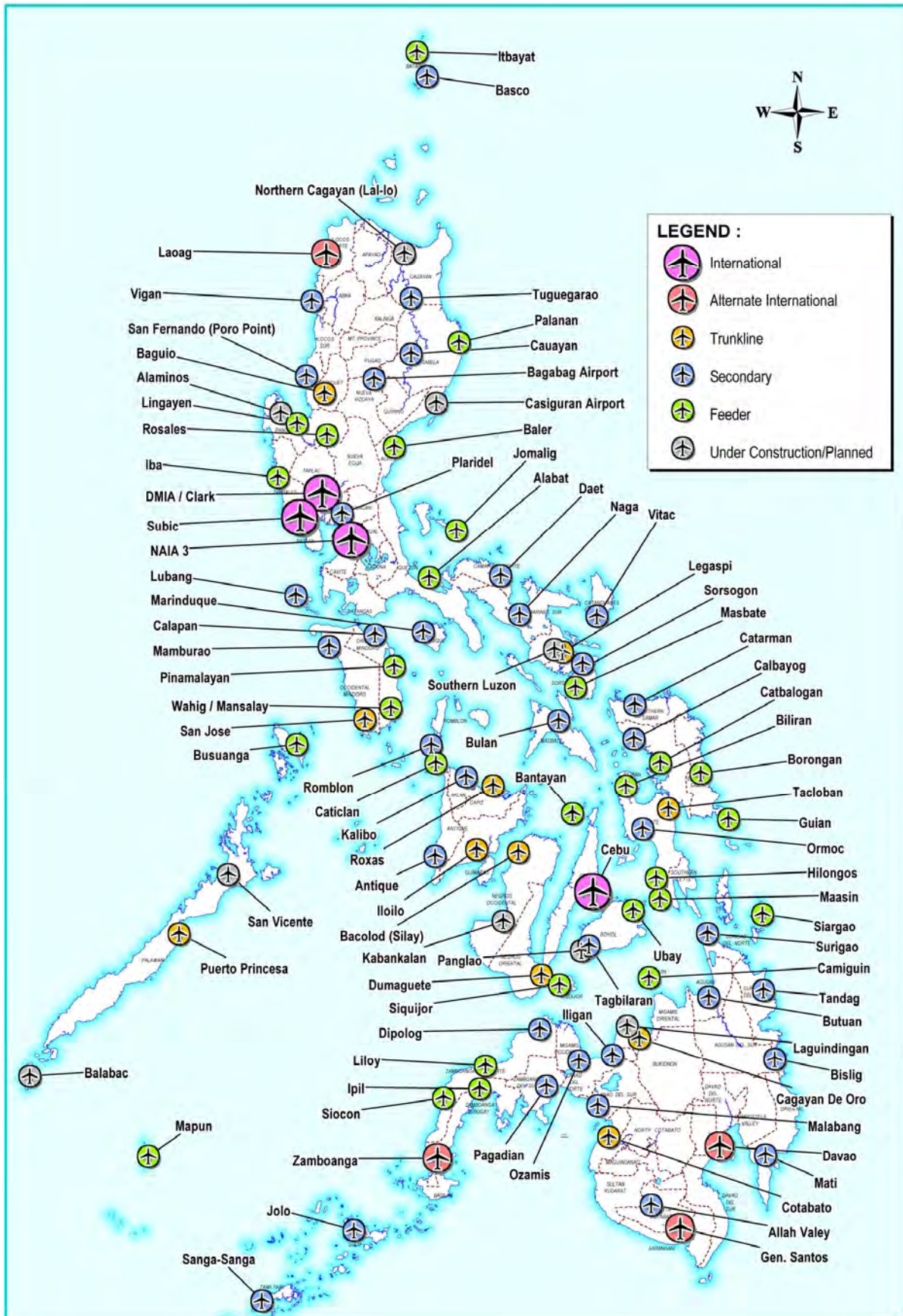


MMIAA

As of August 2010

Source: DOTC Website

FIGURE 2.2-7 ORGANIZATION CHART OF MMIAA



Source: Prepared by the Study Team based on the data of DOTC (2010)

FIGURE 2.2-9 AIRPORT LOCATION MAP

3. REVIEW OF PAST AND PROPOSED PPP PROJECTS

3.1 Road Transport Sub-Sector

1) Brief History of PPP Projects

In accordance with changes of relevant laws and regulations, the toll road development has also evolved through the following three (3) distinct approaches as shown in **Table 3.1-1**.

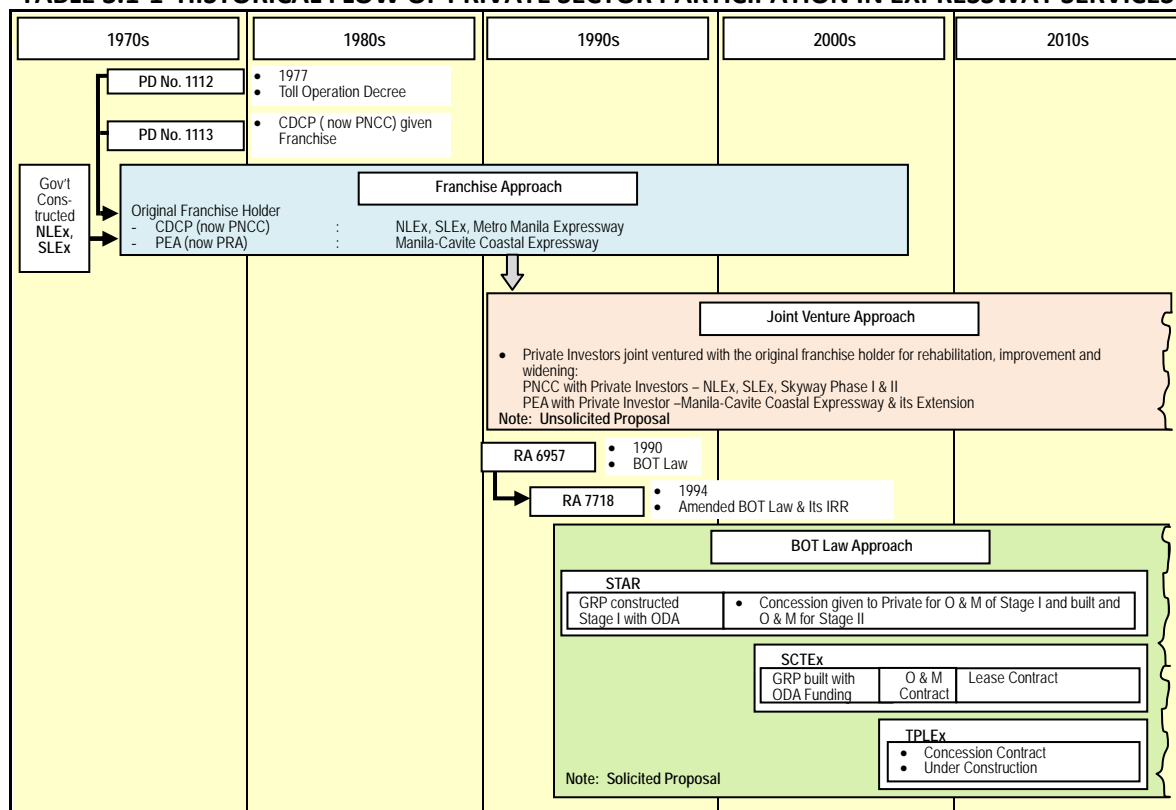
Franchise Approach

Through Presidential Decree (PD) No. 1112 in 1977, the “Toll Operation Decree” was issued and the Toll Regulatory Board (TRB) was created. The TRB was authorized to enter into contracts for the construction, operation, and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares.

Under PD No. 1113 in 1977, the Construction and Development Corporation of the Philippines (CDCP) was granted, for a period of thirty (30) years from May 1, 1977, the right, privilege and authority to construct, operate and maintain toll facilities with extensions to Pangasinan of the North Luzon Expressway (NLEX) and to Quezon of the South Luzon Expressway (SLEX).

Through PD No. 1894 in 1983, the Philippine National Construction Corporation (PNCC, formerly CDCP) was further granted the authority to construct, maintain and operate **any and all such extensions, linkages or stretches from any part of NLEX and/or Metro Manila Expressway**. The franchise for the Metro Manila Expressway and all extensions/linkages shall have **a term of thirty (30) years commencing from the date of completion of the project**.

TABLE 3.1-1 HISTORICAL FLOW OF PRIVATE SECTOR PARTICIPATION IN EXPRESSWAY SERVICES



Source: JICA Study Team

Joint Venture Approach

With the increase of traffic and deteriorated conditions of franchised expressways, needs of rehabilitation, improvement and widening of the facilities increased sharply. Since the original franchise holders did not have enough financial capacity, the private investors submitted unsolicited proposal to the original franchise holders for financing of required rehabilitation/widening/improvement of the facilities under the joint venture approach. The private investors in joint venture with the original franchise holder implemented the necessary works and the Joint Venture Company contracted the supplemental toll operation agreement (STOA) with TRB.

BOT Law Approach

In 1990, Republic Act (RA) No. 6957, otherwise known as the BOT Law, authorized the financing, construction, operation and maintenance of infrastructure projects by the private sector.

In 1994, RA No. 6957 was amended by RA No. 7718, which, among other things, allows more BOT variants, recognizes the need for private investors to realize rates of return reflecting market conditions, allows government support for BOT projects and allows unsolicited proposals. The Revised Implementing Rules and Regulations (Revised IRR) for the BOT Law, as amended, have been prescribed to cover all private sector infrastructure or development projects.

2) Completed and On-going Projects

Figure 3.1-1 shows the existing expressway in the country and on-going projects. Obviously, the present expressway lines of the country have to be improved to form a network which would increase the flexibility of the network. Length of each expressway line is shown in Table 3.1-2.

TABLE 3.1-2 EXISTING AND ON-GOING EXPRESSWAY PROJECTS

Project	Length (km)
▪ South Luzon Expressway (SLEX)	37.23
▪ Southern Tagalog Arterial Road (STAR)	42.00
▪ Metro Manila Skyway	22.78
▪ Manila-Cavite Coastal Expressway	6.80
▪ North Luzon Expressway (NLEX)	91.12
▪ Subic-Clark-Tarlac Expressway (SCTEx)	93.80
Sub-Total	293.73
On-going	
▪ R-1 Extension	11.24
▪ SLEX (Bation-Sto. Tomas)	7.50
▪ NLEX (Seg 8, 9, and 10)	22.26
▪ TPLEX	88.00
▪ Daang Hari-SLEX Link	4.00
Sub-Total	133.00
Total	426.73

Source: JICA Study Team

FIGURE 3.1-1 EXISTING EXPRESSWAY AND ON-GOING PROJECTS



Source: JICA Study Team

3) Proposed PPP Projects

This is discussed in Section 9, and shown in Appendix.

4) Bidding of PPP Projects

Two (2) projects, namely STAR and TPLeX have been bid out by DPWH in accordance with the BOT Law. Tender documents of TPLeX were as follows;

CONTENTS OF TENDER DOCUMENTS

Part I: Instructions to Bidders	Part II: Minimum Performance Standards and Specifications
<ul style="list-style-type: none"> • Summary of General Conditions • Project Information • Scope of Work • General Information for Bidders • Submission of Qualification and Bid Documents • Evaluation Criteria 	<ul style="list-style-type: none"> • Design of Toll Road • TOR for Independent Consultant • Construction of Toll Road • Core Operation and Maintenance Requirements
	Part III: Draft Toll Concession Agreement

Source: PMO-BOT, DPWH

DPWH selects the private investor based on the parameter as follows;

- Lowest toll rate given an amount of subsidy, or
- Lowest Government financial support or subsidy given a set toll rate

In case of TPLeX, only one bidder submitted the bid.

3.2 Rail Transport Sub-sector

1) Brief History of PPP Projects

The first and only PPP project for railway sector in the Philippines is the Metro Rail Transit (MRT) Line-3 along EDSA. Outline of the project is shown in **Table 3.2-1**. The project was implemented under BLT scheme. The facility is being leased to DOTC who is now operating and maintaining the facility. Since passenger fare was set low (similar to bus passenger fare), the Government is providing high amount of subsidy to MRTC as shown in **Table 3.2-2**.

TABLE 3.2-1 OUTLINE OF MRT-3 PPP ARRANGEMENT

▪ Gov't. Agency Partner	DOTC
▪ O & M	DOTC (MRT-3 Project Management Office)
▪ Concessionaire	Metro Rail Transit Corporation (MRTC)
▪ Concession Period	25 years
▪ PPP Type	Build-Lease-Transfer (BLT)
▪ Cost	US\$ 675 million
▪ Construction Schedule	1997-2001
▪ Date of Operation	1999
▪ Length	16.9 km

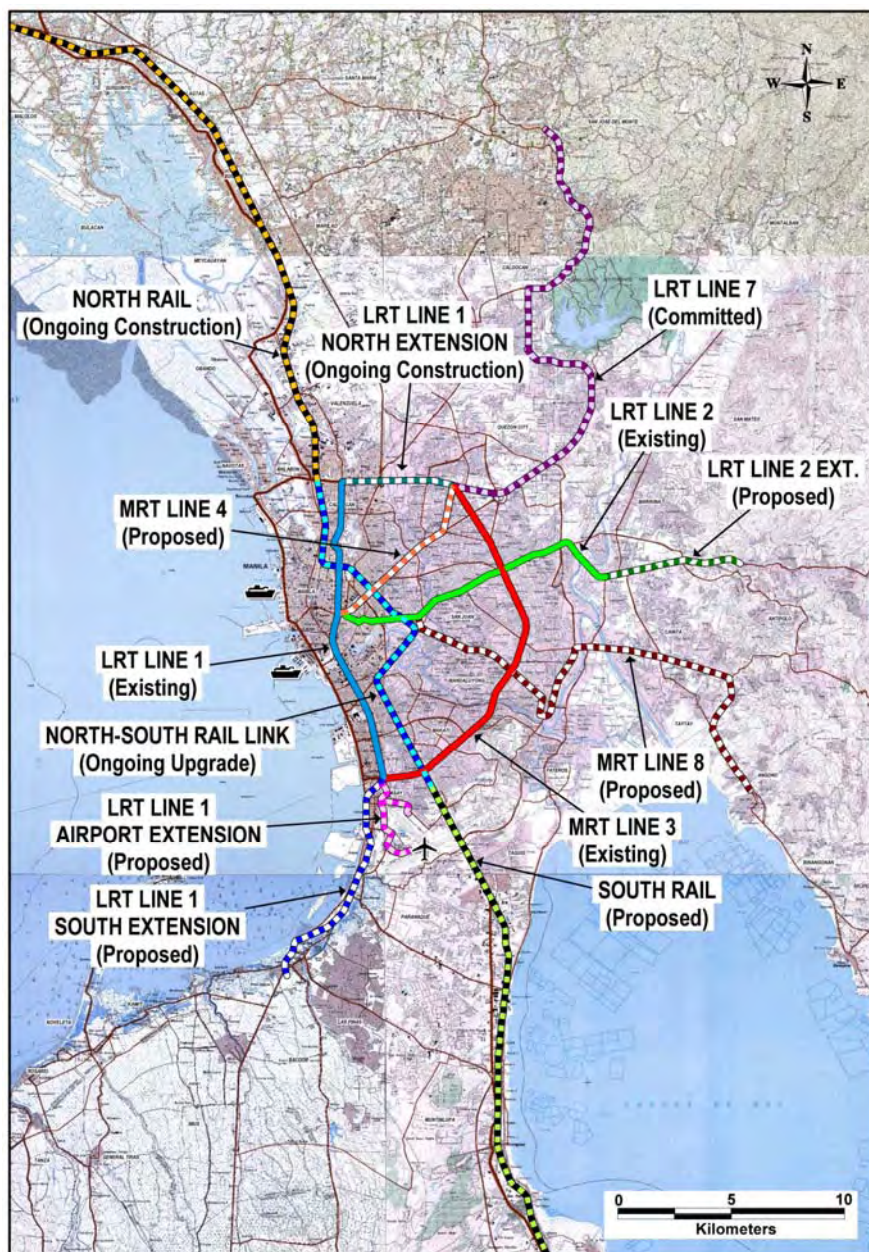
2) On-going and Proposed Projects

Figure 3.2-1 shows the existing, on-going, and planned railway projects. Estimated cost and implementing agencies are presented in **Table 3.2-3**.

TABLE 3.2-2 GOVERNMENT'S SUBSIDY TO MRT-3 (2007-2010)

Year	Gov't. Subsidy (PhP Billion)	O&M (PhP Million)
2007	2.189	578.7
2008	2.446	618.0
2009	1.187	645.0
2010	5.116	645.0

Source: GAA, DBM (2010)



Source: JICA Study Team

FIGURE 3.2-1 EXISTING RAILWAY LINES AND ON-GOING AND PROPOSED RAILWAY PROJECTS

TABLE 3.2-3 ON-GOING AND PROPOSED RAILWAY PROJECTS

	Project Name	Cost	Implementing Agency
On-going	1. Line 1 North Ext.	7.60 B	DOTC / LRTA
	2. Northrail	65.08 B	BCDA / Northrail
	3. Northrail-Southrail Link	130.65 M (US\$) or 5.8 B Php	PNR
	Total	78.48 B Php	
Proposed	4. LRT Line 1 South Ext.	49.03 B	DOTC / LRTA
	5. LRT Line 2 East Ext.	11.30 B	DOTC / LRTA
	6. MRT 7	61.75 B	DOTC / ULC
	7. MRT 3 & LRT Capacity Exp.	70.00 B	DOTC and MRTC
	8. LRT Line 1 Airport Ext.	3.6 to 5.0 B	DOTC / LRTA
	9. Southrail	52.4 B	DOTC / PNR
	10. MRT 8	(Conceptual Stage)	
Total	249.48 B Php		

Source: Various documents of DOTC, 2010

3.3 Sea Transport Sub-sector

1) Brief History of PPP Projects

Per interview with the official of DOTC, no PPP project for sea transport is carried out.

2) Completed, On-going and Proposed Projects

Figure 3.3-1 depicts the recently completed, on-going, and planned port related projects. Recently completed port projects are shown in Table 3.3-1. On-going and planned port related projects were shown in Table 3.3-2.

TABLE 3.3-1 RECENTLY COMPLETED PORT RELATED PROJECTS

No.	Project	Description	Cost (Php million)	Implementing agency
3	Dingalan Port Project	Port Development and Construction of Passenger Terminal Bldg.	97.35	PPA
4	Subic Bay Port Development	Port Development Project	5,217.90	(PPA) JBIC Loan
6	Batangas Port Dev't. Project (II)	Port Development Project	6,001.11	PPA
7	Lucena Port	<ul style="list-style-type: none"> ▪ Construction of Passenger Terminal Building (PTB), ▪ Construction of Breakwater ▪ Concrete Paving of Back-up Area 	338.33	PPA Corporate
8	Boac (Cawit) Port	Construction of RC Pier, RC Wharf, and RORO Ramp.	35.73	PPA Corporate
10	San Pascual Port	Port expansion Project	46.97	PPA
11	Claveria Port	Port Development Project	136.04	PPA
12	Aroroy Port	Port Development Project	100.70	PPA
13	Cawayan Port	Port Improvement Project	42.95	PPA
14	Maripipi Port	Port Expansion Project	53.77	PPA
15	Naval Port	<ul style="list-style-type: none"> ▪ Rehabilitation of RC Pier ▪ Construction of Ro-Ro Ramp ▪ Rehabilitation of PTB 	52.80	PPA
16	Sibunag (Sebaste) Port	<ul style="list-style-type: none"> ▪ Construction of RORO Ramp ▪ Rock Causeway, Breasting Dolphin and Port Lighting System. 	101.41	PPA
17	Santander Port	Port Development Project	20M	CPA
18	Siquijor Port	Port improvement / development works	55M	PPA
20	Bogo Port Development Project	Port Development Project	23.58	CPA
21	Maasin Port	Reconstruction, Widening and Extension of RC Pier	91.34	PPA
22	Limasawa Port	Limasawa Port Development Project	18.03	PPA
23	Ubay Port	Port Development Project	48.04	PPA
24	Jagna Port	Port Improvement Project	59.95	PPA
25	Balbagon Port	Port Development Project	75.44	PPA
27	Davao (sasa) Port	Port Development Project	453.04	PPA
28	Cagayan de Oro Port	Port Development Project	612.41	PPA

Source: Various documents of DOTC, 2010; Note: Number refers to the number in the map

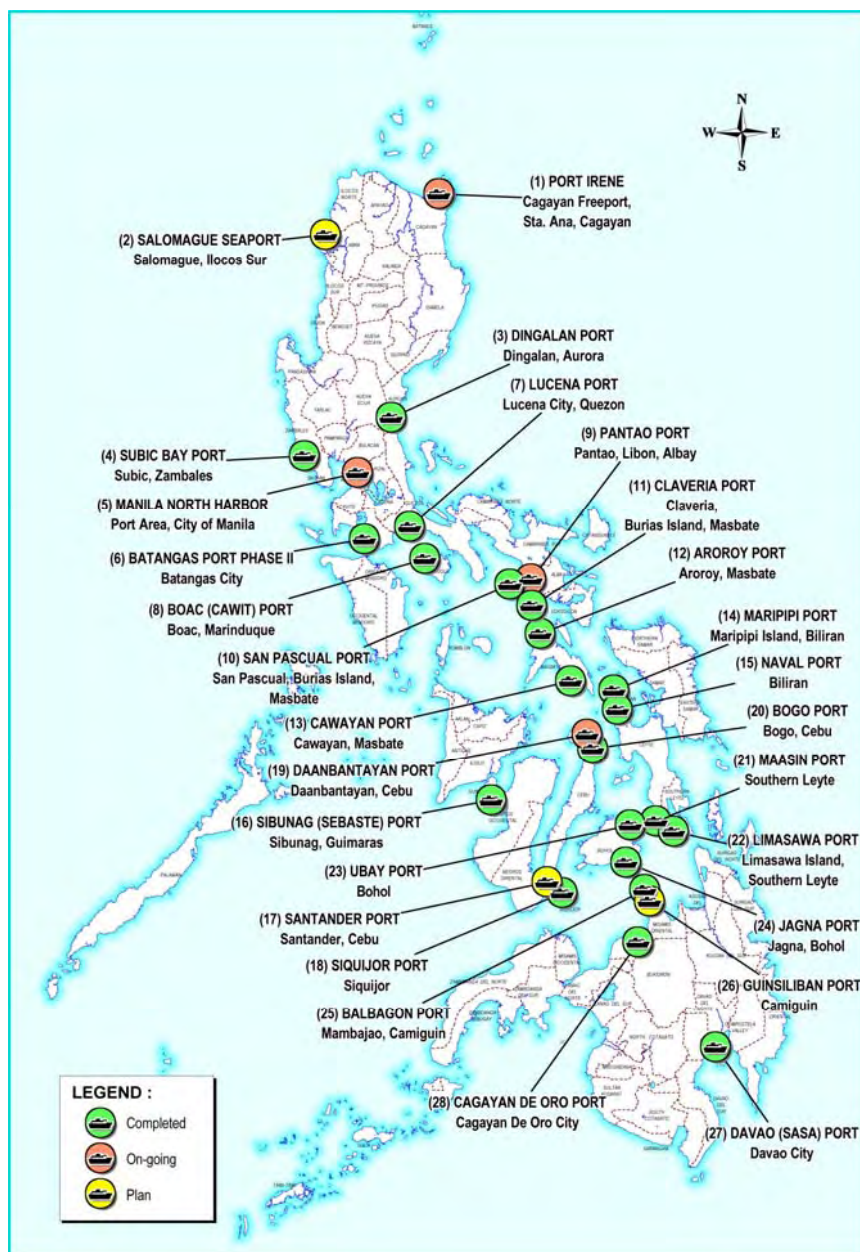


FIGURE 3.3-1 COMPLETED, ON-GOING AND PLANNED PORT RELATED PROJECTS
TABLE 3.3-2 ON-GOING AND PLANNED PORT RELATED PROJECTS

No.	Project	Description	Cost (PhP million)	Implementing agency
On-going				
1	Port Irene	Breakwater Construction and Port Upgrading	3,775.29	CEZA Fund PPP / BOT
5	Manila North Harbor (MNH) Modernization Project	Development, management, operation and maintenance of the MNH	11,000.00	PPP
19	Daanbantayan Port	Port Development Project	15.00	LGU-Cebu Province
Total			14,790.29	
Proposed (Planned Projects)				
2	Salomague Seaport	Upgrading of existing port facilities	5,500.00	ODA
19	Daanbantayan Port	Port Development Project	15.00	LGU-Cebu Province
26	Guinsiliban port	Port Development Project	10.00	
Total			5,525.00	

Source: Various documents of DOTC, 2010; Note: Number refers to the number in the map

3.4 Air Transport Sub-sector

1) Brief History of PPP Projects

The first project carried-out through PPP on air transport sub-sector is the NAIA Terminal-3. The project was then to construct, operate and maintain the new International Passenger Terminal-3 (IPT3) at NAIA. It was design to accommodate the growing volume of international air traffic to Manila, which has exceeded the current capacity of the airport.

The project concept was first developed in a master plan by Aeroports de Paris in 1990 for the Manila International Airport Authority (MIAA), an agency under the Department of Transportation and Communications (DOTC) that manages the operations of NAIA.

A consortium formed by Paircargo (a long time Philippine cargo handler at NAIA), Globe Ground (Lufthansa Airlines' wholly owned ground handling subsidiary), and Security Bank (the 13th largest bank in the Philippines), won the concession to finance, construct, operate and maintain IPT3 on a Build-Operate-Transfer (BOT) basis.

In February 1997, the consortium established the project company, Philippine International Air Terminals Corporation (PIATCO), and in July 1997, the Government, through DOTC/MIAA, and PIATCO entered into a Concession Agreement for the project. During 1999 and 2000, Flughafen Frankfurt Main AG (FAG), owner and operator of Frankfurt airport, acquired shares of PIATCO and became a major sponsor of the project.

The facility was almost completed in 2004, however, the Supreme Court decided that the concession agreement with PIATCO was invalid and PIATCO should not have been prequalified. The facility was compulsory taken over by the Government and is being manage by the Government

2) Completed Projects

Table 3.4-1 shows recently completed airport projects. **Table 3.4-2** shows on-going, and planned airport related projects with estimated cost, implementing agencies and description of works.

TABLE 3.4-1 LIST OF COMPLETED AIRPORT PROJECTS

No.	Project	Description	Cost (Php million)	Implementing agency
4	Bagabag Airport	Construction of new airport facilities	96.00	CAAP/DOTC
5	Upgrading of San Fernando Airport	Upgrading of existing facilities	471.41	BCDA
9	NAIA Terminal 3	New	792	DOTC
16	San Vicente Airport		286.00	CAAP / Malampaya Funds
23	Dumaguete Airport	Upgrading and modernization of airport facilities	320.63	CAAP
25	Guiuan Airport		175.50	CAAP

Source: Various documents of DOTC, 2010; Note: Number refers to the number in the map



FIGURE 3.4-1 COMPLETED, ON-GOING AND PLANNED AIRPORT RELATED PROJECTS

TABLE 3.4-2 ON-GOING AND PLANNED AIRPORT RELATED PROJECTS

No	Project	Cost (PhP million)	Implementing Agency	No	Project	Cost (PhP million)	Implementing Agency
1	Itbayat Airport	205	DOTC	19	New Iloilo Airport	8,921.72	CAAP
2	Basco Airport	290	DOTC/CAAP	20	Panglao Airport	796.42	DOTC/MIAA
3	Northern Cagayan (Lallo) Airport	298.00	DOTC	21	Kabankalan Airport	7.50	LGU
6	Alaminos Airport	157.50	DOTC	22	Bacolod Airport	5,697.98	DOTC/CAAP
7	Casiguran Airport	272.00	CAAP	24	Tacloban Airport	1,167.50	CAAP
8	DMIA	3,658.24	CDC/CIAC ODA	26	Siargao Airport	187.50	CAAP
10	Southern Luzon International Airport	855.00	DOTC	27	Butuan Airport	592.24	DOTC/CAAP
11	Bulan Airport	215.00	CAAP	28	Laguindingan Airport	5,622.84	CY 2007
12	San Jose Airport	303.00	PPP / BOT	29	Dipolog Airport	478.05	DOTC/CAAP
13	Busuanga Airport	215.0	KOICA / CAAP	30	Ozamis Airport	215.13	CAAP
14	Improvement of Puerto Princesa Airport	5,325.20	DOE-Malampaya Shares, CAAP	31	Pagadian Airport	375.46	CAAP
15	Balabac Airport	1,152.50	PPP / BOT	32	Zamboanga Airport	428.50	DOTC/CAAP
17	Caticlan Airport	2,507.00	PPP/BOT	33	Cotabato Airport	327.00	DOTC
18	Kalibo Airport	843.00	CAAP		Total (Planned)	6,424.62	

Source: Various documents of DOTC (2010); Note: Number refers to the number in the map

4. LESSONS FROM OTHER ASIAN COUNTRIES

4.1 MALAYSIA

1) Brief Overview

In 1983, the government shifted its policies from emphasizing state ownership of enterprises to advocating privatization of state industries, including roads. The government has since relied heavily on PPP to achieve its goal of expanding the highway network.

In the past two decades alone, 1,890 km of toll roads have either been constructed by or concession agreements signed with the private sector for their construction, providing much of the expansion over this period. In this regard, the program is successful and the government is likely to continue to rely on PPP to further expand their highway network.

2) Key Agencies

Economic Planning Unit (EPU) - Prime Minister's Office

- Formulate national policies and strategies for socio-economic development plans in the medium to long term planning as well as the budgeting, monitoring and evaluation of the planning achievements.

Highway Planning Unit - Ministry of Works

- Responsible for all the planning and coordination of matters relating to the development, research and policies of road transport in Malaysia.

Malaysia Highway Authority - Ministry of Works

- Administered expressways and also functions as an implementing and coordinating government agency under the Ministry of Works. Its key roles include supervising and implementing the design, construction and maintenance of highways.

State Government / Local Authorities

- Responsible for formulating state development strategies and coordinating the preparation of state development program and projects.

3) Legal Framework

The primary law for development of toll road by PPPs is the Federal Roads (Private Management) Act of 1984 which permits private companies to collect and retain tolls on federal roads. This law is administered by the Prime Minister's Economic Planning Unit (EPU) and its Privatisation Committee.

4) PPP Modality

Toll highways in Malaysia have generally been implemented under Build-Operate-Transfer (BOT) model in which the private sector carries responsibility for:

- Detailed Design
- Construction
- Maintenance and Operations (including toll collection)

Government support typically comes in the form of taking land costs and loans available to the concessionaire.

5) Typical PPP/BOT Award Process

The typical PPP/BOT award process is as follows in general;

- The project is developed to a pre-feasibility level by private groups, who present their proposal and request a letter of exclusivity from EPU to develop the project further.
- EPU reviews the project concept and if the project is approved, a letter of exclusivity is issued.

- The project is then developed to full feasibility stage with an accompanying Privatisation Proposal which is submitted to EPU for formal review.
- Once the concession is awarded, the winner will negotiate a contract with both technical and financial subcommittees of the EPU's Privatization Committee.
- After the agreement is signed, the MHA monitors construction, operations, and maintenance for the government.

6) Problems / Issues Encountered

The following were the major problems / issues encountered by the PPP Toll Roads in Malaysia:

- Low level of traffic and revenue as compared with the projection during project preparation.
- There is no legal requirement for unsolicited proposal that a tender exercise be held for the award of a toll road concession in Malaysia. Although there is a considerable discussion in Malaysia on the merits and needs for transparent tender processes to ensure value for money however to date the concessions continue to be awarded directly.
- Although private sector's know-how brings considerable benefits on the development of toll roads, this also poses a problem of developing an orderly toll road network. The WB Study (1999) reveals that very little advance planning and coordination is undertaken by government agencies in order to coordinate proposals and work towards development of an expressway system.

7) Key Lessons

The positive key lessons from the experience in the Malaysian toll road sector include:

- Allowing a strong private sector to initiate and lead the development of projects has certainly led to an impressive scale of development, as well as a high level of capacity in the Malaysian toll road industry.
- A spirit of partnership between concessionaires and Government has allowed progress to be made – there have been no major disputes and the government is open to renegotiations when conditions adversely change.
- Malaysia has demonstrated that there are several combinations of schemes to ensure success of toll road projects. The government has provided monetary repayments when the government failed to follow a contract, soft loans, concession periods extensions as forms of compensation.
- Clearly delineated roles for EPU and MHA in running the bid and supervising PPPs implementation leads to swift realization of projects.

The following are reported weaknesses of the Malaysian PPP Toll Road:

- A need for a strong government role in PPP toll road projects. In particular the need for consistent and enforced planning; economic appraisal to assess scheme worthiness and careful review of viability and appropriate funding options.
- A need for strong due diligence in particular for traffic and revenue forecasting. Realism required in traffic forecasting.
- Questions have been raised regarding the value for money of certain projects. As such there is a need for transparent tendering and evaluation procedures to ensure value for money.
- A need to vigorous public information campaign to inform travellers what their tolls pay for. The public may show understanding if they view toll tariffs as improving their level of service. There are several instances where toll increases were deferred due to public criticism.

4. 2 THAILAND

1) Brief Overview

The concept of toll road was introduced by the Department of Highways on a new ordinary highway (Route No. 32) constructed by World Bank loan in the 1970s. The toll was collected on highway route no. 32 until 1994 when the government established a policy not to permit tolling on ordinary highways.

Since then, planning for toll expressways has focused primarily on Bangkok Metropolitan. In 1982, the Expressway and Rapid Transit Authority of Thailand (ETA) under the Ministry of Interior completed the first section of the Bangkok Urban Expressway System, with a first phase total length of 9 kilometres – which was approved for the collection of tolls. ETA completed the other two sections and the First-Stage Expressway (with a total length of 27 kilometres) was opened for traffic in 1987.

The Sixth National Economic and Social Development Plan (1987 - 1991) set a direction of encouraging private sector participation in the sector and the two lead agencies - Department of Highways (DOH) under Ministry of Transport and Communications and ETA under Ministry of Interior - began to invite private sector participation in their projects:

DOH signed a concession contract with Don Muang Tollway Co., Ltd. (DMT) in 1989 while ETA signed the concession contract with the Bangkok Expressway Co., Ltd. (BECL) in late 1988 for the Second Stage Expressway (SES). Issues encountered by the two expressways are discussed below:

Issues Encountered by the Don Muang Tollway (DMT)

A big issue during the initial project stages was the removal of two flyovers serving the local road beneath the tollway. These were to have been eliminated so as to not compete with the tollway, but this did not happen due to political pressures. Traffic volumes and revenues were consequently less than forecast, and by October 1996 the tollway company could no longer service its cash flow obligations.

Thereupon, an agreement was reached whereby (i) the Government would rotate the flyovers to serve traffic running perpendicular to the tollway; (ii) the Government would give the DMT company permission to construct a 6.5 km extension to the airport and beyond, and part of the link to SES; (iii) the Government would authorize a toll increase and help refinance the company's existing loans; (iv) DMT's current shareholders would invest another US\$61 million and seek an additional US\$148 million in debt to finance the extensions; and (v) DOH would construct a further 7.3 km northward extension on its own, to be operated jointly with the DMT's facilities upon completion.

Source: Asian Toll Road Development Program, The World Bank, 1999

Issues Encountered by the Second Stage Expressway System (SES)

- Problems first developed due to the difficulty of land acquisition, which resulted in ETA transferring land late to BECL and often in non-contiguous parcels.
- BECL was forced to stop construction when its banks cut off disbursements stating that the Government's refusal to share revenue in November 1992 constituted a default on loan terms.
- Further disagreement between the ETA and BECL on several issues such as sharing of revenues, whose employee will collect tolls, political pressure to Government to decrease rather raises tolls.
- After ETA's "takeover" of the expressway, the Government arranged for Kumagai Gumi's equity stake in BECL to be sold to a Thai construction company and principal project contractor. Some of the foreign banks involved were also given back their principal disbursed plus interest and fees.
- Another highly-publicized row erupted again 1998 concerning toll increase that was requested by the concessionaire and duly approved by the ETA Board. However the Office of the Attorney General, in what has been characterized by some as a politically motivated decision, rescinded the toll increase shortly thereafter.

Source: Asian Toll Road Development Program, The World Bank, 1999

A third concession was awarded (by State Railway Thailand/Ministry of Transport and Communications) in 1990 was the Hopewell concession. After 8 years without progress on the implementation however the concession was terminated. No other toll road PPP projects have been implemented to date in Thailand.

2) PPP Framework and Agencies Involved

In principle, the Thai PPP model is similar to that of Malaysia with the private sector responsible for construction, operation and maintenance of the proposed highway in return for the right to collect tolls. A 1993 Royal Act created the current framework for private sector participation in major infrastructure projects however there is no BOT Law in Thailand and the existing BOT process could not be regarded as fully transparent.

One particular feature of the Thailand scenario is the ineffective institutional framework. The planning and decision-making process starts with the Office of the National Economic and Social Development Board (NESDB) which formulates the guidelines of the 5-Year National Economic and Social Development Plan (NESDP).

The two agencies responsible for transportation development in Thailand – (i) Department of Highways, DOH (under MOTC) and (ii) Expressway and Rapid Transit Authority of Thailand, ETA (under MOI) - are competing with one another to develop alternative expressway networks which often times deviate from the NESDB plans.

3) Key Lessons

Key lessons from the experience to date in the Thai toll road sector include:

- The importance of an effective institutional framework – the agencies in Bangkok often work in competition due to the problem of redundancies and overlapping responsibilities. The DOH and ETA has separate masterplans which recommends separate and sometimes competing toll road projects.
- The importance of transparent processes and reliable contracts – investors remain deterred due to a perceived lack of transparency and lack of confidence in the ability of Government to administer legally-binding contracts.
- The importance of effective planning and adhering to that planning – there are too many competing projects and works in conflict with one another.
- The importance of strong technical due diligence – in particular to counter a strong tendency of project sponsors interested in construction projects to produce highly optimistic traffic and revenue forecasts to support their proposals.

5. DONOR'S PLAN TO SUPPORT PPP PROJECTS

5.1 The World Bank (WB)

1) Loan Assistance on Individual Project

For the Government such as upfront subsidy

It is possible for WB to provide a loan that can be used by the government to fund its support to a PPP undertaking, in order to make the project bankable and viable from the private sector's perspective. This is the model that was designed for the LRT South Extension Project.

For Private Investor

IFC is the private sector arm of the World Bank Group. As such, they deal with private sector entities, while WB deals with the government. In cases where both private and public sectors are involved as in PPP projects, both IFC and WB can be involved.

2) Technical Assistance for PPP Projects

Business Case/Feasibility Study (CALA Expressway)

WB has provided TA to DPWH to help prepare a PPP project. For CALA Expressway, DPWH will procure a Transaction Advisory Services (Consultant Team) that will update/prepare the feasibility studies and help develop the business case through the government review process, and also prepare the bidding documents for a transparent, competitive selection process of the contractor which will design, build, operate and maintain the expressway.

Capacity Development

WB initially recommended to DPWH to procure an International Advisor (IA) to assist in the procurement of the Transaction Advisory Services. The IA will help DPWH in managing and coordinating the activities of the Transaction Advisory Services for CALA Tollway Project, and in providing technical advice as well to PMO-BOT staff of DPWH in the course of project preparation. This plan however did not push through due to lack of fund. WB will also be in discussion with the government on how it can provide assistance in capacity-building the "PPP Center" organized at NEDA.

3) Creation of PPP Project Fund

WB is providing information to the government on options and experiences on similar funds for PPP infrastructure development in other countries. However, as to the exact nature of the fund in the Philippines, and the role that WB can play, this should become clearer as the dialog with the government continues with respect to its needs, vision, and future plans for such a fund.

5.2 Asian Development Bank (ADB)

1) General Policy on PPP Development

In general, the ADB has four (4) pillars on PPP operation plan as shown in **Table 5.2-1**. These are (i) Advocacy side on PPP, (ii) Enabling Environment, (iii) Project Development, and (iv) Project Financing.

TABLE 5.2-1 FOUR PILLARS OF ADB PPP OPERATIONAL PLAN

(Pillar 1) Advocacy	(Pillar 2) Enabling Environment	(Pillar 3) Project Development	(Pillar 4) Project Finance
<ul style="list-style-type: none"> • Create awareness • Invoke leadership • Develop capacity of governments • Identify PPP potential in sector planning and the private sector development agenda 	<ul style="list-style-type: none"> • Develop capacity within governments to manage the development of PPPs • Develop policy, legal, regulatory and institutional frameworks to facilitate, guide and manage the development PPPs (country and sector specific) 	<ul style="list-style-type: none"> • Assist in the development of pathfinder projects • Support throughout the process up to contract award / financial close • Transaction support which can be shaped as expert support, toolkits, funding costs of transaction advisors 	<ul style="list-style-type: none"> • Dedicated finance on favorable terms for Viability Gap Funding etc. • Credit enhancement by offering financial instruments that may enhance a project's bankability, e.g.: equity, long term debt, refinancing, subordinate debt, co-financing, guarantees etc.

Source: ADB, 2010

2) Technical Assistance for PPP Projects

Technical assistance has been extended by ADB to PPP project development in the past and they intend to continue this engagement. They intend to increase this engagement and plan that 50% of their operation will be related to project development of PPP in 2020. In the Philippines, the past ADB's program on PPP can be summarized as follows:

- Limited engagement in Business Case/Feasibility Study
- Limited engagement in Tender Document Preparation and Tender Assistance
- Active engagement in Capacity Development

3) Plan to Establish PPP Fund

In the Philippines, ADB is keen on setting-up Project Development Fund (PDF) and this will probably take into form in 2011. The Pt. IIF (Indonesia Infrastructure Finance) in Indonesia which is also creation of ADB and other financial institutions will be used as reference as well as those in India.

Aside from the planned PDF for Philippines, ADB is also eyeing to create Regional Development Fund. The users of this fund are the countries in BIMP-EAGA (Brunei, Indonesia, Malaysia and Philippines – East ASEAN Growth Area). This plan, however, is at the very early stage.

6. LEGAL AND INSTITUTIONAL FRAMEWORK

6.1 Legal Framework

Historical background of legal framework was discussed in 1) of Section 3 of this report. Major laws and regulations are shown in **Table 6.1-1**. Issues of legal framework are discussed in Section 6 of this report.

TABLE 6.1-1 PPP RELATED MAJOR LAWS AND REGULATIONS

Decrees/Orders Date	Main Subject	Outlines
PD No. 1112 31 st March, 1977	Toll Operation Decree	<ul style="list-style-type: none"> • Authorized the establishment of toll facilities on public improvements, • Created the Toll Regulatory Board (TRB) with the following powers and duties: <ul style="list-style-type: none"> - Enter into contracts for the construction, operation and maintenance of toll facilities. - Determine the kind, type and nature public improvements that can be constructed and operated as toll facilities. - Condemn private property for public use - Promulgate the rates of toll - Grant authority to operate a toll facility and issue "Toll Operation Certificate"
RA No. 6957 9 th July, 1990	Implementation of Infrastructure Projects by the Private Sector (BOT Law)	<ul style="list-style-type: none"> • Authorized the financing, construction, operation and maintenance of Infrastructure projects by the private sector.
RA No. 7718 5 th May, 1994	Amendment of BOT Law and its Implementing Rules and Regulations (IRR)	<ul style="list-style-type: none"> • Amended RA No. 6957 by, among others, <ul style="list-style-type: none"> - Allowing more variants of BOT scheme - Recognizing the need of private investors for rates of return reflecting market conditions - Authorizing government support for BOT projects - Allowing unsolicited proposals
Executive Order (EO) 144 2 nd November, 2002	BOT Center	<ul style="list-style-type: none"> • Reorganized the Coordinating Council for Private Sector Participation into the BOT Center under the Department of Trade and Industry, to promote, market, coordinate and monitor the BOT/ Private Sector Participation (PSP) Program of the Government
Executive Order (EO) 423 30 th April, 2005	Rules and Procedures on the Review and Approval of all Government Contract	<ul style="list-style-type: none"> • Conform with RA No. 9184 "The Government Procurement Reform Act" • Guidelines and procedures for entering into Joint Venture Agreement between Government and Private Entities
Executive Order (EO) 686 19 th December, 2007	Transfer of TRB to DOTC and its Mandate (Delineation of mandates between DPWH and TRB)	<ul style="list-style-type: none"> • Transferred back TRB from DPWH to DOTC and clarified its mandate. • Vested in DPWH the following powers: <ul style="list-style-type: none"> - Enter into contract for the construction, operation and maintenance of toll facilities for highways, roads, bridges and thoroughfares. - Determine the kind, type and nature of highways, roads, bridges and thoroughfares. - Condemn private property for the same • Orders TRB to concentrate on the following powers; <ul style="list-style-type: none"> - Issue, modify and proclaim the rates of toll and approve or disapprove petitions for the increases; and - Grant authority to operate a toll facility and issue the necessary "Toll Operation Certificate".
Executive Order (EO) 8 9 th September 2010	BOT Center renamed to PPP Center and transferring from DTI to NEDA to revitalize BOT Center	<ul style="list-style-type: none"> • BOT Center renamed to PPP Center • Transferred from DTI to NEDA • Conduct project facilitation and assistance to National Agencies and Corporation and LGUs • Provide advisory services and technical assistance • Manage and administer Project Development and Monitoring Facility • Monitor and facilitate PPP projects

6.2 Institutional Framework

Major players for PPP project development and implementation and their roles are shown in **Figure 6.2-1**. Issues and bottlenecks are discussed in Section 6 of this report.

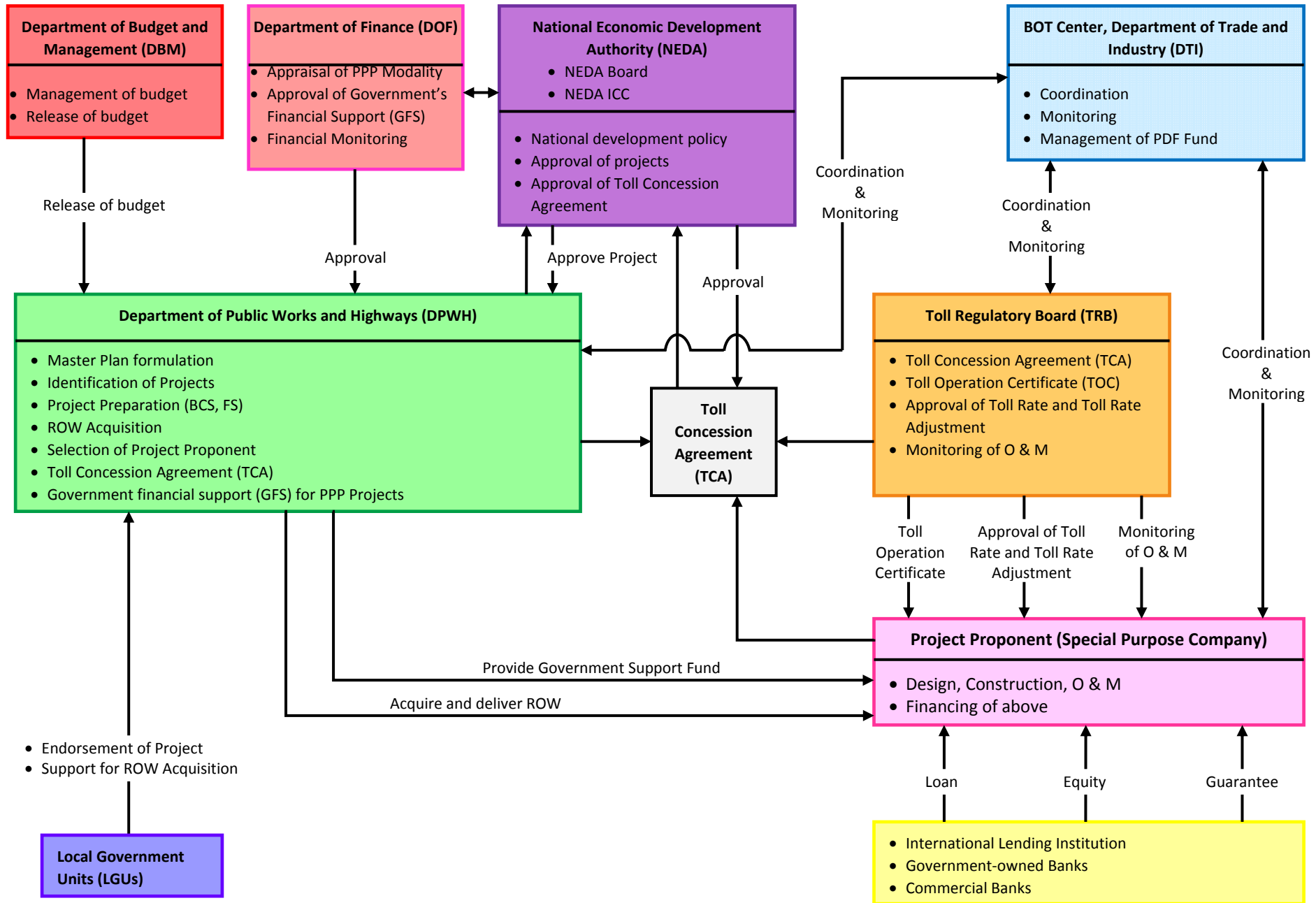


FIGURE 6.2-1 MAJOR PLAYERS UNDER BOT LAW (SOLICITED PROPOSAL)

7. ISSUES AND BOTTLENECKS OF PPP PROJECTS

Major issues and bottlenecks of PPP projects and corresponding recommendations are presented hereunder.

MAJOR ISSUES AND BOTTLENECKS OF PPP PROJECTS

	Issues and Bottlenecks of PPP Projects	Recommendations
1. Legal Framework	<p>1.1 There are two laws/E.O. to allow the private sector to invest infrastructure projects:</p> <p>a) RA 7718 (BOT Law) and its IRR</p> <p>b) EO 423 and its Guidelines and Procedure for entering into joint venture agreement between the Government and the private entities.</p> <ul style="list-style-type: none"> ▪ No NEDA ICC nor NEDA Board's project approval is required. ▪ Head of Agency has authority to approve the JV Agreement regardless of project cost. 	<p>1.1 Options:</p> <p>Option 1 : EO 423 be abolished and integrated into RA 7718</p> <p>Option 2 : Modification of Guidelines and Procedure</p> <ul style="list-style-type: none"> - Project should be approved by NEDA ICC or NEDA Board - Ceiling of project cost should be specified. - Enough time should be given to challengers.
	<p>1.2 Modification of IRR of RA 7718</p> <p>Amendments of IRR is being studied on</p> <ul style="list-style-type: none"> i) Approval of Individual Projects and Draft Contract, ii) List of Priority Projects, iii) Publication of Invitation, iv) Approving Authority for the Contract, v) Contract Variation, vi) Protest Fee, vii) Timelines, viii) Substitution/Withdrawal of a Member of a Consortium/Joint Venture, ix) Government Shoulder the Differential, x) Period of Comparative Bids Preparation, xi) Information Disclosure of Unsolicited Proposal, xii) New ROW Acquisition Under Unsolicited Proposal 	<p>1.2 Amendments should be finalized as early as possible.</p>
	<p>1.3 Creation of PPP Laws</p> <p>Present BOT Law is for the one type of PPP schemes, which should be improved by adding other PPP schemes so as to add more flexibility to other types of PPP schemes and to specify the Government's responsibilities.</p>	<p>1.3 Study on creation of PPP Law should start.</p>

MAJOR ISSUES AND BOTTLENECKS OF PPP PROJECTS

	Issues and Bottlenecks of PPP Projects	Recommendations
2. Institutional Framework	2.1 Lack of Experiences/Capacity of Government Officials for Planning and Implementation of PPP Projects <ul style="list-style-type: none"> - Historically, planning and implementation of BOT projects was led by the private sector's initiative. - The Government is discouraging the unsolicited proposals. - The Agencies are required to be more pro-active and take a leadership for PPP projects. 	2.1 Agencies should take a leadership for promotion of PPP projects. <ul style="list-style-type: none"> - Develop priority projects with implementation priority and firm implementation schedule. - The roles of the private sector, government agencies and other authorities as well as LGUs in transport infrastructure development in operation and management needs to be defined.
	2.2 No PPP Project Specialized Office except DPWH.	2.2 Organize PPP Specialized Office.
	2.3 BOT Center has been not so active.	2.3 In close coordination with Agencies, BOT center should be more active in project development of PPP projects.
	2.4 Strengthening of DPWH Planning Service and PMO-BOT <ul style="list-style-type: none"> - In line with the DPWH Rationalization Plan, DPWH is planning to upgrade existing PMO-BOT to PPP Service. 	2.4 PMO-BOT should be upgraded to PPP Service as early as possible.
	2.5 Materials for PPP Capacity Development and manuals/standards are incomplete. <ul style="list-style-type: none"> - Training materials for PPP - Standard PQ/Tender and Draft Toll Concession Agreement - O & M manual 	2.5 Necessary materials, standards and manuals should be prepared. DPWH should establish regular PPP training course.
3. PPP Project Financing	3.1 Long period (sometimes years) is required for financial closure due to unfavorable offer of banks to the investor (short repayment period with no grace period and high interest rate). Some commercial banks are not familiar with the PPP project financing.	3.1 PPP fund to finance the private entities needs to be created.
	3.2 Delay in ROW acquisition delays financial closure.	3.2 Refer to 4.4

MAJOR ISSUES AND BOTTLENECKS OF PPP PROJECTS

	Issues and Bottlenecks of PPP Projects	Recommendations
3. PPP Project Financing	3.3 Project Development Fund (PDF) of BOT Center is not fully utilized.	3.3 PDF needs to be revitalized by increasing fund as well as establishment of rules and guidelines for usage.
	3.4 On the part of financing the Government expenditure, it is still relying on the project loans from the international lending institutions and/or bilateral sources.	3.4 PPP fund to finance the Government expenditure needs to be studied and established.
4. Bottlenecks in PPP Project Cycle	4.1 <u>Master Plan/Basic Plan/Project Identification Stage</u> <ul style="list-style-type: none"> • Master Plan and/or basic plans were not updated. • Listing of projects and their implementation schedule was not updated. • Project promotion has been largely relied on the private sector. 	4.1 Master Plan, project list and project implementation priority should be always updated and firm implementation schedule and corresponding budgeting should be done.
	4.2 <u>Business Case/Feasibility Study Stage</u> <ul style="list-style-type: none"> • Level of feasibility studies has been incomplete/inadequate. • Soon after a feasibility study is completed, it has been difficult to go into a tendering stage due to unfixed ROW, lack of ECC, lack of LGUs' endorsement, etc. • Agencies' capacity and local consultants' capacity to undertake a feasibility study of PPP project is not sufficient. 	4.2 <ul style="list-style-type: none"> • More fund and time should be spent for this study • Complete information and documents for NEDA's project approval and succeeding tendering should be prepared.
	4.3 <u>Project Approval Stage</u> <ul style="list-style-type: none"> • Lengthy time is required until the project is approved by NEDA ICC or NEDA Board. 	4.3 <ul style="list-style-type: none"> • Complete information and documents should be prepared during the feasibility study stage. • NEDA should undertake seminars on "ICC Project Evaluation Procedure and Guidelines".

MAJOR ISSUES AND BOTTLENECKS OF PPP PROJECTS

	Issues and Bottlenecks of PPP Projects	Recommendations
4. Bottlenecks in PPP Project Cycle	<p>4.4 <u>ROW Acquisition/Resettlement Stage</u></p> <ul style="list-style-type: none"> • Preparation of IROW plan and parcellary plan takes long time due to inaccurate land registration, difficulty to locate land owners, inaccurate record of lot boundary, etc. • A lot of documentations are needed and lot owners have difficulty to prepare required documents. • Land valuation is made based on BIR land valuation for the first offer, and based on Provincial/ City Appraisal Committee or Land Bank valuation for the second offer, these are close to, but still lower than market value. • In case that land owners fail to prepare complete documents, expropriation is the only solution. • ROW acquisition Teams are not provided sufficient logistics (like service vehicles, computers, etc.). • More staff who are familiar with ROW acquisition are needed. • Some Toll Concession Agreements include the private sector's funding for ROW acquisition. 	<p>4.4</p> <ul style="list-style-type: none"> • Preparation of IROW plan and parcellary plan and succeeding ROW acquisition should start soon after the project is approved by NEDA Board or NEDA ICC. • Once major critical documents are prepared, cash advance by the private sector should be made to PAPs through the Government, which shall be refunded to the private sector. This arrangement should be specified in TCA. • Land value should be based on the prevailing market price. • Enough logistics support such as service vehicles, computers, etc. should be provided for ROW acquisition team, cost of which should be included in the project cost. • IROW Procedural Manual should be updated and more staff should be trained.
	<p>4.5 <u>Tender Stage</u></p> <p>1) <i>Government Projects</i></p> <ul style="list-style-type: none"> • Selection of Consultants and Contractors takes lengthy time. - Consultant selection - over 8 months - Contractor selection - over 10 months <p>2) <i>Selection of Project Proponent of PPP Project</i></p> <ul style="list-style-type: none"> • Selection of project proponent takes lengthy time - over 12 months <p>3) <i>Unsolicited Proposal</i></p> <ul style="list-style-type: none"> • Takes much longer time to finalize due to many disputes and counteroffers and negotiation of contract terms such as toll rates, risk allocation, etc. 	<p>4.5</p> <p>1) <i>Government Projects</i></p> <ul style="list-style-type: none"> • Selection of Consultants should target 6 months or less. • Selection of Contractor should target 8 months or less. <p>2) <i>Selection of Project Proponent of PPP Project</i></p> <ul style="list-style-type: none"> • Selection of Project Proponent should target 10 months or less. • Agency should undertake project campaign and enough information should be disclosed before the project is advertized. • All tender conditions and draft Toll Concession Agreement should be agreed between DPWH and TRB before advertisement.

MAJOR ISSUES AND BOTTLENECKS OF PPP PROJECTS

	Issues and Bottlenecks of PPP Projects	Recommendations
4. Bottlenecks in PPP Project Cycle	<p>4.6 <u>Contracting Stage</u></p> <ul style="list-style-type: none"> • Review of Toll Concession Agreement (TCA) by TRB usually takes lengthy time. • Approval of NEDA Board also takes lengthy time. 	<p>4.6</p> <ul style="list-style-type: none"> • Close coordination between NEDA and Agencies should be made.
	<p>4.7 <u>Toll Operation Agreement Stage</u></p> <ul style="list-style-type: none"> • Review by TRB of toll adjustment formula and other O & M aspects take considerable time. 	<p>4.7</p> <ul style="list-style-type: none"> • From the feasibility study stage, TRB should be involved.
	<p>4.8 <u>Fund Procurement/Preparation Stage</u></p> <ul style="list-style-type: none"> • Government <ul style="list-style-type: none"> - Budget constraints and delay in budget release - Difficult to cope with cost overrun. • Private <ul style="list-style-type: none"> - Delay in attaining financial closure due to difficulty in meeting lender's requirement such as complete ROW acquisition, government financial support, approval of toll rates and toll rate adjustment formula. - Difficult to find appropriate financier (short repayment period with no grace period, and high interest rates). - Unexpected changes requiring additional costs due mainly to additional facilities required by LGUs and LGU fees. 	<p>4.8</p> <ul style="list-style-type: none"> • Government <ul style="list-style-type: none"> - Needs provision of adequate annual budget. - Needs to tap ODA. • Private <ul style="list-style-type: none"> - Creation of fund to finance the private sector for infrastructure project implementation should be studied.
	<p>4.9 <u>Detailed Design Stage</u></p> <ul style="list-style-type: none"> • Lacks proper coordination with LGUs, thus modification of design, requirement of additional facilities, etc. is required by LGUs. • Lacks proper coordination with utility companies for relocation/protection of public utilities affected. 	<p>4.9</p> <ul style="list-style-type: none"> • Proper coordination with LGUs and utility companies should be done during the feasibility study. • Value engineering should be exercised.

MAJOR ISSUES AND BOTTLENECKS OF PPP PROJECTS

	Issues and Bottlenecks of PPP Projects	Recommendations
4. Bottlenecks in PPP Project Cycle	<p>4.10 <u>Construction Stage</u></p> <ul style="list-style-type: none"> • Delayed construction due to delayed delivery of ROW and financial closure. • Needs more strict quality control and schedule control. 	<p>4.10</p> <ul style="list-style-type: none"> • An Independent Certificate Engineer should be employed at the cost of the Government.
	<p>4.11 <u>Operation and Maintenance Stage</u></p> <ul style="list-style-type: none"> • Approval of toll fee and adjustment of toll fee by TRB is delayed. • Increase of toll fee is usually objected by the people and politicians and adoption of new toll rate is delayed. 	<p>4.11</p> <ul style="list-style-type: none"> • TRB should approve toll fee and its adjustment in accordance with provisions of TCA. • The Government should compensate the loss of revenue due to delayed increase of toll rates. • TRB and operators should jointly make information disclosure to the people why toll rates and toll adjustment are needed and determined and what are benefits of users.
	<p>4.12 <u>End of Contract and Facility Transfer Stage</u></p> <p>No experience on this stage, yet.</p>	-

8. ROW ACQUISITION

8.1 General Issues and Recommendations

Delay in ROW acquisition is one of the serious problems of infrastructure projects, particularly PPP projects. ROW acquisition requires several research works, documentations and constant dialogue with the affected people. It should be noted that ROW acquisition requires lengthy time, thus it should be started as early as possible with enough staff, logistics support, and timely disbursement of budget.

More detailed issues and recommendations are discussed in Section 7 of this report.

8.2 ROW Acquisition Steps

ROW acquisition steps are as follows;

ROW ACQUISITION STEPS

STEP – 1	:	Highway Design Drawing with Delineation of ROW
STEP – 2	:	Preparation of IROW Plan
STEP – 3	:	Preparation of Parcellary Plan
STEP – 4	:	Prepare Estimate of Land Acquisition Cost and Improvement Cost
STEP – 5	:	Negotiated Sale
STEP – 6	:	Validation and Evaluation of IROW Claims
STEP – 7	:	Expropriation Proceedings, when Negotiated Sale is failed
STEP – 8	:	Transfer of Transfer Certificate of Title (TCT) to the Republic of the Philippines

What to be done in each step and corresponding legal framework is presented in the Chapter 6 of Main Text. DPWH developed a "Checklist" to confirm all documents are prepared. The checklist items for each stage are as follows;

ROW Acquisition Checklist	-	33 items for each land owner
Checklist for Improvement	-	25 items for each land owner
Checklist for Trees and Agriculture Crops	-	18 items for each land owner

As shown above, a lot of documentation efforts are required to complete the checklist, thus lengthy time is needed for ROW Acquisition.