THE STUDY ON PPP INSTITUTIONAL BUILDING IN THE PHILIPPINES

FINAL REPORT
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ABBREVIATIONS

ADB	Asian Development Bank
ADMS	Aerodrome Development and Management Service
ADR	Alternative Dispute Resolution
AFCS	Automatic Fare Collection System
AOI	Articles of Incorporation
APG	Algemene Pensioen Groep
ASEAN	Association of Southeast Asian Nations
ATPD	Air Transportation Planning Division
AusAID	Australian Agency for International Development
AWUAIP	Angat Water Utilization and Aqueduct Improvement Project
BAC	Bids and Awards Committee, DOTC
BATMAN	Natural Gas Pipeline from Batangas to Manila
BCDA	Bases Conversion and Development Authority
BIWC	Boracay Island Water Company
BLT	Build-Lease and Transfer
BOT	Build-Operate-Transfer
BROT	Build-Rehabilitate-Operate-Transfer
BRT	Bus Rapid Transit
BSP	Bangko Sentral ng Pilipinas
BT	Build-Transfer
BTO	Build-Transfer-Operate
CAAP	Civil Aviation Authority of the Philippines
CAOT	Contract-Add-Operate-Transfer
Cavitex	Cavite Expressway
CALAx	Cavite-Laguna Expressway
CDCP	Construction and Development Corporation of the Philippines
CFC	Certificate of Final Completion
CHED	Commission on Higher Education
CIDA	Canadian International Development Agency
CIIP	Comprehensive Integrated Infrastructure Program
CL	Contingent Liability
CMMTC	CITRA Metro Manila Tollway Corporation
CN	Confirmation Note
CPC	Certificate of Public Convenience
CW	Civil Work
Daang Hari	Daang Hari-South Luzon Expressway Link Road
DBL	Design-Build-Lease
DBM	Department of Budget and Management
DBP	Development Bank of the Philippines
DED	Detailed Engineering Design
DOE	Department of Energy

DOF	Department of Finance
DOH	Department of Health
DOJ	Department of Justice
DOTC	Department of Transportation and Communications
DPWH	Department of Public Works and Highways
DSCR	Debt Service Coverage Ratio
DU	Distribution Unit
ECC	Environmental Compliance Certificate
EDCF	Korea's Economic Development Cooperation Fund
EDSA	Epifanio de los Santos Avenue
EPIRA	Electric Power Industry Reform Act
ERC	Energy Regulatory Commission
FS	Feasibility Study
FM	Force Majeure
GAA	General Appropriations Act
GCG	Governance Commission for GOCC
GCL	Government Contingent Liability
GDP	Gross Domestic Product
GF	Guarantee Function
GFI	Government Financial Institution
GFS	Government Financial Support
GOCC	Government Owned and Controlled Corporation
GOI	Government of Indonesia
GoP	Government of the Philippines
GPRA	Government Procurement Reform Act
GSIS	Government Service Insurance System
HB	House Bill
IA	Implementing Agency
IC	Independent Consultant
ICC	Investment Coordination Committee
IFC	International Finance Corporation
IFG	International Finance Group
IIGF	Indonesia Infrastructure Guarantee Fund
IPO	Initial Public Offering
IPP	Independent Power Producer
IRR	Internal Rate of Return
ITS	Integrated Transport System
JICA	Japan International Cooperation Agency
JV	Joint Venture
KPI	Key Performance Indicator
KOICA	Korea International Cooperation Agency
LAWC	Laguna AAA Water Corporation
LD	Liquidated Damage
LGU	Local Government Unit
LRT	Light Rail Transit

LRTA	Light Rail Transit Authority
LRV	Light Rail Vehicle
LWCI	Laguna Water Company Incorporated
LWUA	Local Water Utilities Administration
MAGA	Material Adverse Government Action
MATES	Manila Toll Expressway Systems Incorporated
MCIA	Mactan-Cebu International Airport
MCIAA	Mactan-Cebu International Airport Authority
MCWD	Metro Cebu Water District
MERALCO	Manila Electric Company
MIAA	Manila International Airport Authority
MIWD	Metro Iloilo Water District
MLD	Million Liters per Day
MMUTIS	Metro Manila Urban Transportation Integration Study
MNTC	Manila North Tollways Corporation
MPIC	Metro Pacific Investment Corporation
MPSS	Minimum Performance Standards and Specifications
MRT	Mass Rapid Transit
MTPDP	Medium-Term Philippine Development Plan
MTPIP	Medium-Term Public Investment Plan
MWCI	Manila Water Company Inc.
MWSI	Maynilad Water Services Inc.
MWSS	Metropolitan Waterworks and Sewerage System
MYOA	Multi-Year Obligational Authority
NAIA	Ninoy Aquino International Airport
NAIAx	Ninoy Aquino International Airport Expressway
NEDA	National Economic and Development Authority
NESDP	National Economic and Social Development Plan
NGA	National Government Agency
NLEx	North Luzon Expressway
NPC	National Power Corporation
NWRB	National Water Resources Board
O&M	Operations and Maintenance
ODA	Official Development Assistance
OGCC	Government Corporate Counsel
OSG	Office of the Solicitor General
PQ	Prequalification
PDMF	Project Development and Monitoring Facility
PEA	Public Estates Authority
PFI	Private Finance Initiative
PHILGEPS	Philippine Government Electronic Procurement System
PhP	Philippine Peso
PIATCO	Philippine International Air Terminals Company Incorporated
PIC	Philippine Infrastructure Corporation
PIDC	Private Infrastructure Development Corporation

PInAI	Philippine Investment Alliance for Infrastructure
PIRR	Project Internal Rate of Return
PNCC	Philippine National Construction Corporation
PNOC	Philippine National Oil Corporation
PNR	Philippine National Railways
PMO	Project Management Office
PMS	Project Management Service
PPA	Power Purchase Agreement
PPD	Plans and Programs Department
PPP	Public-Private Partnership
PSALM	Power Sector Assets and Liabilities Management Corporation
PSIS	Philippine Society for Industrial Security
PEATC	PEA Tollway Corporation
PU	Performance Undertaking
RA	Republic Act
ROM	Rehabilitate-Operate-Maintain
ROR	Rate of Return
ROW	Right of Way
RWCSRP	Raw Water Conveyance System Rehabilitation Project
SB	Senate Bill
SBAC	Special Bids and Awards Committee
SCTEX	Subic-Clark-Tarlac Expressway
SEC	Securities and Exchange Commission
SEW	System Enhancement Work
SIDC	STAR Infrastructure Development Corporation
Skyway	Metro Manila Skyway
SLEx	South Luzon Expressway
SLTC	South Luzon Tollways Corporation
SMC	San Miguel Corporation
SMIG	San Miguel Infrastructure Group
SOMCO	Skyway O&M Corporation
SSF	Strategic Support Fund
STAR	Southern Tagalog Arterial Road
STOA	Supplemental Toll Operation Agreement
TA	Technical Assistance
TCA	Toll Concession Agreement
TIEZA	Tourism Infrastructure and Enterprise Zone Authority
TMC	Tollways Management Corporation
TOC	Toll Operation Certificate
TOP	Toll Operation Permit
TOR	Terms of Reference
TPLEx	Tarlac-Pangasinan-La Union Expressway
TRA	Toll Rate Adjustment
TRB	Toll Regulatory Board
TTF	Treasury Task Force

TWG	Technical Working Group
UMPC	UEM-MARA Philippines Corporation
VGF	Viability Gap Fund
WACC	Weighted Average Cost of Capital
WTP	Water Treatment Plant
WD	Water District
WESM	Wholesale Electricity Spot Market

Chapter 1. Policy Matrix Prototype

1.1 About this Report

The JICA Study Team conducted a Study on PPP Institutional Buildings in the Philippines from August 2012 until September 2013. In the course of the study, the Study Team has produced various outputs which may be helpful to JICA and ADB to develop a policy matrix, currently being discussed between them. This report was edited explicitly to serve as the back analysis for discussion on the formulation of the policy matrix.

This report starts with outline of "Policy Matrix Prototype", which shows "Policy Matrix Prototype" being discussed between JICA and ADB. Succeeding chapters provide back analysis and relevant information regarding the items shown in the matrix.

It should be noted that the report does not deal with all the items written in the matrix because the items in the matrix are the ones identified through the course of discussion of JICA and ADB and the scope of the works of the JICA Study Team does not necessarily cover the whole items in the matrix.

1.2 Policy Matrix Prototype

The matrix of Table 1.2-2 is the "Policy Matrix Prototype". This matrix reflects only preliminary discussion with JICA and ADB. It is not authorized by any entity and even JICA and ADB are not supposed to be responsible for this policy matrix prototype. However it is expected that this serves as a basis for starting discussions about the policy matrix among stakeholders.

As can be seen, the matrix consists of two policy areas: "Public Spending for Infrastructure" and "Public Private Partnerships". The former addresses the infrastructure public spending in general and the latter addresses specifically the items relating PPP.

"Public Spending for Infrastructure" consists of three items: "1.1 Master planning", "1.2 Absorption capacity of ODA-funded public investments" and "1.3 LGU Infrastructure Investments." Chapter 2 provides relevant analysis and information for "1.1 Master planning."

"Public Private Partnerships" consists of four items: "2.1 Improved Enabling Environment", "2.2 Improved Financing Mechanisms", "2.3 Pipeline Development and Monitoring", and "2.4 Improved PPP systems capacity at sector departments". Chapter 3 provides relevant analysis and information for "2.1 Improved Enabling Environment"; Chapters 4 and, for "2.2 Improved Financing Mechanisms"; and Chapter 6, for "2.4 Improved PPP systems capacity at sector departments".

Table 1.2-1 Relevance of the items of the matrix and the corresponding chapter of this report

Policy Area of Matrix	Items of the Matrix	Corresponding Chapter of This Report
Public Spending for Infrastructure	1.1. Master planning	Chapter 2
	1.2. Absorption capacity of ODA-funded public investments	-
	1.3.LGU Infrastructure Investments	-
Public Private Partnerships	2.1. Improved Enabling Environment	Chapter 3
	2.2. Improved Financing Mechanisms	Chapter 4,5
	2.3 Pipeline Development and Monitoring	-
	2.4. Improved PPP systems capacity at sector departments	Chapter 6

Source: JICA Study Team

Table 1.2-2 Policy Matrix Prototype (Retrieved from JICA)

Policy Areas	Definition	Current Status (Analysis)		Completed Achievements/ On-going Activities	Indicative Achievements by Dec 2013	Indicative Achievements by Dec 2015	Target by June 2016
Part I: Public Spending for Infrastructure → Please fill in→ADB Aziz.							
1.1. Master planning	**[Policies which will make]** investment planning integrated, such as master plans and upstream-sector or cross-sector studies in selected sectors covered by selected government agencies **[need to be implemented.]**	There are numerous masterplans conducted by each agency, but few of them consider the roles of the private and public for each identified project. In some cases, such as mega city urban planning, inter-agency or cross-sectoral palnning is cruicial for the projects to be rationally identified, planned and implemented.		**Please fill in→ADB Aziz.**			Investment Planning Integrated. (Quantitative) (Qualitative)
				National Investment Planning: xx done by xx in YY	aaa	aaa	
				Regional or Urban Investment Planning: xx done by xx in YY	bbb	bbb	
				Sector or cross-sectoral Investment Planning: Road: xx done by xx in YY Rail: xx done by xx in YY Airport: xx done by xx in YY Water: xx done by xx in YY Energy: xx done by xx in YY Others: xx done by xx in YY	ccc	ccc	
1.2. Absorption capacity of ODA funded public investments	**[Policies which will make]** ODA project preparation, processing and implementation systems streamlined to ensure greater synchronization with the country's development strategy **[need to be implemented.]**	ODA processing system among different Donors vary; however, the synchronization of each agencies' activities is considered key for efficient implementation of projets. Currently, DOF is proposing relevant Donors to join its new ODA processing system, where DOF will have stronger leadership in coordinating Donor activities.		**Please fill in→ADB Aziz.**	aaa	aaa	ODA project sysytem streamlined. (Quantitative) (Qualitative)
				bbb	bbb	bbb	
				ccc	ccc	ccc	
1.3. LGU Infrastructure Investments	[Policies which will make] ･･･[subject] [verb]･･･ [need to be implemented.]	**Please fill in→ADB Aziz.**		**Please fill in→ADB Aziz.**	aaa	aaa	**Please fill in→ADB Aziz.** (Quantitative) (Qualitative)
				bbb	bbb	bbb	
				ccc	ccc	ccc	
Part II: Public Private Partnerships							
2.1 Improved Enabling Environment	**[Policies which will make]** PPP governance and legal Framework streamlined enhancing further private investment **[need to be implemented.]**	As result of below and other efforts, the government could meet its target of rolling out 8 PPPs in 2012. (1) PPP Center became a true unit in the government in PPP quality assurance and project development (2) Project Development and Monitoring Facility (PDMF) has become operational (3) BOT Law IRRs have been amended for better transparency in the bidding process and treatment of unsolicited proposals (4) sufficient funding has been allocated to line-departments for government share in PPPs through the strategic support funds (SSF) (5) inter-agency contingent liabilities (CLs) working group has been set up by DOF for timely and sufficient estimation of CLs. In addition, there are recent progress in forming a PPP Governance Board, consisting of xx, xx, and xx, where xx becomes the chief of the Board, with the authority to decide on difficult issues regarding PPP such as xx, xx, and xx. It is also expected to be a permanent vehicle for betterment of the existing laws, rules, and regulation as well as operation.		**Encompassing Laws, Rules, and Regulations:** - BOT Law and its IRR - E.O. 8 - BOT Law and JV guidelines convergence - PPP Governance Board prepared	**Encompassing Laws, Rules, and Regulations:** - BOT Law ammendment on xx (e.g. Technical bid parameter to be considered in BOT Law) - adoption of PPP Governance Board - convergence of JV law with BOT Law by xx -	**Encompassing Laws, Rules, and Regulations:** - BOT Law ammendment on xx (e.g. Technical bid parameter to be considered in BOT Law) - adoption of PPP Governance Board - convergence of JV law with BOT Law by xx	PPP Legal Framework streamlined. (Quantitative) e.g. PPP index from xx to xx (Qualitative) e.g. PPP investor's survey improves
				Project Development to Financial Closure Stage: - PPP project selection (definition) - PPP Roadmap - ICC Procedure - Project Development Facility (PDMF) - Assurance to bidders (e.g. Performance Undertakings, Government Guarantee cap (BSP Circular No.79), MYOA, SSF, CL Fund, Dispute Resolution Mechanism (E.O. 78), etc)	**Project Development to Financial Closure Stage:** - PPP project to be exlusively defined in the PPP list by xx procedure - PDMF to enahnce monitoring assistance capacity to las by xx - SSF to become CL Fund by xx	**Project Development to Financial Closure Stage:** - PPP project to be exlusively defined in the PPP list by xx procedure - PDMF to enahnce monitoring assistance capacity to las by xx - SSF to become CL Fund by xx	
				Project Implementation to Completion/Termination Stage: - PPP contract management - Contingent Liability Management (SSF, CL Fund, etc) - Dispute Resolution Mechanism/ ADR (E.O. 78, etc) - Contract Termination - Transfer of Assets/ Purchase of Assets	**Project Implementation to Completion/Termination Stage:** - PPP contract sample formulated for all relevant sectors and disclosed to public - PPP Manual for IAs regarding Transfer of Assets/ Purchase of Assets, Termination of Concession, etc - a fast-response consultation mechanism prior to turning to ADR introduced	**Project Implementation to Completion/Termination Stage:** - PPP contract sample formulated for all relevant sectors and disclosed to public - PPP Manual for IAs regarding Transfer of Assets/ Purchase of Assets, Termination of Concession, etc - a fast-response consultation mechanism prior to turning to ADR introduced	
2.2. Improved Financing Mechanisms	**[Policies which will make]** Financing Mechanisms operational enhancing further private investment, such as VGF, PIPFF, and others (SSF, CL Fund) **[need to be implemented.]**	**Subsidy:** - current status of subsidy (for solicited and unsolicited): ROW cost is not provided to unsolicited projects, unless "rightfully compensated," which might disencourage the investors to propose an unsolicited proposal, since one of the biggest hurdles for PPP project is securing the land, which the investors will not be recieving extensive support from the government. - current VGF operations/idea of permanent VGF: it is considered case-by-case, so bidders are not sure whether such can be tapped. VGF policy brief has been submitted to xx on MM YY, while xx has started to conduct xx; however, the importance of permanent VGF is still not recognized in depth. - BOT Law (50:50 ratio issue, including interpretation of ODA): it is not exlusively defined how ODA is considered in the law, especially for hybrid projects, persuming that the concessionaire will pay back in the long run more than it has been subsidized in the start of the project (definition of the project cost under life cycle cost vs. initial upfront investment)	**VGF:** not permanent **SSF:** introduced since 2011 **CL Fund** (as evolving system for SSF): non-existence **PIPFF**: non-existence **Others:** Pinai Fund (PE fund) formed utilizing GSIS fund since xx	**Subsidy:** - ROW acquisition assistance for unsolicited projects: xx - permanent VGF concept: xx - BOT Law ammendment/ operational guideline on 50:50 ratio issue, including interpretation of ODA): xx	**Subsidy:** - ROW acquisition assistance for unsolicited projects: xx - permanent VGF concept: xx - BOT Law ammendment/ operational guideline on 50:50 ratio issue, including interpretation of ODA): xx	**Subsidy:** - ROW acquisition assistance for unsolicited projects: xx - permanent VGF concept: xx - BOT Law ammendment/ operational guideline on 50:50 ratio issue, including interpretation of ODA): xx	Financing Mechanisms becomes operational. (Quantitative) e.g. amount of PPP financing from the private and government (as well as utilization of concessional financing for non-commercially viable projects) (Qualitative) e.g. PPP investor's survey improves
		Finance: - current status of PPP project financing: xx million peso of project finance has been formulated in YY, which is expected to grow even more in the coming years; however, the source of financing is generally limited to big business groups who can tap large amount of money from its subsidary financial institution taking into consideration the collateral from the company, rather than the project itself, whereas foreign investors with international financial institution trying to form a pure project financing will have difficult time on risk mitigation measures. On the other hand, single borrower's limit has been raised from xx% of its asset to xx% in MM YY, which illustrates the concentration of bidders and its financiers. Considering that the Philippines will expect further growth on PPP project financing demand, openess to new comers and/ or foreign investors are crucial. - idea of PIPFF: concept considered at DOF; however, due to high liquidity of finance in local financial market, it is currently considered unnecesary		**Finance:** - single borrower's limit: expanded from xx to xx - PIPFF concept : xx	**Finance:** - single borrower's limit: expanded from xx to xx - PIPFF concept : xx	**Finance:** - single borrower's limit: expanded from xx to xx - PIPFF concept : xx	
		Others (CL issues, Equity, etc): - current status of SSF/ idea of CL fund: DOF has formulated a CL management group in xx since xx, and have created SSF since xx to be utilized for xx, xx, and xx. DOF has extended the utilization purpose of SSF to CL as well, where DOF will calculate the neccesary budget allocation for each IAs for CL to be included in SSF budget allocation. However, the utilization of SSF is single year and is difficult to accomodate among the IAs , therefore, the investors will not fully be assured of its payments (be free from appropriation risk); therefore, the concept of revolving inter-IA CL fund which will not expire is proposed to DOF for future consideration. - current status of Pinai Fund and other equity investors: Pinai Fund formed since MM YY, fully operational since MM YY, targeting investments to projects such as xx; however, most of the target projects are for brown field projects, which does not fully support the enhancement of PPP project development in green field projects.		**Others (CL issues, Equity, etc):** - SSF/CL calculation method:xx - idea of CL fund: xx - Pinai Fund operation: xx - measures to broaden the potential investors and financiers: xx	**Others (CL issues, Equity, etc):** - SSF/CL calculation method:xx - idea of CL fund: xx - Pinai Fund operation: xx - measures to broaden the potential investors and financiers: xx	**Others (CL issues, Equity, etc):** - SSF/CLcalculation method:xx - idea of CL fund: xx - Pinai Fund operation: xx - measures to broaden the potential investors and financiers: xx	
2.3.Pipeline Development and Monitoring	**[Policies which will make] pipeline projects for PPP (solicited and/ or unsolicited) developed and maintained in sufficient number [need to be implemented.]**	**PDMF:** - current status of PDMF: please fill in → ADB Aziz - idea of PDMF evolving forward: please fill in → ADB Aziz		**PDMF:** introduced since xx, monitoring function will need to be strengthened **Increasing PPP Project Pipeline:** (2010) xx projects, xx million php (2011) xx projects, xx million php (2012) xx projects, xx million php	**PDMF:** - current status of PDMF: please fill in → ADB Aziz - idea of PDMF evolving forward: please fill in → ADB Aziz	**PDMF:** - current status of PDMF: please fill in → ADB Aziz - idea of PDMF evolving forward: please fill in → ADB Aziz	Sufficient number of pipeline projects for PPP (solicited and/ or unsolicited) developed sand maintained. (Quantitative) e.g. number of identified projects implemented, number of projects newly developed, etc (Qualitative) e.g. PPP investor's survey improves
		Economic Infrastructure: - Road: xx projects identified, total xx million php - Rail: xx projects identified, total xx million php - Airport: xx projects identified, total xx million php - Energy: xx projects identified, total xx million php			**Economic Infrastructure:** - Road: xx more projects identified, total xx% more - Rail: xx more projects identified, total xx% more - Airport: xx more projects identified, total xx% more - Energy: xx more projects identified, total xx% more	**Economic Infrastructure:** - Road: xx more projects identified, total xx% more - Rail: xx more projects identified, total xx% more - Airport: xx more projects identified, total xx% more - Energy: xx more projects identified, total xx% more	
		Other Infrastructure: Agriculture: xx projects identified, total xx million php Education: xx projects identified, total xx million php Health (Hospital): xx projects identified, total xx million php Safety (Prison): xx projects identified, total xx million php			**Other Infrastructure:** Agriculture: xx more projects identified, total xx% more Education: xx more projects identified, total xx% more Health (Hospital): xx more projects identified, total xx% more Safety (Prison): xx more projects identified, total xx% more	**Other Infrastructure:** Agriculture: xx more projects identified, total xx% more Education: xx more projects identified, total xx% more Health (Hospital): xx more projects identified, total xx% more Safety (Prison): xx more projects identified, total xx% more	
2.4. Improved PPP systems capacity at sector departments	**[Policies which will] improve line-departments capacity in sustainably developing and managing PPP projects [need to beimplemented.]**	**Economic Infrastructure:** DPWH(Road): PPP Unit fomed since xx, xx projects have been implemented. Capacity is XX. DOTC(Rail): PPP Unit yet to be formed, xx projects have been implemented. Capacity is XX. DOTC(Airport): PPP Unit yet to be formed, xx projects have been implemented. Capacity is XX. MWSS/ LUWA(Water): tbc. Capacity is XX. DOE/PNOC (Energy): tbc. Capacity is XX. **Social Infrastructure:** DA (Agriculture): tbc. Capacity is XX. DepEd (Education): tbc. Capacity is XX. DOH(Hospital): tbc. Capacity is XX. DOJ(Prison): tbc. Capacity is XX.			Capacity Building at **Governing Agencies** (DOF, NEDA, PPPC, DBM, as well as DBP/ LDP): tbc	Capacity Building at **Governing Agencies** (DOF, NEDA, PPPC, DBM, as well as DBP/ LDP): tbc	Capacity Building at **Governing Agencies** (DOF, NEDA, PPPC, DBM, as well as DBP/ LDP): tbc	
					Capacity Building at **Implementing Agencies** (DPWH, DOTC, MWSS/ LUWA, DA, DepEd, DOH, DOJ): tbc	Capacity Building at **Implementing Agencies** (DPWH, DOTC, MWSS/ LUWA, DA, DepEd, DOH, DOJ): tbc	Capacity Building at **Implementing Agencies** (DPWH, DOTC, MWSS/ LUWA, DA, DepEd, DOH, DOJ): tbc	Line-departments capacity in developing and managing PPP projects improve. (Quantitative) e.g. numer of government agencies with PPP unit, capacity index rating improves (Qualitative) e.g. PPP investor's survey improves
					Capacity Building at **LGUs**:please fill in → ADB Aziz	Capacity Building at **LGUs**:please fill in → ADB Aziz	Capacity Building at **LGUs**:please fill in → ADB Aziz	

Chapter 2. Necessity of Integrated Master Plan for Strategic Infrastructure Development

2.1 Issues of Existing Master Plans

Currently, agencies such as NEDA, DPWH, DOTC, and NWRB develop national development plan and master plans in each sector. Followings are some of the plans which relate with infrastructure development:

Table 2.1-1 Major Development Plan and Master Plan

Title of Plan	Agency in Charge
Philippine Development Plan 2011-2016	NEDA
Master Plan of High Standard Highway Development	DPWH
National Transport Plan	DOTC
Master Plan for Transport in Metro Manila	DOTC
Philippine Water Supply Roadmap (2008, amended in 2010)	National Water Resource Board (NWRB)

Source: JICA Study Team

However, those master plans are not explicitly intended to formulate PPP projects and relevant agencies, including oversight agencies and implementing agencies are facing the following issues:

- Comparison and Prioritization of infrastructure projects are difficult.
- It is difficult to see the justification of particular projects from wider view points.
- Infrastructure projects developments are done in a piecemeal (not strategic) manner.
- It often requires huge costs for adjustment when plural projects produce physical and functional conflicts.
- The necessary budget cannot be estimated at once.
- There is no guide to identify potential PPP projects.

These issues seem to arise from the following factors.

- Philippine Development Plan does not articulate the basis of specific projects selection.
- The master plans are independently developed and not linked and adjusted with other plans or sectors.
- The existence of master plan itself is not widely informed.
- The information exchange and sharing among ministries are not well conducted.
- The master plans have no binding power.
- Indicative viability analysis is missing.

According to ad hoc interviews to the current and ex officers of the relevant agencies, at present there is not authorized platform or organizational vehicle to invite relevant agencies collect information, adjust their plans and integrate them into single plan. However, in order to accelerate formulation and implementation of PPP projects, such coordination and integration mechanisms, which are supposed to improve the efficiency of decision making process, will be required. The Study Team considers that a strategic master plan, which covers main infrastructure sector and enables prioritization, objective and appropriate evaluation, and rational identification of potential PPP project, will be a great help for relevant decision making agencies, such as DOF, NEDA, DPWH, DOTC, the PPP Center and even LGUs. The concept and functions of such an integrated master plan will be elaborated in the following

sections.

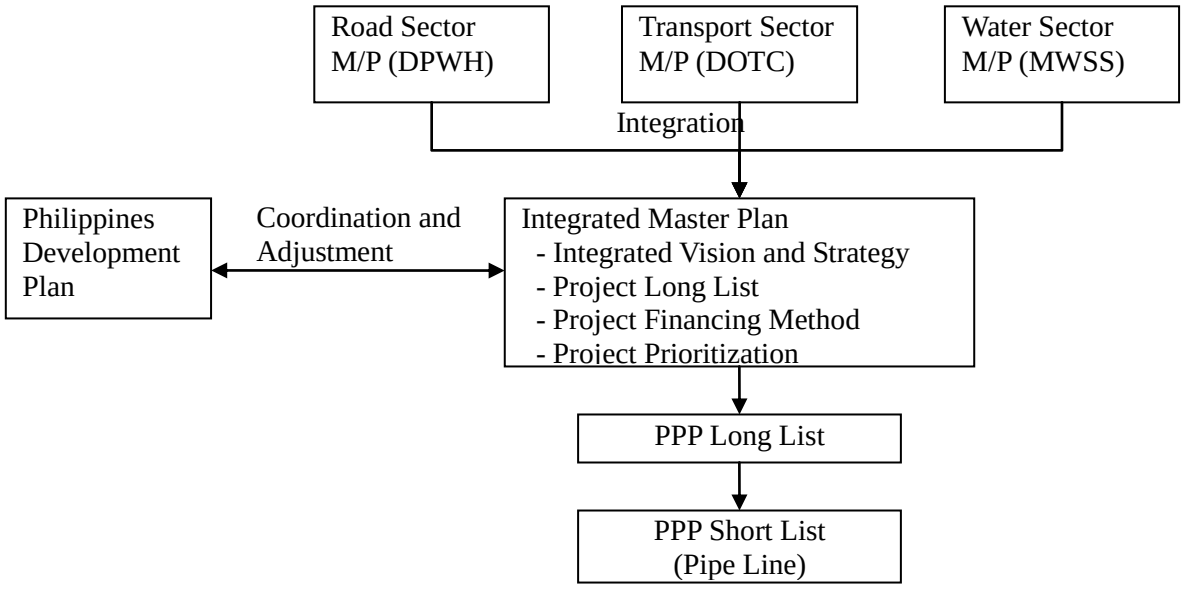
2.2 Scope and Function of Integrated Master Plan for Strategic Infrastructure Development

2.2.1 Functions and Coverage of Integrated Master Plan

Based on the recognition of the previous sections, the JICA Study Team proposes a master plan (it is tentatively called as an "Integrated Master Plan for Strategic Infrastructure Development) which has the following functions and coverage:

- Objective: The plan aims at prioritizing infrastructure projects and formulating their financing methods.
- Agency in Charge: NEDA should assume the responsibility for development of the master plan. They may require supports from the key IAs such as DPWH and DOTC.
- Sector Coverage: It should cover the entire transport sector of being as public goods, including Road, Railway, Airport and Seaport sector. Other critical sector should also be covered which include but not limited to Water, Flood Control, Waste and power plant /pipeline
- Project List: It should contain key infrastructure projects (long-list) and the information of project list should be obtained from implementing agencies
- Project Evaluation Procedure and Criteria: It should show the evaluation procedure and criteria for prioritization of infrastructure project.
- Role of DOF: Indicative commercial viability to inform the decision on finance.

Image of the integrated master plan is shown in the following figure:



Source: JICA Study Team

Figure 2.2-1 Image of the Integrated Master Plan

The main differences of the integrated master plan from existing ones are as follows:

- The integrated master plan is applicable to multi-sectors (multi-agencies)
- The integrated master plan is made for strategically priority areas in the country.
- The integrated master plan contains prioritized project list and shows indicative commercial

viability.

2.2.2 JICA's Support to Develop Integrated Master Plan

JICA has been contributing to develop this kind of master plan in various countries including the Philippines. There are three examples of such trials in the Philippines.

The first example is Master Plan on High Standard Highway (HSH), which was completed in 2010. The main objectives of the study were as follows:

- To formulate HSH (High Standard Highway) Development Strategies in three areas, Manila 200-km radius, Cebu, and Mindanao,
- To formulate HSH Master Plan in Manila 200-km radius and identify priority projects for future feasibility studies, and
- To develop DPWH's capacity on HSH planning, design, construction, maintenance, operation, and management.

In this study, the project prioritization was made and their implementation schedule and the financing methods were considered. This still serves as the basis for DPWH's project development planning.

The second example is a support do develop "Mega Cebu Vision 2050 (Formulation of sustainable urban development vision for Metro Cebu)" which aims at formulation of a collective suitable urban development vision for Metro Cebu. The grand development strategy, created for Mega Cebu Vision 2050 is shown in the following figure:

Source: JICA

Figure 2.2-2 Mega Cebu Vision 2050: Development Strategy

The third example is "Study on Transport Sector Roadmap for the Sustainable Development of Mega Manila" which is currently being conducted by another JICA Study Team (as of May 2013). This study helps the GoP to develop its integrated vision and development direction, as well as to identify prioritized transport projects and its development strategy in Great Manila. This exactly will serve as

an integrated master plan and it is expected that the GoP and the relevant agencies will take full advantage of this study results.

2.3 Example of Integrated Master Plans in Indonesia: MP3EI and MPA

The examples of integrated master plans can be found in many countries and this section introduces the examples of Indonesia. As of April 2013, GOI has been addressing the two master plans for acceleration of infrastructure development: MP3EI and MPA Masterplan of which outlines are described below. The JICA Study Team hopes the examples shown here will help the Philippine counterparts improve their mater plans on their own.

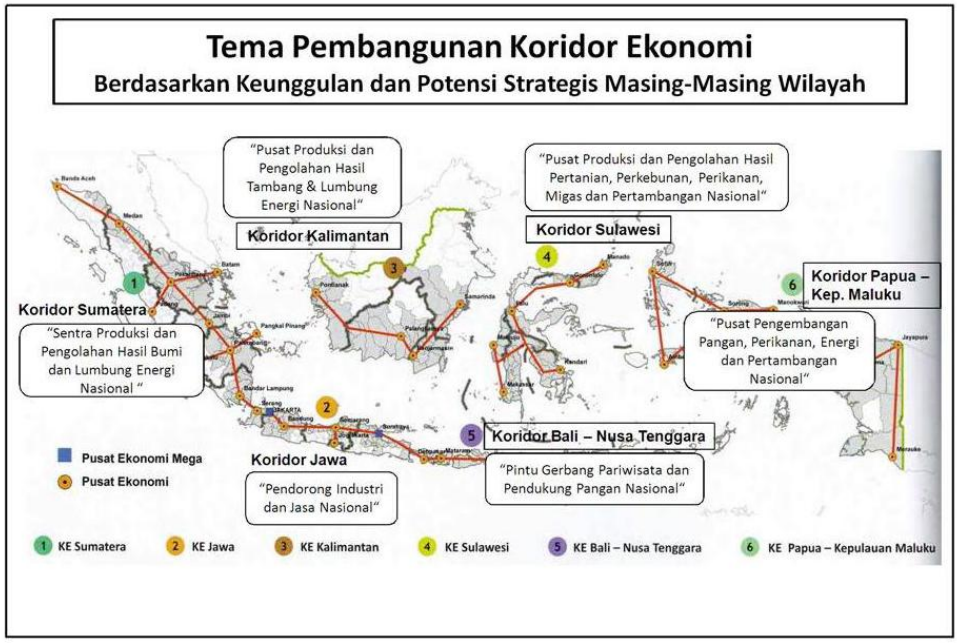
2.3.1 MP3EI (Masterplan for Acceleration and Expansion of Economic Development)

MP3EI (Master Plan Percepatan Pembangunan Ekonomi Indonesia) is "the Masterplan for Acceleration and Expansion of Indonesia's Economic and Social Development" in order to support its national long-term development plan up to 2025. The plans identified 6 economic corridors in the country and establish strategic plan for economic and social development of the region. In the plan private sector will have an important role in implementing the Masterplan, in investment, production and distribution, together with the Government who will act as the regulator and also as a facilitator, and with strengthened coordination among related ministries and regional government.

MP3EI consists of three main elements:

- Developing six Indonesia economic corridors, by establishing centers of development within every corridor and developing industry clusters and special economic zone based on advanced commodities resources;
- Strengthening national connectivity, which includes intra and inter connectivity of centers development, intra-islands (corridors), and international trade;
- National science and technology acceleration to support the development of the main program.

The development and implementation of the plan is managed by KP3EI (Committee for MP3EI) with supports from the Coordinating Ministry of Economic Affairs (CMEA) and National Planning and Development Agency (BAPPENAS). JICA is providing assistance to the secretary office of KP3EI and the Corridor Working Group under KP3EI. The image of the MP3EI is shown in the following figure:



Source: KP3EI

Figure 2.3-1 Infrastructure Development Plan of MP3EI (Extraction)

MP3EI identifies 6 economic corridors in the countries and set unique economic strategy for economic corridors. It also shows the relations and linkage of those corridors. And based on the strategy, infrastructure development strategy in each corridor is developed. This covers project from several sectors and integrated analysis and prioritizations are made for selection of urgent projects. The image of the integrated analysis is shown in the following figure.

Source: KP3EI

Figure 2.3-2 Infrastructure Development Plan of Suma Tera Island in MP3EI

2.3.2 MPA (Metropolitan Priority Area) Master Plan

MPA Master Plan Study (Jakarta Metropolitan Special Area and Investment Promotion (MPA) Master Plan Study) is the study sponsored by JICA, for establishment of bilateral development framework between the Government of Indonesia and the Government of Japan. This is the integrated master plan for which focuses on Jakarta Metropolitan Area (JABODETABEK Area) and proposes comprehensive development plan of the region. As the results of the study, Fast-Track Projects and Priority Projects , which should be developed with high priority, are identified. (See the table of the next page)

The master plan is made from multi-sector (ministerial) perspectives and covers a wide range of sectors as shown in the following:

- City planning (Social, economic forecast, industry structure)
- Urban planning (Spatial planning vision for the city)
- Industrial Park Investment Promotion and Facilitation

- Urban transportation planning and logistics planning Highway planning
- Rail plan
- Airport Plan
- Port planning
- Power plan
- Water and sanitation project
- Waste plan
- Disaster prevention plan

The vision and the image of integrated analysis are shown in the following figure.

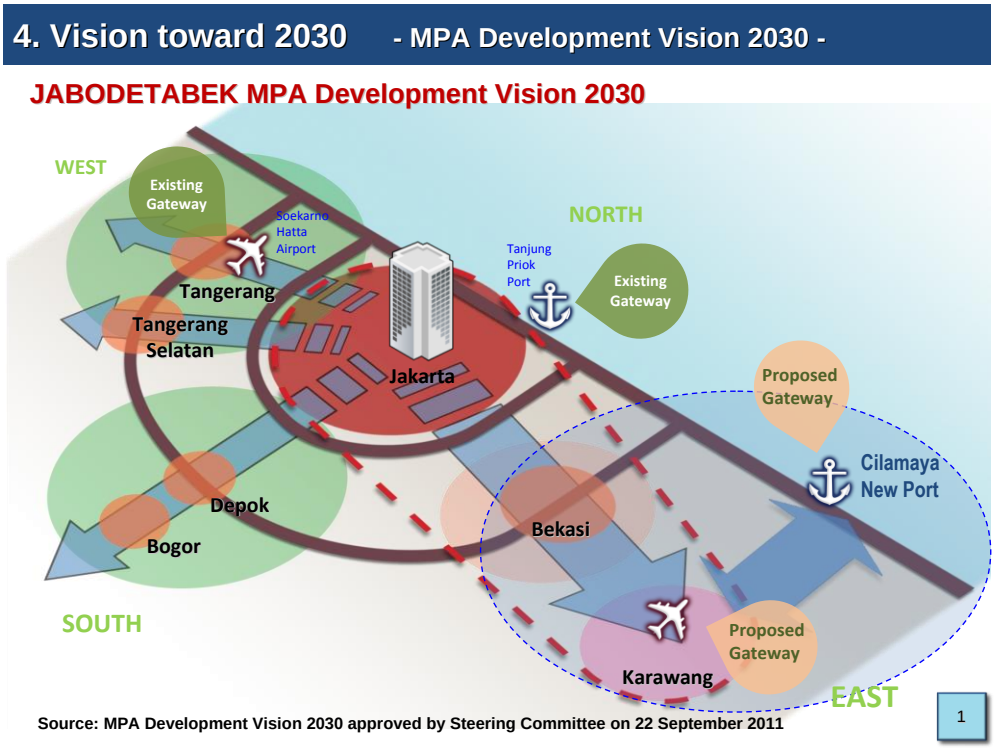


Figure 2.3-3 Infrastructure Development Plan of MPA Master Plan

The identified Fast Track Project and Priority Project are summarized in the following table.

Table 2.3-1 Fast Track Project and Priority Project In MPA Master Plan

Programs	Projects	Project Type
A.1: Development of MRT-based New Urban Transport System	(1) Jakarta Mass Rapid Transit (MRT): N-S Phase I, N-S Phase II, and E-W Phase 1 as FTP 3.1	Public
	(2) JABODETABEK Railway Capacity Enhancement Project (Phase I) as FTP 3.2 and Further Improvement as Phase II	Public
	(3) Development of Jakarta Monorail	PPP
	(4) Station Plaza Development and Park & Ride System Enhancement	PPP
	(5) Introduction of Common Ticketing System (Smart Card)	Private
A.2 :Development of Road Network in and around Jakarta	(1)a. Improvement of Road Network in JABODETABEK as FTP 4.1	Public
	(1)b. Improvement of Road Network in JABODETABEK as FTP 4.1 (Improvement of Intersection in DKI Jakarta)	Public
	(2) Development of Outer Ring Road	PPP
	(3) Introduction of Intelligent Transport System (ITS) n JABODETABEK	Public

A.3: Promotion of Urban Re-development	(1)a. A Pilot Project of Urban Development/ Redevelopment (Option I: Project for creating green open spaces of business and commercial area and development affordable housing in DKI Jakarta)	PPP
	(1)b. A Pilot Project of Urban Development/ Redevelopment (Option II: Project for development of housings in multiple purpose complex)	PPP
A.4: Improvement of Water Supply and Sewerage Systems	(1) DKI Jakarta-Bekasi-Karawang Water Supply (Jatiluhur) as FTP 6.1	PPP
	(2) Rehabilitation of Water Supply Facilities in DKI Jakarta, Bekasi and Karawang, with the integration of DKI Jakarta – Bekasi – Karawan Water Supply (Jatiluhur)	PPP
	(3) Development of Sewerage Works in DKI Jakarta (Zone 1, 6)	PPP &Public
	(4) Development of Water Supply Systems for Large-scale Infrastructure Development	PPP
A.5: Solid Waste Treatment	(1) Construction of the West Java Regional Solid Waste Treatment and Final Disposal as FTP 7.1 (Legok Nangka)	PPP
	(2) Development of New Landfill Site at Tangerang	PPP
A.6: Flood Management	(1) Reconstruction of East Pump Station at Pluit as FTP 8.1	Public
	(2) Development of Urban Drainage System in DKI Jakarta	Public
	(3) Construction of East Banjir Floodway from the Ciliwung River	Public
B.1: Development of New Growth Sub-Corridor for Jabodetabek	(1) Development of New Township	PPP
	(2) Development of New Industrial Estate in the vicinity of New Airport	PPP
	(3) Development of New Administration Area	PPP
B.2: Development of New Academic Research Cluster	(1) Development of New Academic Research Cluster	PPP
B.3: Development of Road/Railway along New Growth Sub-Corridor for Jabodetabek MPA	(1) Construction of Second Jakarta-Cikampek Toll Road	PPP
	(2) Improvement of Road Network within the Industrial Area to the East of Jakarta as FTP 2.2	Public
	(3) Construction of Access Road to New Cilamaya Seaport as FTP 1.2	PPP
	(4) Construction of Freight Railway to New Cilamaya Seaport	Public
	(5) Construction of Access Road to New International Airport	PPP
	(6) Construction of Jakarta-Bandung High Speed Railway via New International Airport	PPP
C.1: Development of Cilamaya Port	(1) Development of a New International Port as FTP 1.2	PPP
	(2) Development of a New Car Terminal at Cilamaya Port	Private
	(3) Development of Logistics/Industrial Parks at Cilamaya Port	Private
C.2: Improvement of Tanjung Priok Port	(1) Improvement and Expansion of Container Terminal at North Kalibaru as FTP 1.1	Public (SOE)
	(2) Development of New Car Terminal at Kalibaru	Private
C.3: Development of New Int'l Airport	(1) Development of New International Airport (Phase I)	PPP
C.4: Improvement of Soekarno-Hatta International Airport (SHIA)	(1)a Expansion of Soekarno-Hatta International Airport as FTP 5.2 Phase 1	Public (SOE)
	(1)b Expansion of Soekarno-Hatta International Airport as FTP 5.2 Phase 2	Public (SOE)
	(2)a Construction of Access Railway to Soekarno- Hatta International Airport as FTP 5.1 (Express)	PPP
	(2)b Construction of Access Railway to Soekarno-Hatta International Airport as FTP 5.1 (Commuter)	PPP
D.1: Low-Carbon Power Supply Development	(1) Development of Central Java Coal-fired Power Plant, proposed as FTP	PPP
	(2) Construction of Indramayu Coal-fired Power Plant as FTP 9.2	Public (SOE)
	(3) Development of Banten Coal-fired Power Plant as FTP 9.3	Private
	(4) Development of Gas-fired Power Plant and FSRU (Floating Storage Regasification Unit) as FTP 9.4	Private
	(5) Development of Rajamandala Hydroelectric Power Plant as FTP 9.5	Private
	(6) Construction of Java-Sumatra Interconnection Transmission Line as FTP 9.1	Public (SOE)
	(7) Other Renewable and Low-Carbon Emission Power Projects connecting to Java-Bali- Sumatra Power Network	PPP
	(8) Development of West Java Coal-fired Power Plant with Clean Coal Technology	Private

D.2: Development of Smart Grid	(1) Smart Community (including a pilot project for the Smart Grid) as FTP 2.1	PPP
	(2) Optimization of Power Distribution System in DKI Jakarta	Public

Source: JICA Study Team

The project type or the financing methods are considered by the JICA Study Team based on the discussion with oversight agencies, such as BAPPENAS, as well as implementing agencies, such as the Ministry of Public Works and the Ministry of Transportation. The main criteria applied for the analysis are as follows:

- Existing ODA Plan (Blue Book) and PPP Pipeline (PPP Book)
- Readiness of Implementing Agency including Maturity of Conventional F/S , PPP F/S
- Market Interest
- Business Plan of State Owned Enterprises
- Project Profitability (The Study Team's Preliminary Analysis)

Chapter 3. Back Analysis for Creation of PPP Enabling Environment

3.1 Regulatory Framework

3.1.1 Proposed Amendments to the BOT Law

In this section, recent discussion on amendment of the BOT is explained. After twenty years since the last amendment, the BOT Law is again the subject of several amendatory bills, in apparent response to the call for legal reforms by the Aquino administration. One was filed with the Senate. Three others were filed with the House of Representatives. The outlines of these four bills are summarized below.

(1) Senate Bill No.2710

Senate Bill ("SB") No. 2710, which seeks to amend certain sections of the BOT Law and appropriate funds therefor, was introduced by Senator Ralph G. Recto on 22 February 2011. The Explanatory Note of SB 2710 provides that its aim is to further improve the BOT Law "by expanding its coverage and providing more incentives to the private sector who become partners of the government in infrastructure projects." This is in line with the declared priority legislative policy of the Aquino administration of "strengthening laws that provide incentives to PPP."

SB No. 2710 was referred to the Committee on Public Works and has been pending with the committee. SB No. 2710 seeks to make it clear that unsolicited proposals are not entitled to direct or indirect government guarantees, subsidies or equity. In addition, SB No. 2710 provides that projects classified by the President as "projects of national significance" are entitled to certain incentives, among which is the exemption from all real property taxes for all real properties actually and directly used for the project.

The most notable amendment proposed under SB No. 2710 is the creation of a PPP Guarantee Fund[1], designed to defray the cost of compensating private proponents in the event that the government agency fails to comply with its obligations under a PPP contract. The PPP Guarantee Fund shall initially be funded in the amount of Five Billion Pesos (₱5,000,000,000.00) to be charged against the savings of the National Government. Further, replenishment of the fund shall come from General Appropriation Act (GAA).

(2) House Bill No. 759, No. 4151, and No. 5238

House Bill ("HB") Nos. 759, 4151 and 5238 are the bills pending before the House of Representatives that seek to likewise amend the BOT Law.

HB No. 759, which was introduced by Representative Rodolfo W. Antonino on 05 July 2010, seeks to "enunciate a clear-cut policy on government support, adhere to best practices on risk allocation, set the reasonable rate of return for solicited or unsolicited or negotiated projects, institutionalize a fair, honest and competitive procurement process, establish a BOT Authority to rationalize the program implementation, and provide penal provisions."[2]

[1] The PPP Guaranty Fund proposed under SB No. 2710 refers to a fund which shall "defray the cost of compensation to project proponents which enter into BOT contracts, concession agreements or other contractual agreements with any national government agency or GOCC pursuant to the provisions of Republic Act No. 6957, as amended, in the event that the government agency or GOCC fails to comply, or is prevented from complying, with its obligations under the aforementioned contracts or agreements as a result of an act of another agency or branch of government."

[2] HB No. 759, Explanatory Note.

A notable proposal in HB No. 759 is the creation of a Project Development Facility, which is a revolving fund to finance the proper identification, study, validation, development, and preparation for public bidding of private sector infrastructure or development projects. In addition, perhaps to entice more private investors in PPP projects, HB No. 759 also proposes that the President sign all contracts for PPP projects and proposes to add a provision in the BOT Law expressly saying that the Republic of the Philippines shall honor the validity and enforceability of a duly executed contract, unless it is proven that the procedures under the BOT Law were not followed.

HB No. 4151, which was introduced by Representatives Feliciano Belmonte, Jr. and Neptali M. Gonzales II in February 2011, appears to be but a counterpart of SB No. 2710, as HB No. 4151 contains the same provisions as the latter. The HB No. 4151's Explanatory Note, which like SB No. 2710, similarly provides that it aims to broaden and tighten the legal and policy framework, and to enunciate a clear-cut policy on government support.[3]

Lastly, HB No. 5238, which was principally authored by Representative Romeo M. Acop and filed in September 2011, aims to address the decrease in the momentum of PPP projects owing to legal problems encountered in the implementation of PPP projects, and controversial transactions. It notes that, strategically, the effective implementation of BOT projects hinges on the followings:

- A legal and economic environment conducive to a mutually beneficial partnership
- Certainty of recovering investments and availability of mechanisms for dealing with risks and unforeseen events
- Clarity in articulating the duties and responsibilities of the parties to the contract;
- Transparency and credibility of the government's processes from project identification, review and approval of proposed BOT projects to contract implementation.[4]

HB No. 5238 proposes to expressly include in the declared policy of the BOT Law that the incentives which shall be provided to the private sector in the development and undertaking of PPP projects shall include allowing a reasonable rate of return of investments and mitigation risks by ensuring that the validity and enforceability of contracts are respected through due process of law. HB No. 5238 also proposes to include a provision in the BOT Law to the effect that a private proponent shall not be subsidized by the government for any loss in projected revenues. These amendatory bills however were not passed into law before the adjournment of the 15th Congress. Thus, the aforementioned amendatory bills would have to be re-filed at the 16th Congress after the May 2013 elections.

3.1.2 Latest Amendments to the BOT Law IRR

While the BOT Law itself had not been amended since 1994, its Implementing Rules and Regulations ("IRR") has been adjusted, modified or refined several times. The latest version of the IRR was published in a newspaper of general circulation on 07 October 2012. The 2012 IRR then took effect fifteen (15) days after said publication, or on 22 October 2012. Some of the more salient revisions made in 2012, and matters that may be further improved, are discussed below:

(1) Notable revisions in the 2012 IRR

Improvements and clarifications to the IRR[5] have been introduced in the 2012 IRR, particularly in terms of providing a fairer and more efficient and transparent process for BOT projects, from the proposal and negotiation stage, to the drafting of the contract, to the bidding, and right down to the execution and implementation thereof. Some of the more notable changes are:

[3] HB No. 4151, Explanatory Note.

[4] HB No. 5238, Explanatory Note.

[5] Prior to 2012, the BOT Law IRR was last amended in 2006.

a. Compulsory Contract Review

For a contract drafting procedure leading to fewer contests, the 2012 IRR, under Sections 2.8 (for solicited proposals) and 10.9 (for unsolicited proposals), now requires that the draft contract be reviewed by the Office of the Government Corporate Counsel (OGCC), the Office of the Solicitor-General (OSG), or any other entity prescribed as the statutory counsel of GOCCs and LGUs, and, if necessary, by the Department of Finance (DOF), before the draft contract may be approved by the head of the agency. Prior to the amendment, a DOJ or OGCC opinion may be sought as a closing opinion required to b e stipulated under a BOT agreement. The legal review therefore occurs at the tail end of the process. The new requirement sets the review early on. Hopefully, this revision translates to fewer contests on the validity of the BOT contract during the implementation stage.

b. Direct Government Subsidy or Equity

The 2012 IRR, still consistent with the BOT Law, highlights the requirement that no direct government guarantee, subsidy or equity shall be allowed for unsolicited projects. Section 10.4 of the 2012 IRR now explicitly states that the grant of usufruct of government assets, including, among others, right-of-way, to private proponents shall be considered as direct subsidy or equity, unless the government receives appropriate compensation for such. Thus, while government may still contribute to a project resulting from an unsolicited proposal, it may not support or assist such a project for free or without receiving remuneration equivalent to what it contributes.[6]

c. Changes to Published Bidding Requirements

In order to promote transparency, the 2012 IRR now emphasizes that, for any change to the bidding requirements previously published, the government agency must issue a bid bulletin to all bidders who had purchased the tender/bid documents, informing them of such changes, and affording them reasonable time within which to consider the same in the preparation of their submission/bids. This promotes fairness in the bidding by keeping all interested bidders informed of all amendments to the bidding requirements, allowing them to properly prepare and craft their bids. While this was already the previous practice of implementing agencies, the 2012 IRR now expressly mandates the same, thereby giving such requirements greater stability and permanence.

d. Formation of Special Purpose Company

Like the 2006 IRR, a private proponent is allowed by the 2012 IRR to create a special purpose company to assume the rights and obligations of the winning private proponent under the BOT contract. In addition however, the 2012 IRR provides that the implementing agency may now mandate or compel the winning private proponent to register or incorporate such a special purpose company, rather than keeping it optional. In either case, there is apparent recognition that a proponent (and its partners or co-investors) need not organize as a company at the onset but shall do so only after it is actually awarded a project.

e. Grant of Provisional Franchise

As regards the grant of provisional franchises, the 2012 IRR now clarifies that the government agency empowered by law to fix the rates of a public service is required to automatically grant, in favor of the private proponent, a franchise to operate the facility on a provisional basis and collect tolls, fees, rentals, and other charges stipulated under the contract.[7] The 2006 IRR formerly provided that the government agency or regulator concerned shall issue the required franchise only after conducting a public hearing. There was thus some uncertainty as to whether a winning project proponent could actually operate and maintain the facility, including the collection of tolls, fees, rentals, and charges,

[6] DOJ Opinion No. 32, Series of 2011.

[7] Section "12.3", 2012 IRR.

soon after the award of the project. This new provision under the 2012 IRR is more consistent with Section 5 of the BOT Law, which provides that the winning project proponent shall be automatically granted by the appropriate agency the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges.

f. Use of Parametric Formula in Toll Rate Fixing

Another notable improvement is with respect to the adjustment of tolls, fees, rentals and charges as the 2012 IRR now provides that the government shall ensure that the project proponent recovers the difference between the amount of tolls, fees, rentals and other charges based on the contract and/or approved parametric formulae and the amount approved by the government agency regulating such tolls, fees, rentals and charges. This was not previously provided under the older version of the IRR.[8] Notably, the Department of Justice (DOJ) has rendered an opinion, as early as 1995, that there is nothing objectionable to the use of a parametric formula in adjusting tolls, fees, rentals and other charges.[9] The track adopted by the 2012 IRR is more consistent with the aforementioned DOJ opinion.

(2) Points for Further Improvement in the 2012 IRR

Notwithstanding the foregoing beneficial additions, revisions, and amendments, the 2012 IRR still has room for improvement. The Study Team has conducted a close review of the 2012 IRR, in comparison with the IRR 2006, and has found that several provisions in the 2006 IRR, which were identified to be deficient or required amendments, remain unchanged. The Study Team suggests that GoP continues discussion and review of the 2012 IRR, particularly on the following points:

a. Unsolicited Proposals

With regard to the period for submission of a counter-proposal or "Swiss challenges" to an unsolicited proposal, the 2012 IRR provides that the period for acceptance of said counter-proposals is sixty working days from the date of issuance of the tender/bidding documents.[10] This period has been observed to be short and insufficient for other proponents to prepare and submit competitive bids, and thus highly favors the original proponent and is thus not conducive to fair competition.

There looks like no provision in the 2012 IRR expressly saying that the contents of a BOT contract for an unsolicited proposal will be opened to the public. This has been observed to lack transparency. However, it is noted that the contract approved by the government agency for an unsolicited proposal forms part of the tender documents provided to those interested to send comparative proposals to the approved unsolicited proposal.[11] Further, Section 11.4 of the 2012 IRR requires that the notice of award and/or bidding results be posted in government websites within seven calendar days from the issuance of the Notice of Award.

b. Governmental Responsibilities and Contractual Breach

The 2012 IRR has been observed to lack sufficient provisions mapping out governmental obligations and responsibilities under a contract. For instance, there is no provision outlining the criteria for the government's provision of a subsidy in a BOT project. Secondly, the 2012 IRR does not mention the consequences of any delay by the government in the acquisition and/or delivery of ROW as provided in a BOT contract. Thirdly, remedies available to the private proponent in case of breaches by the government of its contractual obligations are not expressly enumerated in the 2012 IRR. This is not to say, however, that the parties (the government) to a BOT contract may not choose to stipulate and/or provide remedies that may be resorted to by the private proponent. The only rule is that such a

[8] Section "12.18", 2012 IRR.

[9] Opinion No. 97, series of 1995.

[10] Sections "10.1" and "10.11", 2012 IRR.

[11] Section "10.10", 2012 IRR.

stipulation (remedy) must not be contrary to law, morals, good customs, public order, or public policy.[12] Also, consistent with Executive Order No. 78, series of 2012, which expressly mandates the inclusion of provisions on the use of alternative dispute resolution mechanisms in all PPP contracts, the IRR may expressly provide for standard provisions therefore. The only rule is that such a stipulation must not be contrary to law, morals, good customs, public order, or public policy.[13]

The 2012 IRR provides for contract drafting procedure, by requiring draft contracts to undergo successive reviews by either OGCC or OSG, and DOF, if necessary. For this purpose, model contracts may be developed to provide greater clarity on certain matters of PPP arrangement between the Government and the private proponent. Provisions on issues such as risk identification and quantification may be required to be inserted in PPP contracts, depending on the public sector concerned, as well as on the BOT scheme. Also, consistent with Executive Order No. 78, series of 2012, which expressly mandates the inclusion of provisions on the use of alternative dispute resolution mechanisms in all PPP contracts, the IRR may expressly provide for standard provisions therefor.

c. Development Assistance and Subsidies

Another matter which may benefit from further clarification in the IRR is the provision dealing with projects financed with private funds and partly with direct government appropriations and/or from ODA. A maximum of 50% of the total project cost is set for government or ODA, with the balance to be provided by the project proponent. However, the 2012 IRR currently does not have specific provisions in terms of the following items:

- Whether "financing" includes only the grant of subsidy (and not to the loan amounts)
- Whether the limit should cover the cost of acquiring ROW
- Clearly defined criteria for determining the difficulty of sourcing funds, and who determines the same.

The foregoing matters may be expressly clarified in a new set of IRR of the BOT Law, because aside from the lack of express provisions thereof in the 2012 IRR, no precedent has yet been made by the Supreme Court and no opinion has yet been issued by the DOJ squarely interpreting the foregoing provision.

Nonetheless, in interpreting the provisions of the BOT Law, an IRR must not run counter to, but rather be in furtherance of the State policy behind the law/statute. As discussed earlier, by enacting the BOT Law, the Philippine Congress "recognized the indispensable role of the private sector as the main engine for national growth and development". While the ideal scenario contemplates a complete investment by the private sector in BOT projects, the Congress also recognized that there is a need to "provide the most appropriate incentives to mobilize private resources" to attract more private sector participation. Among others, the foregoing provision, which allows assistance in the form of direct government appropriations and ODA at the maximum of 50% of project cost, may be said to implement the national policy.

d. Joint Venture (JV)

A Joint Venture (JV) is contemplated under the Revised Guidelines and Procedures for Entering into JV Agreements between Government and Private Entities issued by NEDA in 2013 (JV Guidelines)[14]. JV is one form of partnerships between a private party and a government entity. More specifically, it is described in JV Guidelines as "a contractual arrangement whereby a private sector entity or group of

[12] *cf.* Article 1306, New Civil Code of the Philippines.

[13] *cf.* Article 1306, New Civil Code of the Philippines.

[14] The JV Guidelines were first issued in 2008, and were later revised in May 2013. The JV Guidelines, as revised, will take effect fifteen (15) calendar days from its publication on 11 May 2013 (in the Philippine Daily Inquirer), or on 26 May 2013. (Sec. 11, JV Guidelines). The quotations in this section are all made from JV Guidelines.

private sector entities on one hand, and a Government Entity or group of Government Entities on the other hand, contribute money/capital, services, assets (including equipment, land or intellectual property), or a combination of any or all of the foregoing to undertake an investment activity."

A JV is treated differently from other PPP or BOT contracts as it has its own set of guidelines. The JV Guidelines and the BOT Law are similar in a lot of aspects, particularly in the processes adopted to ensure transparency and accountability in the procedures for public tender. In fact, the procedures for evaluating negotiated JV proposals were patterned after the process for unsolicited BOT projects, particularly in the adoption of the "Swiss Challenge" method.

BOT projects may be differentiated from JV arrangements in the following points.

Firstly, in BOT projects, ownership of the business will stay with the government, while in the JV projects, the private sector is allowed to take over the undertaking of the projects in its entirety, after the government divests itself of any interest in the JV.

Secondly the JV Guidelines apply only to public or semi-public entities, such as GOCC, government corporate entities, government instrumentalities with corporate powers, government financial institutions, state universities and colleges, which are expressly authorized by law or their respective charters to enter into JV agreements. On the other hands, LGUs are expressly excluded from its coverage. And so are national government agencies, by implication. In contrast, the BOT Law expressly authorizes "all government infrastructure agencies, including government-owned and-controlled corporations and local government units" to enter into BOT contracts. Therefore, it can be said that the coverage of the BOT Law is much broader.

Thirdly, the JV Guidelines allow the parties thereto to elect for a SEC registered/incorporated, or un-incorporated, JV arrangement, provided that government's interest or equity contribution in the JV "shall only be less than fifty percent". The BOT Law and the IRR allow for greater flexibility in providing for a multitude of schemes or variants, such as BOT, BOO, BLT, and other variations. In fact, the possibilities are broad enough to include even JV type arrangements since the law allows for the adoption of "other variations as may be approved by the President".

Fourthly, apart from the foregoing, probably the more problematic matter is the difference in conditions for unsolicited proposal. Under the BOT Law, an unsolicited proposal may only be accepted by government under certain conditions such as the projects involve a new concept or technology and/or not included in the IA's list of priority projects, no direct government guarantee, equity or subsidy required, NEDA-ICC clearance before negotiations, and undertaking a Swiss Challenge (BOT Law Sec.4-A). However, all these conditions are not required under the JV Guidelines.

Fifthly, the JV Guidelines also provides that a "JV Company shall be permitted to derive income from activities authorized under the JV Agreement". It also specifies that the parties to the JV "shall be entitled to receive dividends each year from the net profits that would constitute portion of the unrestricted retained earnings of the company". The JV Guidelines does not set a limit unlike for certain BOT projects which have a cap on rate of return on rate base at 12% specifically for public utility which are monopolies. Thus, a proponent seeking either direct equity and/or a higher return may resort to a JV rather than a BOT arrangement.

As discussed, the issues of the JV Guideline are summarized below.

- It seems that the JV is preferred by IAs and private proponents since the guideline generally needs few government approvals and requirements.
- The JV entails a shorter processing period (90 to 165 days) while the BOT Law does a longer processing period from 250 to 410 days.
- There is less transparency in the procurement process undertaken under the JV Guideline.

In this regard, it is worth considering how the BOT Law may be revised to cover JV projects. Possibly, the track may be initiated by including JV projects among the list of permissible BOT schemes or variants. Unifying the JV Guidelines with the BOT Law will benefit private proponents as they will only need to consider one set of regulations for PPP projects in the Philippines.

3.1.3 Other Issues on PPP Legal Framework

As one of other issues on PPP legal framework, the use of different modes of alternative dispute resolution would be focused here. The use of different modes of alternative dispute resolution has been perceived globally, not only as an acceptable substitute to ordinary court litigation, but also as a more efficient and less costly option for resolving various legal disputes between and among the parties to a contract. Ordinarily, resort to ADR may be made when the contracting parties have agreed that disagreements related to the contract may be submitted to ADR.

In the Philippines, the use of the ADR system has been recognized and adopted through Republic Act No. 9285, or the ADR Act of 2004. Said law sanctions various modes of ADR, including but not limited to any, or a combination, of the following:

- Mediation - a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute;
- Arbitration - a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or the IRR of the ADR Act of 2004, resolve a dispute by rendering an award;
- Mini-trial - a structured dispute resolution method in which the merits of a case are argued before a panel comprising senior decision makers with or without the presence of a neutral third person after which the parties seek a negotiated settlement;
- Mediation-arbitration - a two-step dispute resolution process involving both mediation and arbitration.

Consistent with the policy of the promotion of party autonomy in the resolution of disputes, the ADR Act of 2004, the parties to a contract are given the freedom to choose their preferred mode of dispute settlement, as well as other incidents thereto, such as, in the case of arbitration, the place of arbitration, the language to be used therein, and the arbitrator/s.

For arbitration, the ADR Act of 2004 expressly adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law as the law governing international commercial arbitration[15] in the Philippines, and Republic Act No. 876, or the Philippine Arbitration Law of 1953, for domestic arbitration cases.[16]

The use of ADR system has been institutionalized in the Executive Department under Executive Order No. 523, series of 2006, which required all administrative bodies to promote the use of ADR such as, but not limited to, mediation, conciliation and arbitration as part of their practice in resolving disputes filed before them. Further, Executive Order No. 78, series of 2012 ("EO 78"), expressly mandates the inclusion of provisions on the use of ADR mechanisms in all PPP contracts.

[15] "International arbitration" is defined in the IRR of the ADR Act of 2004 as an arbitration where:
(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or
(b) one of the following places is situated outside the Philippines in which the parties have their places of business:
(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

[16] Except for construction disputes, which shall be governed by Executive Order No. 1008, or the Construction Industry Arbitration Law.

As specifically required by EO 78, the National Economic Development Authority is required to issue the implementing rules and regulations for EO 78, which shall be binding on all government agencies and shall guide local government units ("LGU") that shall enter into PPP contracts.[17] Said IRR may provide for a uniform contractual clause on ADR mechanism and require the same to be inserted in all PPP contracts. Moreover, it may provide for a standard default provision (which will set an ADR mechanism) in PPP contracts in the event that the parties do not or fail to specify a dispute mechanism.

As regards the courts' power of judicial review over matters relating to ADR where contractual parties have agreed to resort thereto, the Supreme Court has promulgated the Special Rules of Court on Alternative Dispute Resolution[18], which took effect on 30 October 2009. Consistent with the policy to promote the use of various modes of ADR, in accordance with said Special Rules, courts shall intervene only in cases allowed by the ADR Act of 2004 and by the said Special Rules. While arbitral awards may not be set aside by the courts based on mere errors of judgment (either as to the law or as to the facts), an award may be vacated if the arbiter's findings have no factual support or when the award was made in "manifest disregard of the law" (*i.e.* when the findings clearly violate an established legal precedent).[19]

Domestic arbitral awards may be confirmed, upon proper petition, by the Regional Trial Court having jurisdiction over the place in which one of the parties is doing business, where any of the parties reside or where arbitration proceedings were conducted. However, while the court may not overrule the factual findings of the arbitrator/s, it may also vacate the domestic arbitral award based on certain specific grounds (*e.g.* corruption on the part of the arbitrator, non-existence or invalidity of the arbitration) or correct/modify the same based on specific grounds (*e.g.* evident miscalculation of figures or evident mistake in the identification of a thing, omission of an issue submitted for resolution, imperfect form).[20] On the other hand, foreign arbitral awards may, upon proper petition, be recognized and enforced in the Philippines by a decree of the court. However, the court may also set aside and resist recognition and enforcement of a foreign arbitral award based on certain specific grounds (*e.g.* incapacity of one of the parties, lack of proper notice to any of the parties, invalid appointment of arbitrator/s).[21]

Given the foregoing, it may also be worthy to consider whether PPP contracts should be required to include provisions that, in the event that a judgment is issued or an award is made by the arbitral body through the ADR provision of the contract, the Government shall automatically draw from an available standby fund to ensure the immediate payment of said award to a private party, pending the court's confirmation of the domestic arbitral award or recognition and enforcement of the international arbitral award. Such payment should, however, be without prejudice to the right of the Government to question such arbitral award (and recovery of wrongful payments) through available remedial measures provided for by law, such as a petition to the proper courts to vacate or correct a domestic arbitral award or a petition to set aside a foreign arbitral award, based on valid grounds.

By allowing the proponent some payments upon the issuance of the arbitral award but prior to the confirmation or recognition and enforcement of the award by the courts, the burden of waiting for the final resolution of the courts, as well as the concomitant costs therefor, is effectively shifted from the private proponent (who holds on the burden from the commencement of the dispute up to the decision or arbitral award) to the Government. In the interim, the compensation for any injury which the private party may have suffered from a Government breach of the contract is not unnecessarily prolonged by possible unexpected delays in the resolution of the courts. By so providing in the contract, the parties give the arbitral award the presumption that the same shall eventually be confirmed or recognized and

[17] Section 2 of EO 78.

[18] A.M. No. 07-11-08-SC.

[19] Equitable PCI Banking Corporation vs. RCBC Capital Corporation, 574 SCRA 858 (2008).

[20] Rule 11.4 of the Special Rules of Court on Alternative Dispute Resolution.

[21] Rule 12.4 of the Special Rules of Court on Alternative Dispute Resolution.

enforced by the courts, subject to the repayment to the Government of whatever it pays pursuant to the award in the remote possibility that the same is vacated or set aside by the courts.

3.2 Organizational and Policy Framework

3.2.1 Creation, Evolution and Strengthening of the PPP Center

The PPP Center, as established by Executive Order No. 8, series of 2010 ("EO 8"), is the primary government institution, tasked with enabling PPP projects in the Philippines. Prior to a series of reorganizations in the past, the PPP Center started out as the Coordinating Council on the Philippine Assistance Program ("CCPAP"), created in 1989 by Administrative Order No. 105 mainly to implement the Philippine Assistance Program, to "mobilize the international community's support to achieve the objectives of sustainable economic growth coupled with an equitable distribution of income and wealth" and to "effectively mobilize the aid and to ensure its successful implementation".[22] Not only was it tasked to formulate policies and guidelines for the implementation of said program, it was also given the responsibility to monitor, review and evaluate the implementation of programs and projects thereunder. Upon the passage of the BOT Law, the CCPAP became the central body responsible for the coordination and monitoring of BOT or PPP projects.

In 1999, the CCPAP was reorganized as the Coordinating Council for Private Sector Participation ("CCPSP") under the Office of the President, through Administrative Order No. 67. The CCPSP's functions included coordination and monitoring the program of the Government on private sector participation ("PSP") in its infrastructure and other development activities and the formulation of policies and guidelines which will ensure transparent and expeditious implementation of the PSP Program.

The CCPSP was then converted to the BOT Center by virtue of Executive Order No. 144, Series of 2002, and became an attached agency of the Department of Trade and Industry ("DTI"). The BOT Center was empowered to coordinate and monitor BOT and PPP projects and the BOT/PSP Program of the Government, as well as to promote and market the same. As such, it was expressly designated as an investment promotion body, and not a regulatory or approving authority. The BOT Center also had the functions of formulating policies and guidelines for BOT/PSP project development and of providing technical assistance to national agencies, GOCCs and LGUs. It also was tasked to establish, manage and administer a revolving fund to be known as the Project Development Facility ("PDF"), a technical assistance fund for the preparation of feasibility studies and bid documents. The seed capital of PDF was funded from a grant, and was envisioned to be administered in such a way that would allow for the recovery of said seed capital and to use the re-flows for other BOT/PSP project preparation/studies.

EO 8 reorganized the BOT Center of the Philippines into what is now the PPP Center, and made the same an attached agency of the NEDA. With the aim to fast-track the implementation of PPP programs and projects, as a cornerstone strategy of the national development plan to accelerate the infrastructure development of the Philippines, the PPP Center was given certain responsibilities over all PPP programs and projects. Its powers currently include, among others:

- Conducting project facilitation and assistance, and providing advisory services, technical assistance, trainings and capacity development to agencies and LGUs;
- Recommending plans, policies and implementation guidelines related to PPP;
- managing and administering the Project Development and Monitoring Facility ("PDMF"), which was formerly the PDF, a revolving fund established for the preparation of business case, pre-feasibility and feasibility studies and tender documents of PPP projects;

[22] Whereas Clauses of Administrative Order No. 105, Series of 1989.

- Monitoring and facilitating the implementation of priority PPP projects of agencies and LGUs;
- Such other functions which may be critical in expediting and implementing effectively the PPP projects of the Government.

As evidenced by the number of reorganizations of the PPP Center, the Government has indeed recognized the changing needs of the PPP environment in the Philippines, including the need for a centralized body in charge of formulating policies and guidelines, monitoring and evaluating the overall implementation of PPP projects, with the view of achieving greater effectiveness and efficiency therefor.

EO 8 may still benefit from further amendments in the future. For instance, it has been suggested that EO 8 may expressly provide for a PPP Center Governing Board which may serve as a central policy-making body in all PPP matters. Moreover, EO 8 may be amended to expressly include as one of the purposes of the PDMF the monitoring of PPP projects to ensure their timely implementation.

Having undergone several changes in the past twenty (20) years, it is likely that the PPP Center will continue to evolve, as its role changes, or even expands, as does the PPP paradigm. The PPP Center would continue to seek a structure that will allow it to best deliver its services on PPP concerns.

The continuing evolution of the PPP Center is dependent however, on how it succeeds with its current functions. The failure by the PPP Center to improve the development of PPP pipeline projects, as well as to improve the capability of implementing agencies to roll out and implement PPP projects will heavily weigh against any move to further expand the PPP Center. However, should the PPP Center succeed in these roles, coupled with a continuing increase in PPP projects, then the PPP Center would perhaps require expansion in the future, so as to obtain more powers, autonomy, and financial self-sufficiency.

In line with this proposition, it was suggested in a study conducted by GHD, entitled *Review of the PPP Institutional Set-up in the Philippines*, that the PPP Center evolve into a GOCC, offering project development services to implementing agencies, in the form of consultancy services. The PPP Center, as a GOCC, would be compensated by implementing agencies for consultations, not only on feasibility study preparations, but also on drafting and negotiating project agreements, as well as on monitoring and evaluation of PPP projects.[23]

It was noted in the same study however, that before the PPP Center could evolve into a GOCC, certain factors must be present, such as sufficiency of PPP projects to sustain revenue generation, and the availability of manpower and skills, such that the PPP Center organized as a GOCC, could replace external consultants.[24]

In the interim however, that there appears to be insufficient impetus to transform the PPP Center to a GOCC. Alternatively, it was likewise suggested that the PPP Center evolve into a Commission, as an autonomous body under the Office of the President. The autonomy and attachment of the would be PPP Commission to the Office of the President would provide it a perception of higher stature and clout than the current PPP Center. Said PPP Commission would, theoretically, be more able to enforce adherence by implementing agencies of the process flow timelines provided by the BOT Law IRR. It could also improve access and communication with the private sector.[25]

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[23] GHD Pty, Ltd. *Review of the PPP Institutional Set-up in the Philippines* (19 September 2012), available at http://ppp.gov.ph/wp-content/uploads/2012/09/Review-of-PPP-Institutional-Set-Up_09192012.pdf, (last accessed at 09 April 2013).

[24] *Id*. at 40.

[25] *Id*. at ¶ 127. The would be PPP Commission "should be able to identify policy needs; define procedural issues that are lacking in the PPP process; coordinate with DOF, NEDA or DBM needed course corrections in the PPP program; extend technical assistance in matters related to project preparation, evaluation of unsolicited proposals and procurement to national agencies and LGUs; ensure that conflicts of interest in the processing of solicited, or unsolicited, proposals are eliminated; and compensate for the weaknesses and gaps in knowledge related to the application of proper tools and

The PPP Center, as an enabler of PPP projects, has much room for improvement, whether it remains as the PPP Center, or eventually evolves into a commission under the Office of the President, or even perhaps into a GOCC. It cannot be gainsaid however, that the PPP Center will continue to be reorganized, as the needs and requirements of the PPP paradigm evolves.

3.2.2 PDMF Support for PPP Projects

Philippine infrastructure planning and programming flows from the Medium-term Philippine Development Plan ("MTPDP") which lays down the broad policy framework of government for the President's six-year term. During the preparation of the MTPDP, line agencies also identify and prepare a list of projects, consistent with the broad policy goals, that is submitted to the NEDA to be included in the Medium-term Public Investment Plan ("MTPIP"), albeit it has been observed that supporting studies for selected projects are usually limited, decisions to pursue projects via PPP are based on subjective criteria and prioritization happens without a common analytical system[26]. Together with the MTPIP is the Comprehensive and Integrated Infrastructure Program ("CIIP") that lists projects appropriate for purely private financing, PPP or joint venture, or purely public financing.

While the MTPDP 2011-2016 is already in place identifying PPP as a key program of the Aquino administration, the PPP program itself is handicapped by the absence of accompanying MTPIP and CIIP. Hence, projects that have been chosen so far for PPP are largely based on their readiness to go to market in terms the necessary supporting studies and documents. Also, while the current government has emphasized preference for competition associated with publicly-led solicitation of PPP projects, there are a number of infrastructure projects that are not in government's priority list that are being actively proposed for PPP by the private sector through an "unsolicited" track in the BOT law subject to various rules and limitations.

In light of current constraints related to the lack of national and sector plans as well as inadequate technical, financial and legal capabilities in government agencies to prepare ready-to-tender projects, there is currently greater attention placed on the PPP Center. The PPP Center's capacity for undertaking PPP projects is enhanced by donor assistance, notably from the Australian government and the ADB, for the Project Development and Monitoring Facility (PDMF). The PDMF is a revolving fund used for project preparation and tendering, including the hiring of consultants / transaction advisors.

The PDMF system involves line agencies, typically the implementing government agencies for PPP projects, continuing to be at the frontline of identifying projects. However, given capacity constraints, line agencies have the option to submit project concepts for PDMF financing. A PDMF Board consisting of government representatives from NEDA (chair), DBM, DOF and the PPP Center decides whether or not submitted projects are eligible for PDMF funding. If approved, the PPP Center handles selection of consultants from an existing pool of pre-qualified consulting firms (See Annex 4) to conduct pre-investment studies, prepare draft tender documents and provide transaction advisory services. Should the project be bidded out successfully, the winning bidder reimburses the PDMF for all these costs.

While there is greater attention on the PDMF at this time, going through the PPP Center's facility is in fact not necessary if line agencies have the capability to develop their own projects or have access to technical assistance from other donors.

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forms evaluating/monitoring PPPs." (*Id.* at ¶ 40). The PPP Commission would also "have more control over its budget; access to higher levels of decision-making; more opportunity to interface with the market; freedom from the structural conflicts of interest it faces in its present location; and the independence and flexibility to act when needed." (*Id.*)

[26] GHD Pty Ltd, ed 15 November 2012).2" Philippines. The BOT Law for inclusive growth, June 2012. Draft, September 4, 2012.

For instance, two major projects that are rolled out, the NAIA Expressway and the LRT Line 1 Extension, did not receive PDMF financing but were developed with the help of other donors, including the IFC and JICA. In these cases, the projects similarly go through the BOT Law's process where projects have to secure approval of the NEDA – Investment Coordination Committee (ICC) and for large ones costing over P300 million, the approval of the NEDA Board, which is chaired by the President.

Hence, even as the medium-term policy framework is being drawn up, which will take some time, government appears to be trying to learn by doing and show some early successes to drum up interest and build investor confidence in its PPP program. While external consultants are presently doing the heavy lifting, the objective seems to be that over time, public sector staffs will, with the help of donor assistance, develop the technical expertise to identify projects that are suitable for PPP and prepare ready-to-tender projects.

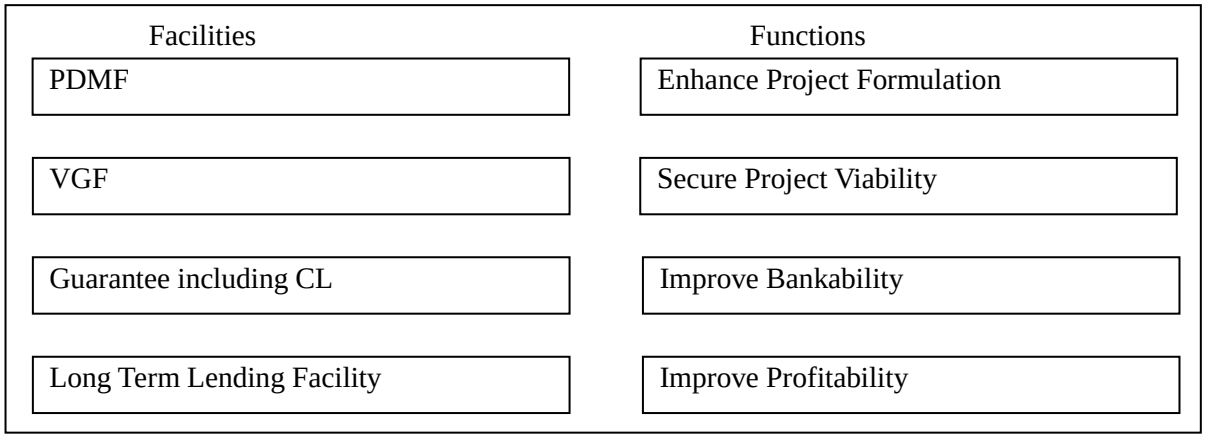
At the same time, these early projects provide lessons for government on what are the missing elements in the current system that government needs to address and what the market looks for and demands from government in order to participate in the bidding. These lessons help to strengthen the medium-term framework moving forward.

Chapter 4. Back Analysis on Public Financial Framework for PPP

4.1 Introduction

The key issue in ongoing PPP projects is how to attract private sector efficiencies in the financing, construction, operation and maintenance of infrastructure services at minimum cost (both on and off-budget) to government, while at the same time achieving social objectives (service provision at affordable rates). Since long-gestating infrastructure projects are inherently risky, the issue boils down to what risks the private sector is able and willing to bear, and for risks that stay with government, what mechanisms it can use to assure the private partner of its long-term commitment to the PPP contracts.

In some countries where the environment for PPP is still in its developing stage and needs private capital to finance catch-up infrastructure, government has introduced a number of financial facilities to address gaps that may keep the private sector away. Depending on each country's institutional features and domestic market conditions, these may include dedicated facilities for (i) project development, (ii) closing viability gaps, (iii) long-term domestic currency lending, and (iv) extending guarantees, including mechanisms to ensure contingent liability obligations of government are complied with. In the Philippines, the public financial framework currently consists of an assortment of formal and informal facilities and mechanisms that tries to meet the requirements of a successful bid. The functions and relations of those facilities are summarized in the following:



Source: JICA Study Team

Figure 4.1-1 Functions and Relations of Public Financial Facilities for PPP

4.2 Current Public Financial Framework

4.2.1 Project Development and Monitoring Facility

The PDMF, lodged in the PPP Center, is a revolving fund charged with developing a robust pipeline of bankable PPP projects. Initial funding for the PDMF was sourced from the government ($7 million) and Australian and Canadian governments grant ($6 million) under the administration of the ADB. The funds may only be used for: (a) preparation of project pre-feasibility and feasibility studies, (b) project structuring, (c) preparation of bid documents and draft contracts, (d) transaction advisory, (e) assistance in the tendering process, including bid evaluation and award, (f) activities required to determine the feasibility and viability of potential PPP projects, (g) preparation of various project

documents as required for approval, and (h) hiring of consultants and advisors to assist the implementing agency in the various aspects of the project preparation. The fund may be replenished by (a) winning bidder if a project is successfully bidded out, (b) repayment by implementing agency if it fails to bid out the project[27] or (c) the PPP Center from its annual budget to augment estimated cash deficiencies. [National Budget Circular 538, March 22, 2012]

As of April 2013, the PDMF has funded 18 projects, with only one awarded and funds reimbursed[28]. Last April 2012, the Australian government and the ADB announced additional support amounting to $15.5 million, $9 million of which will be used for the PDMF (the rest for capacity building activities). Together with counterpart funding from the Philippine government, the PDMF currently has unallocated funding estimated at $18.5 million.

Parallel with the PDMF is bilateral technical assistance being provided for project development for PPP, of which JICA has been most prominent. The typical PPP projects assisted by JICA are i) CALA Expressway Laguna Section, ii) NAIAx Phase-2, iii) LINE-1 South Cavite Extension and iv) LINE-2 Extension. The IFC has likewise been active in providing PPP advisory.

Table 4.2-1 Projects with PDMF funding

[27] Percentage repayment depends on PDMF Board determination of fault/responsibility for failure to bid out the project (100% if due to IA failure, 50% otherwise)

[28] As of this time, the PPP Center only releases information on PDMF-approved projects. It does not indicate whether a project has applied for such support.

	Project	Estimated Cost
Awarded		
1	PPP for School Infrastructure Project (Phase 1)	PHP16.42Bn | USD389Mn
Projects with Live Bidding		
1	Automatic Fare Collection System (AFCS)	PHP1.722 Bn | USD 42.9 Mn
2	Mactan-Cebu International Airport Terminal Building (MCIA)	Phase 1:(Initial Investment) PHP8.873 Bn; Phase 2:(Future Expansion) PHP8.647 Bn
Project Structure Being Finalized		
1	Enhanced O&M of New Bohol (Panglao) Airport	USD 190.50 Million
2	Operation and Maintenance of Laguindingan Airport	USD 42.9 Million
On-going Studies		
1	Establishment of Cold Chain Systems Covering Strategic Areas in the Philippines	PHP 1.50 Bn | USD 35.7 Mn
2	Integrated Transport System (ITS) Project	To be determined (TBD)
3	New Centennial Water Supply Source Project	To be determined (TBD)
4	Bulacan Bulk Water Supply	To be determined (TBD)
On-going Procurement of Advisors		
1	El Nido Water Supply and Sanitation System Project	To be determined (TBD)
2	Manila-Makati-Pasay-Paranaque (MMPP) Mass Transit System (MTS) Project	No information
3	Regional Prison Facilities through PPP	No information
4	Integrated Luzon Railway Project	No information
For Procurement of Advisors		
1	Plaridel Bypass Toll Road	No information
2	Batangas-Manila (BatMan) 1 Natural Gas Pipeline Project	No information
3	LRT-1 Extension to Dasmarinas	No information
4	Manila Bay-Pasig River-Laguna Lake Ferry System Project	No information
5	Operation and Maintenance of Iloilo, Davao and Bacolod Airports	No information

Source: PPP Center

The PPP Center provides the PDMF Guidelines (October 2011) to operate and manage it. Its main points are summarized below.

(1) Qualified projects

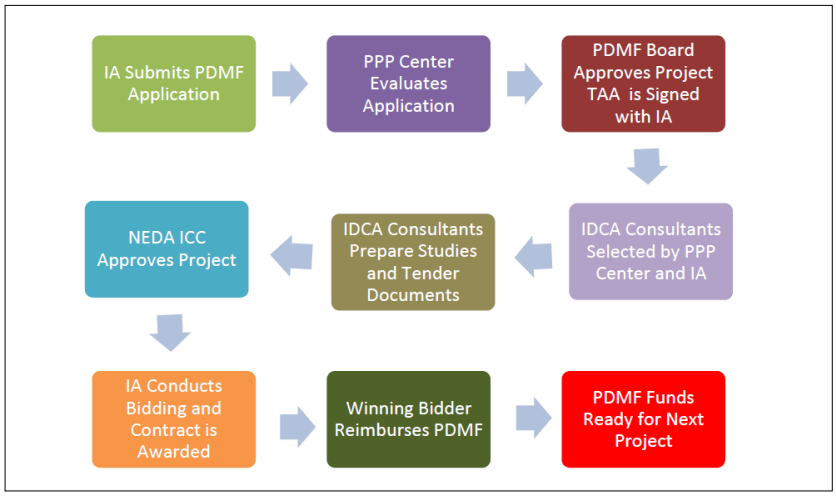
The projects that can be funded under the PDMF shall: (i) belong to economic and social infrastructure sectors; (ii) be consistent with priority government infrastructure programs such as Comprehensive and Integrated Infrastructure Program (CIIP), Medium-Term Philippines Development Plan (MTPDP)/Medium Term Public Investment Program (MTPIP) and Regional/Provincial/Local Development Programs; and (iii) be pursed under the PPP schemes allowed under the BOT Law and its IRR. CIIP is to be approved by NEDA board every 5 years and the latest version is CIIP 2009-2013.

(2) Operating Process

The projects applied for PDMF support will be handled in the following steps as shown in the process chart.

- An IA applies for PDMF financing to The PPP Center with applications including project concept note, indicative TOR with cost estimates, etc.
- The PPP Center evaluates the application and the PDMF Board approves it.
- IA executes a Technical Assistance Agreement (TAA) with the PPP Center.

- The PPP Center establishes a Project Study Committee (PSC), a Special Bids and Award Committee (SBAC), and a Technical Working Group (TWG).
- The PPP Center selects the Consultants/Transaction Advisors and signs the consulting contracts with the selected ones in consultation with IA based on indefinite delivery contract assignment (IDCA)
- The selected Consultants/Transaction Advisors engage the assigned work such as: conduct the pre-investing studies; prepare draft tender documents; provide PPP transaction advisory services.
- The NEDA Investment Coordination Committee (ICC) approves the project for bidding.
- The approved PPP project is bid out and the contract is awarded to a winning bidder.
- The winning bidder reimburses all the project related cost from the PDMF.



Source: Project development and monitoring facility (PDMF) Guidelines

Figure 4.2-1 PDMF Process Flowchart

4.2.2 Viability Gap Funding: PPP Strategic Support Fund

In addition to the PDMF, government has provided budget to a number of implementing agencies starting in 2011 under the line item "PPP Strategic Support Fund (SSF)" to defray costs assigned to the public sector, including capital subsidies. Under National Budget Circular 538 (March 22, 2012), the SSF may only be used for: (a) right of way acquisition and related costs (including resettlement), government counterpart to be used for the construction and other related costs for potential and actual PPP projects, and (b) cost of designing, building and otherwise delivering any part of a PPP project which government decides to retain responsibility for, including public infrastructures such as rural and access roads, utilities and other support facilities required for a PPP project to be viable.

The 2011 and 2012 SSFs were lump sum amounts in agency budgets with the two main infrastructure agencies, DOTC and DPWH, having the largest SSF budgets. For these two years, the implementing agencies were given two years to obligate their SSFs. However, given the slow progress in project pipeline development, some agencies had trouble utilizing their budgeted SSFs. While the executive branch was earlier considering pooling the SSFs into one fund that is open to any implementing agency and avoids the problem of unutilized SSFs left idle in any particular agency, the legislature decided in the opposite direction. That is, starting 2013, the SSFs are expected to be disaggregated to specific, identified PPP projects in agency budgets with the sums having a one-year expiry.

As can be seen in Table 4.2-2, SSF in 2013 is significantly lower than its 2011 and 2012 levels. This is because earlier appropriations are yet to be spent.

Table 4.2-2 Budgeted SSF Amounts (P billion)

	2011	2012	2013
DA	2.50	1.00	
DOH		3.00	
DOTC	5.00	8.59	5.08
DPWH	5.00	3.00	3.00
Total	12.50	15.59	8.08

Source: DBM

4.2.3 Public Guarantee Facility

At the outset, it is important to distinguish the two functions under a guarantee facility: one that guarantees direct liability (or, scheduled liability) and the other that guarantees contingent liability (CL). The Public Guarantee Facility that we discuss here covers both Direct Liability and Contingent Liability.

Table 4.2-3 Difference of GF and CL Fund

	Coverage	
	Direct Liability (DL)	Contingent Liability (CL)
GF	○	○
CL Fund	―	○

Source: JICA Study Team

Currently, there is no dedicated guarantee facility for PPP beyond provisions in the contract itself. To strengthen these and provide investors greater comfort, government may use two instruments available to it: (a) the stronger of the two with tested bankability is the performance undertaking or Confirmation Note, a letter issued by the Secretary of Finance to the project investor stating that government obligations under the contract carry the Republic's "full faith and credit"; or (b) the multi-year obligational authority (MYOA), an authority issued by Department of Budget and Management (DBM) allowing government agencies to enter into multi-year contracts and that commits the executive to provide budget cover for these annually. Investors' discomfort with this instrument is that the MYOA does not bind Congress, the approving authority for government's budget. Performance undertaking or confirmation note can cover both direct and contingent liabilities while MYOA covers direct liability only.

There is no public guarantee facility in the Philippines. Risks and damages occurred during project implementation are compensated by private insurance companies. There are currently about 100 private general insurers (companies managing general/non-life insurance) out of which 11 foreign companies operate. Private proponents basically insures against force majeure caused by natural calamity, and third party liability during construction and operation but not for events caused by the government side. The following is risks covered by private insurance based on a toll road project contract on a BOT basis.

Table 4.2-4 Risks to be Covered by General Insurers

Stages	Kinds of Insurance	Coverage	Fees/Conditions
Detailed design	Professional Indemnity Insurance	Damage during construction caused by defects of detailed design. Insurance period is a few years after start-up of	For a toll road project, foreign company insuring professional indemnity insurance is employed in the

		construction.	Philippines.
Construction	Contractors' All Risks Insurance	1) Material damage 2)Third party liability	Insurance fees: 1) 0.35% of construction cost 2) US$ 10,000 per person
	Marine Cargo Insurance	Material damage/loss during marine or air transportation	Insurance fees: About 0.2% of cargo value per one transportation
	Start-up delay insurance	Revenue loss/additional cost caused by delay in construction due to natural calamity,	Delay in commencement due to delay in land acquisition is outside the coverage
Operation	All Risks Insurance	Fire/Earthquake insurance, damage caused by maintenance works	Insurance fees: About 0.15% of facility value at current price
	Third Party Liability Insurance	Damage of third party caused by maintenance works	Insurance fees: About US$ 10,000 per insurance
	Workers' compensation insurance	Injures of workers during O&M	Insurance fees: 2% of annual income of workers

Source: JICA Study Team's interview to the private insurers

Any damage/loss caused by political risk and delay in commencement of project implementation due to delay in ROW (Right of Way) is outside coverage of general insurance.

4.2.4 Long Term Financing

While government initially contemplated the setting up of a dedicated long-term lending facility to address likely market failure in providing needed long term project finance for PPP projects and reduce demands for on-budget viability gap funding, initial work put into designing the facility has failed to prosper and to date, no such facility is in place. Instead, one of the government financial institutions, the Government Service Insurance System (GSIS) which manages the pensions of public sector employees, that was supposed to participate in the lending facility has opted to set up its own infrastructure fund. Called the Philippine Investment Alliance for Infrastructure (PInAI), the facility has contributions totaling $625 million coming primarily from GSIS ($400 million), with the rest put in by the ADB and two foreign groups, Australia's Macquarie and Dutch pension asset manager Algemene Pensioen Groep (APG). The fund seeks to invest in all types of infrastructure projects in the Philippines. However, given GSIS's mandate (it has an internal 12% target hurdle rate for investments), it is expected that PInAI will be commercially-oriented and focused on projects with predictable cashflows and good returns and hence, may not be able to serve a more catalytic role especially for greenfield PPP projects.

At the time, institutions targeted to participate in the facility either as equity or debt holders included from the government side, DBP, Land Bank, SSS and GSIS and from donor agencies, ADB, IFC and JICA. Key criticism at the time included (a) the facility was being designed with both developmental and commercial goals (giving rise to conflicts in performance targets and governance issues) (b) with no government guarantees and (c) likely high startup and operating costs. At the same time, the facility was being proposed at a time when the local financial market was highly liquid. Hence, the set up to address a perceived gap in the PPP financial framework that has not been realized yet.

While initial efforts to set up a public lending facility were unsuccessful because of the above, the

JICA Study Team continues to find value in having such a facility in place to address long term infrastructure gaps.

4.2.5 Summary of Review of the Four Facilities

In some countries where the environment for PPP is still in its developing stage and yet needs private capital to finance catch-up infrastructure, government has introduced a number of financial facilities to address gaps that may keep the private sector away. Depending on each country's institutional features and domestic market conditions, these may include dedicated facilities for (a) project development, (b) closing viability gaps, (c) long-term domestic currency lending, and (d) extending guarantees, including mechanisms to ensure contingent liability obligations of government are complied with. Similarly, the World Bank identifies four types of government support (financial facilities) to PPP projects: (i) funded products, (ii) contingent products, (iii) financial intermediaries, and (iv) project development funds. The country-specific facilities are related to the WB definition and the current status is summarized below (This long-term financing is tentatively called PIPFF (Philippines Infrastructure Public Finance Facility) for the same of the case study in this report).

Table 4.2-5 Summary of Public Financial Facilities

Type (per WB)	Facilities in the Philippines	Function	Current status
Project development fund	PDMF	Enhance project formulation	already exists
Funded project	VGF	Secure project viability	does not yet exist (started with SSF)
Contingent product	Guarantee for CL	Improve bankability	does not yet exist
Financial intermediaries	PIPFF	Improve profitability and reduce VGF	does not yet exist

Source: JICA Study Team

Out of the four facilities, PDMF is already existing and working. The needs for the remaining not-yet-existing facilities are as follows.

The immediate need of the GoP is to address the issue of CLs. There is no dedicated CL Fund for PPP beyond provisions in the contract itself. The lack of facility for CLs arising from the GoP's non-performance of its obligations causes poor response to bidding and results in slow progress of PPP pipeline implementation. There is an urgent and pressing need for addressing the CLs. In the longer run, there is a need to address the issue of guarantee for direct liabilities.

Regarding VGF and long-term public financial facility there are needs for medium and long term perspectives. The PPP projects currently bid-out are commercially viable so that there is little need for direct financial supports from the government. Coming projects, however, will be less commercially viable than now, and there is a need for strong support from the GoP through the combination of VGF and long-term public financial facility. The immediate need lies in establishing of a standalone VGF and then application of long-term financing is explored to reduce the amount of VGF required. This VGF reduction effect by the financing is shown below.

A case study was conducted using coming candidate project to clarify this point. The results of this case study are summarized below (see Annex 1 for details).

Table 4.2-6 Summary of Case Study for long-term public financial facility

Case study project	Project cost (Mn Ps)	FIRR (%)	VGF required (% of project cost)		Cash flow for GoP (NPV, Mn Ps)	
			Without PIPFF	With PIPFF	Without PIPFF	With PIPFF
CAVITE Express way	22,652	11.2	39.2	26.7	▲ 3,038	142
NAIA Expressway	13,608	10.2	43.9	26.2	▲ 22,128	▲ 535
SELEX Extension Road	13,835	9.2	42.8	20.6	▲ 2,349	▲ 333
Visayas Airport	2,197	13.7	16.7	0.0	298	400
Zamboanga Airport	2,387	10.4	38.7	24.4	182	4
Tacloban Airport	1,581	7.7	47.1	37.8	426	▲ 316

Source: JICA Study Team

The study indicates VGF ranging from 16.2% to 47.1%, averaging 38.1% of project costs is required to make them viable in cases of without long-term public financial facility. In case of provision of with long-term public financial facility (a mixed loan of 50% commercial loan and 50% public long-term loan with half interest and double tenor of those in commercial loan) the required VGF is reduced to 37.8% to zero, averaging 22.6%. Provision of public long-term financing reduces VGF by 40.6% on average basis. This is a great benefit for the GoP in terms of mitigation of fiscal burden.

The subsequent sections describe further analysis of the not-yet-exist facilities (VGF pool, guarantee for CL, and long-term public financial facility).

4.3 Comparison with Other Countries

4.3.1 Contingent Liability Treatment

(1) Japanese Example

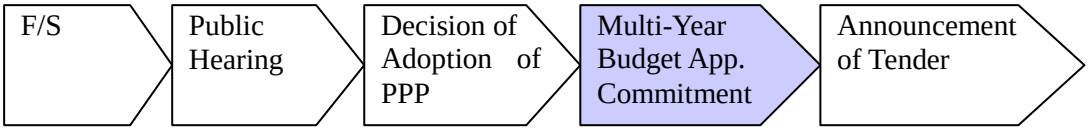
a. Contingent liability in Japanese PFI

Most of Japan's PFI Projects are "Annuity Payment Type" and it requires long-term payment by ministries and local autonomies. During such a long-term payment period, some contingent liabilities can be expected to occur, i.e., price escalation and increase of bank loan interest rate which are almost impossible to be predicted in advance. Also, there is a certain possibility, although it is very low, that the Diet might disapprove the budget appropriation for annuity payment in a certain year. To mitigate the above-mentioned contingent liability, the Multi-Year Budget Appropriation Commitment was introduced and it has been properly performed

b. Multi-Year Budget Appropriation Commitment

"PFI Process Guideline", which was issued by the Japanese Cabinet Office, requires "Multi-Year Budget Appropriation Commitment" for projects both by Ministries and local autonomies. "Multi-Year Budget Appropriation Commitment" requires Diet's approval for national projects and local assemblies' approval for local projects. "Multi-Year Budget Appropriation Commitment" is legally allowed by Japanese Financial Law, Local Autonomy Law, and PFI Law.

It is guided by PFI Process Guideline that "Multi-Year Budget Appropriation Commitment" shall be set before announcement of tender (PQ). The following flow chart shows the flow of the process and the timing of Multi-Year Budget Appropriation Commitment.



Source: JICA Study Team

Figure 4.3-1 Flow of sequential procedure for the Multi-Year Budget Appropriation under PFI contract

When "Multi-Year Budget Appropriation Commitment" is set in either Diet or Local Assembly, the approval is made for the following contents:

The government or local autonomy shall pay to the PFI Company, the designated amount over the designated period as written in the PFI contract to be closed. The amount shall duly include the annuity payment (service purchase payment), as well as the costs duly to be borne by the government/local autonomy, as the results of the changes of agreed items, such as interest rate and CPI.

(2) Example of Colombia

a. Initial feature of the Government guarantee policy

Since early 1990's, the Colombian Government introduced various guarantee policies and incentive policies for promotion of private entities' participation in infrastructure development business fields through PPP scheme. With the purpose of encouraging private participation in electricity sector and telecommunication sector, typical PPP related policy measures have been introduced such as minimum revenue guarantee, availability payment scheme and so forth. The infrastructure concession projects incorporated contingent liabilities primary related to guarantees of: 1) revenue risk (typically traffic demand risk), 2) Geological hazard risk, 3)ROW delivery risk, 4)exchange risk and 5)natural disaster related risk. At the beginning stage, such guarantees and incentives for private participation were not recorded in the fiscal accounting framework since there were no instruments for assessment of contingent liabilities.

b. Public body for Risk management

In 1998, the Risk Office was established within the general Directorate of Public Credit, of which jurisdiction is identification, assessment, mitigation and control of the different sources of contingent liabilities of the nation. The Law 448 was issued in 1998, by which action was taken with respect to the management of contingent liabilities. The Law 448 stipulated that the Nation shall include debt service appropriations in their own budget, which may be necessary to cover the potential losses coming from contingent liabilities.

c. Contingency Fund of State Entities

Based on the Law 448 issued in 1998, Contingency Fund of State Entities was established to meet contingent liabilities and risks of state agencies as a special account with no juridical persons. The funding sources of the Fund come from: 1) contributions made by state agencies, 2)contributions from national budget and 3)recovery product portfolio. The arrangement plan of such funding resources is determined by the General Directorate of Credit and National Treasury, Ministry of Finance and Public Credit, through the approval of the various contribution plans, in accordance of Decree 423.

d. Contingent Liability management bodies

The Law 448 assigned responsibility for approving and monitoring the valuation of contingencies to the General Directorate of Public Credit and National Treasury, Ministry of Finance and Public Credit.

In 1999, the Decree 1849 stipulated that the first definition of contingent liabilities and general procedure for disbursement of from the Contingency Fund for State Entities.
In 2001, the Decree 423 provided the guidelines for the management of the Contingency for State Entities, and authorized that the general Directorate of Public Credit and national treasury, Ministry of Finance to approve the plan of contribution of funding sources of the Fund.

e. Contingent Liability caused by litigation against the Nation

As for contingent liability brought about by litigation action against the nation, it also has been seriously taken into consideration. The major factors for this kind of contingent liability were considered as: 1) the lack of financial resources to strengthen prevention measures against unlawful state damage, 2) increasing the unlawful damage caused by the State to individuals and therefore an increase in the number of lawsuits against the Nation, 3) poor technical defense against state court proceedings, 3) increasing the responsibility of the State to guarantees of fundamental rights, 4) lack of uniform criteria to address litigation, 5) organizational deficiencies defense offices, 6) little use of alternative dispute resolution and 7) the absence of information systems for the collection and analysis of data regarding state litigation. In 2004, the Deputy Directorate of Risk performed the initial assessment of for contingent liability lawsuits against the Nation. In 2007, Decree 1795 provided the Unique System for Juridical Management Information, which was the only system of collection and management of litigation related data and information. Based on the system, and the Deputy Directorate of Risk conducted the assessment of lawsuits related contingent liabilities.
As for contingent liability generated in public credit operation, the sources were identified as: 1)the public payment obligations based on PPP contracts, 2)court proceedings against the State, 3)guarantees public credit operations and 4)occurrence of natural disasters.

f. Contingent Liability in public credit operations

Since 1993, the 2681 Act empowered the Nation to provide guarantees to state agencies. There have been a significant number of credit transactions held by different state agencies, in which the Nation acts as a guarantor of credit agreements between lending institutions and organizations at the national and regional levels. In general, the Nation's guarantee is provided in a form of liquid collateral in credit agreement. In this context, the Nation as a guarantor has continued to be exposed to public credit risks. As hedging mechanisms against the above-mentioned credit risks are 1) counter-guarantees and 2) payments to the Contingency Fund for State Entities.

1) Counter-guarantees
The General Directorate of Public Credit and National Treasury has established the counter-guarantee. To ensure liquidity and easy performance, the Ministry of Finance has signed with the entities concerned a contract of indemnity pledging that a revenue stream and management in a mechanism being assured by the General Directorate of Public Credit and National Treasury to make effective.

2) Payments to the Contingency Fund of State Entities
In 2005, Decree 3800 stipulated that all beneficiaries of the Nation's guarantee are forced to contribute to the Contingency Fund of State Entities. When the state entities enter into a credit agreement secured by the Nation, the entities are forced to commit to design and follow a plan of contributions to the Contingency Fund. The procedure for making contribution plan is given by Resolution 2818 issued in 2005.

g. Contingent Liability caused by natural disasters

In 1998, Decree 93 stipulated the National Plan for Prevention and Attention of Disasters under the following four risk management concepts: 1)Risk identification and monitoring, 2)Risk reduction, 3)Institutional strengthening and 4)Socialization of disaster prevention and care. In order to determine the magnitude of fiscal exposure to the pecuniary loss of damage caused by natural disaster, the values exposed of public and private property were estimated, and the potential losses were identified which

could occur due to natural disasters. Also such risk transfer mechanisms were discussed as insurance, reinsurance and catastrophe bonds.

4.3.2 Guarantee Treatment

(1) Example of Mexico

In Mexico, the main entities which have been providing financial guarantees are BANOBRAS and FONADIN. Traditionally PPP projects have been supported by standard long term credit facilities provided by BANOBRAS, which is the development bank of the Mexican Federal Government. Since 2007, BANOBRAS added financial guarantee service to their portfolio. FONADIN is denominated as the Mexican Government Infrastructure Fund, which was established as a guarantor with its own patrimony consisting of portfolio of existing toll roads operated by the Federal Government.

a. BANOBRAS

BANOBRAS' current guarantee services contain two types i.e., the one is Partial Credit Guarantee, which is a guarantee of timely payment made by concessionaire to the lender, and the other is Contract Payment Enhancement Guarantee, which is a guarantee of full and timely payment committed by the Government to the concessionaire.

1) Partial Credit Guarantee

It is denominated as timely payment guarantee, which is unconditional and irrevocable guarantee of timely payment of principal and interest of the loan. At the preparatory stage of this guarantee scheme, it goes through a due diligence process, legal documentation process, provision of reserve account, which are similar to typical project financing process. Above due diligence reports and legal documents are submitted to the rating agencies. The rating agencies undergo interactive process with BANOBRAS together with clients, advisers and financial professionals. Finally, BANOBRAS together with the client and its advisers with a view of the rating levels determines the size of guarantee. The size of guarantee is limited to 50% of the principal amount of the guaranteed obligation. Under the guarantee, BANOBRAS becomes a sort of lender to the project when it disburses funds to the lenders or investors to make debt service payment in case that project cash in-flow is insufficient.

2) Contract Payment Enhancement Guarantee

Under this type of guarantee, BANOBRAS guarantees full and timely payment committed by the Government to a concessionaire under PPP contract. This guarantee is applicable to PPP projects referred to in Mexico as "Service Rendering Contracts". Under this PPP contract, the concessionaire commits to construct, operate and maintain the infrastructure in exchange for fixed availability payments paid by the Government. The purpose of this service product is to support the state agencies and municipalities attract more private proponents to bid for the infrastructure development projects. The possible tenor of the guarantee is up to 30 years.

b. FONADIN

FONADIN is denominated as the Mexican Government Infrastructure Fund operated by the Federal Government. FONADIN is conceived the first and foremost tool of the Government of Mexico to make PPP projects attractive for private proponents. The main forms of support FONADIN offers are 1) equity and 2) subordinated loan. In addition, FONADIN offers two types of guarantees: 1) financial guarantees and 2) performance guarantees.

1) Financial Guarantees

Financial guarantees which FONADIN offers consist of the following types:

First loss guarantee: FONADIN makes the first disbursement of guarantee for insufficient debt service payment before other guarantee would disburse.

Last payment guarantee: FONADIN disburses guarantee for insufficient debt service payment after other guarantee have been honored.

FONADIN does not offer full scale guarantee, but the size of guarantee have a limitation of 50% of all guaranteed obligation.

2) Performance Guarantees

The performance guarantees cover a portion of the construction risk of a project and are limited to 15% of the investment budget. They also cover the initial stage of operation of a project until revenues have reached 40% of projected revenues.

(2) Example of Brazil

Brazil has some state-level guarantee scheme. The Federal Guarantee Fund is a federal-level guaranteeing entity, and some state-level guaranteeing entities such as Paulista Partnership Company of state of São Paulo, the guarantee fund of state of Minas Gerais and the guarantee PPP fund of state of Bahia.

a. The Federal Guarantee Fund

In 2005, the PPP Law authorized the Federal Government to take part in the global limit of 6 billion Brazilian reais, which is equivalent to 3.6 billion USD, in the Federal Guarantee Fund, of which purpose is to provide guarantee of payment for money liabilities assumed by federal public partners by virtue of PPP projects within a federal scope.

The major function of the Federal Guarantee Fund is to prevent public payment defaults, by way of guarantee of payments to private proponents in a form of constant payment from the fund. The Fund aims to reduce the risk of government insolvency and increase the liquidity by offering greater security to private proponents and positively reflecting on its credit risk upon the raising of funding the project.

The guarantees provided by the Federal Guarantee Fund are:1) non-conditional surety, 2) pledges of chattel rights integrating the Fund's equity, 3) mortgage of real estate belongings to the federal government's entity, 4) chattel mortgage and 5) other agreements producing guarantee effect.

The Federal Guarantee Fund can also provide counter-guarantees to financial institutions, insurance companies or multilateral organizations that guarantee shareholder's obligations in PPP contracts.

b. Other State-level Guarantee Fund

In addition to the above-mentioned federal-level guarantee fund, some state-level guarantee funds in state of São Paulo, state of Minas Gerais and state of Bahia are being operated.

1) Paulista Partnership Company (state of São Paulo)

The São Paulo PPP program created the Paulista Partnership Company to provide guarantees to private-sector participants. Public-sector assets are contributed to the company's fund, which in turn issues securities and performance guarantees. The Paulista Partnership Company is the state owned enterprise which is managed by the state of São Paulo, and the state of São Paulo is the majority shareholder of the company.

2) Guarantee Fund (state of Minas Gerais)

The Fund was established to provide financial support to the PPP program. It is managed by State Secretary of Economic Development state of Minas Gerais, and its financial agent is Minas Gerais Development Bank. Fund resources are: 1) the amounts allocated in the state budget and supplemental appropriations, 2) income from bank deposits and investments of the Fund, 3) donations, contributions and legacies for the Fund and 4) income from the Union. State-owned assets, chattels, and movable

properties owned by the public Administration can be allocated in the Fund. The Fund disburses guarantee to the private proponents and offer real guarantees that could ensure the compensation by the public Administration, according to the PPP contracts.

c. Guarantee PPP Fund (state of Bahia)

In state of Bahia, according to PPP Statute, the Bank of Brazil as the financial institution is responsible for the transfer 12% of financial resources from the State Federal District Participation Fund to the Development Agency of the State of Bahia. The above financial resources are maintained by the Development Agency of the State of Bahia in a separate bank account, which has the specific aim of guaranteeing PPP contracts where State of Bahia is the public partner.

4.3.3 Long Term Lending Treatment

(1) Example of India

In India, there exist several infrastructure funds as follows:

ILFS: Infrastructure Leasing and Financial Services
IDFC: Infrastructure Development Finance Company limited
VGF: Viability Gap Funding
IIFC: India Infrastructure Finance Company limited
IIPDF: India Infrastructure Project Development Fund

a. ILFS: Infrastructure Leasing and Financial Services

ILFS was established in 1987 for the purpose of financing infrastructure development undertaken by private sectors. Investors are Central Bank of India, Unit Trust of India and Housing Development Finance Corp. ltd. In 1993, additional investors such as IFC (International Finance Corporation) and ORIX Japan involved with investment. In the past, ILFS financed development of such infrastructures as airports, sea ports, subways in India.

b. IDFC: Infrastructure Development Finance Company limited

IDFC was established in 1997 as an India Development Bank. Major shareholder are Ministry of Finance India, of whish share of stock holding is about 20%, commercial banks in India, IFC, ADB, Government of Singapore Investment Corporation and Commonwealth Development Corporation. IDFC plays roles of provision of long-term loan and guarantee for commercial risks.

c. VGF: Viability Gap Funding

VGF started to function in 2005 initiated by Indian Government. VGF aims at financially supporting private sector companies being engaged in infrastructure development projects, which are not financially viable. VGF is provided for private sector companies which are selected through a process of open competitive bidding. VGF is provided in the form of a capital grant at the stage of project construction. In order to secure VGF from the Indian Government, the candidate private sector company must submit proposals of the financial support to the Indian Government and sanctioned with the approval of Finance Minister on case-by-case basis. The limit of the grant is 20% of all project costs including not only construction costs but also operation/management costs.

d. IIFC: India Infrastructure Finance Company limited

IIFC was established in January 2006 as a state owned enterprise. IIFC is functioning as a long-term loan provider for infrastructure development project undertaken by private sector companies. Funding

sources come from the Government of India, the World Bank, ADB and commercial banks in India. Conditions for the finance are as follows:

- Eligible projects are infrastructure development projects undertaken by private sector companies and its financial viability must be secured.
- The amount of finance must be up to 20% of total project costs
- IIFC can provide loan directly or indirectly (via commercial banks) to the private company

e. IIPDF: India Infrastructure Project Development Fund

IIPDF was established by the Government of India, the Ministry of Finance in December 2007. The funding sources of IIPDF come from the Ministry of Finance India and the multilateral and bilateral agencies. IIPDF's primary objective is to fund potential infrastructure PPP projects development expenses including cost of engaging consultants and transaction advisors. More specifically, IIPDF is available to the Sponsoring Authority including State Government and Local Authorities, who incur the project development expenses with respect to conducting feasibility studies, environment impact assessment, financial structuring, legal reviews and project documents development. IIPDF is envisaged as a revolving fund and must be replenished by the reimbursement of investment through fee earned from successful bid projects. However, in case of failure of the bid, the fund would not be recovered. The fund assists up to 75% of the project development expenses to the Sponsoring Authorities.

Summary of above-mentioned funds are as follows:

Table 4.3-1 Outline of Infrastructure Development Fund in India

Name of the Fund	Year of Establishment	Funding Sources	Major Functions
ILFS	1987	Central Bank of India Unit Trust of India Housing Development Finance Corp. IFC ORIX Japan	Provision of long-term loan for infrastructure development undertaken by private sector companies.
IDFC	1997	Ministry of Finance India Indian commercial banks IFC ADB Government of Singapore Investment Corporation Commonwealth Development Corporation	Provision of long-term loan and guarantee for commercial risks
VGF	2005	Ministry of Finance India	Provision of capital grant, of which amount is up to 20% of all project costs
IIFC	2006	Ministry of Finance India Indian commercial banks The World Bank ADB	Provision of long-term loan for infrastructure development undertaken by private sector companies.
IIPDF	2007	Ministry of Finance India	To finance the cost of project development e.g. F/S costs undertaken by concerned authorities

Source: JICA Study Team

4.3.4 Summary of Comparison

The comparison results are summarized in the following table:

Table 4.3-2 the Outline of the Global Examples on PPP Financial Institutions

		Philippines	Japan	Indonesia	India	Colombia	Mexico	Brazil
Contingent Liability	**Types**	•	•Diet's disapproval of budget appropriation for an annuity payment to a concessionaire •Raise of interest rate or price escalation more than expected	-	-	•Public credit operation •Litigation •Natural disaster	-	-
	Manage-ment	•	•Application of "Multi-Year Budget Appropriation Commitment" •Seeking solution through the consultation between a state entity and a concessionaire	-	-	•Magnitude of the risks are identified and assessed •The results of the risk assessment is incorporated into the budget appropriation plan •Making most of the Contingency Fund of State Agencies	-	-
Guarantee Scheme	**Types**		-	•Guarantee of Public Credit made by the Government	•Commercial Risk Guarantee	•Revenue Guarantee for ensuring debt service •Exchange risk guarantee •Guarantee for geological hazard risk •Guarantee for natural disaster related risk	•Partial Credit Guarantee: Guarantee of timely payment made by concessionaire to the Bank •Contract Payment Enhancement Guarantee: Guarantee of full and timely payment committed by the Government •Financing support in a form of equity injection and provision of subordinated loan	•Guarantee of payment for money liability assumed by federal public entities through the Federal Guarantee Fund
	Manage-ment		-	•IIGF (Indonesian Infrastructure Guarantee Fund) performs guarantee disbursement	•IDFC (Infrastructure Development Finance Company limited), which is a state-owned company, guarantees a commercial risks	•The Nation plays a major role of guarantor •Ministry of Finance functions as a counter-guarantor	•BANOBRAS, which is the development bank, provides Partial Credit Guarantee and Contract Payment Enhancement Guarantee since 2007 •FONADIN, which is the Mexican Government Infrastructure Fund, provides equity and subordinated loan as well as financial guarantee, political guarantee and performance guarantee	•Guarantee disbursement is performed by Federal Guarantee Fund and state-level guarantee funds
Infrastructure Development Fund	**Types**		-	-	•Funding support for infrastructure development	-	-	-
	Manage-ment		-	-	•Operational bodies: ILFS: Infrastructure Leasing and Financial Services •IDFC: Infrastructure Development Finance Company limited •IIFC: India Infrastructure Finance Company limited •IIPDF: India Infrastructure Project Development Fund	-	-	-

Source: JICA Study Team

4.4 Feedbacks from the Philippines Side: Discussions at JICA PPP Workshop

Under JICA's sponsorship and with the cooperation of the Philippine government, the Study Team conducted the workshop, "Government's risk management: enabling environment for PPP infrastructure development," on March 7, 2013. The purpose of the workshop is to get the views of the various parties involved in PPP on the question of further enhancing the attractiveness of PPP investments for the private sector so that it can be a more potent instrument for government to achieve its objectives of improving infrastructure. Workshop participants included government, development partners and private financiers.

Highlights of the different presentations are as follows:

- There has been significant underinvestment in the Philippines in the past decade and a half, including in vital infrastructure projects which various studies and surveys show have contributed to the country's reduced competitiveness and low rankings in terms of investment climate vs. other Asian countries, and have led to a vicious cycle of low and uneven economic growth.

- A catch-up infrastructure program requires indicative investments of over P3 trillion, with planned financing almost evenly split between government budget / ODA and private sector participation. (Note: latest internal information from ADB shows planned infrastructure investments through 2016 of roughly P2 trillion.)

- In most cases, the private investor in infrastructure projects looks to the government to provide some form of financial support to make the projects financially attractive (explicit subsidies or guarantees, which in many cases do not have explicit mechanisms for computing default payments). Given the Philippine system where the budget process is exposed to political risk in the form of failure of the executive or of congress to include these financial support (even for the regular, known amounts) in the annual budget (termed "non-appropriation risk"), private investors have tended to mistrust government promises under the long-term contracts and have either attached a high risk premium to hurdle rates or completely stayed away from such projects.

- Because of this and other risks, local banks have provided financing on the basis of project sponsors' balance sheet rather than on the basis of project cashflows. This has necessarily limited the number of potential participants in PPP given that (a) on the side of lenders, banks have prudential limits on lending to single borrowers and sectors and (b) on the side of borrowers, only a few large companies have the balance sheets needed to support large infra projects. On the other hand, for banks to rely more on project finance requires clearer assignments and management of risks under PPP contracts and more definite assurances from government that it will deliver on its promises under the contract, including timely payments of financial liabilities, timely delivery of right of way and adjustments of tariffs as well as clearer rules for determining and accounting for termination payments.

- As it is, not only do current PPP contracts require greater clarity in payment rules, government's current budget instrument (MYOA) for assuring the private sector of its commitment to meet future claims has not provided as much comfort to private proponents a it has hoped since the MYOA does not commit congress. A key finding of the Study Team is the need for a dedicated fund that can be structured in a variety of ways that will allow government to pay for contingent claims under PPP contracts in a timely manner, can provide private parties more assurance and thus, bring in more players/ bidders in PPP projects. Based on the Study Team's discussions with private companies, removal of non-appropriation risk as well as other government-related risks via such a fund can potentially reduce their required hurdle rates by as much as 2 percentage points.

- Government reported on the Treasury's current efforts to set up a contingent liability fund primarily to help government manage fiscal risks, noting three options with both pros and cons - (a) actual cash can be set aside in a "true fund" but the key concern is the opportunity cost of parked monies given competing uses for government's scarce resources, (b) a line item may be included in agency budgets that will be funded as the need arises but this will compete for the agency's fiscal space, and (c) a lump-sum budget can be centrally managed in DBM but will be difficult to justify to congress . In any of these options, it noted that the key issue is to allow the Treasury to "fund" the fund, i.e., for congress to approve a line item in the annual budget, with the Treasury partial to putting a line item for contingent liabilities under the "unprogrammed fund" item of the budget.

In several Q&As following the presentations, discussions dwelt on:

- Constraints on government. This included (a) openness of congress to lump-sum funds, especially since it has already reduced the validity of appropriations from two to one year starting in the 2013 budget and (b) even if congress agreed, there are specific conditions for releasing funds from the "unprogrammed fund" item, i.e., a) new revenue source b) loan contract signed with a lender and c) availability of additional unprogrammed revenues. It was also noted that efforts to work with congress in moving into a medium-term expenditure framework that will permit multi-year appropriations have not been successful to date. Finally, the issue of how to quantify how much to budget was also raised.

- Private sector demands on government, which officials noted may be too much considering that non-appropriations risk is present in other countries as well and that over time, as budget processes become more transparent, risks should go down as well, making contingent liability funds unnecessary. In any event, officials noted that in the past, government had always paid, albeit with lags as any amount will have to be appropriated by congress.

- Financiers' (a) assessment of risks which focuses on the proper allocation between the public and private sectors (noting that demand risk should be shouldered by the public sector especially for greenfield projects), and (b) willingness to go beyond plain vanilla debt financing into riskier financing structures through e.g., subordinated debt (currently provided by project sponsors and thus counted as equity) or buying project bonds. It was also noted that while banks are now highly liquid and eager to find investment outlets, the liquidity does not directly translate into bankability, which depends on specific project characteristics.

- Alternative structures for the proposed contingent liability (CL) fund, which as presented by the Study Team included (a) using a GOCC to manage the fund, (b) expanding the scope of the PDMF to include CL, (c) setting up a new trust fund within DOF, and (d) pooling the SSF within DBM. Comments from government are (a) that the fund be managed by committee within the central government, (b) that it be a special fund that will not lapse but if actual monies put in, will be allowed to grow to minimize carrying costs, (c) that it will be a lump-sum fund so as not to crowd out agency budgets, and (d) the need for spending authority for such a fund. On the question of guarantee premiums, it was noted that the CL fund is essentially government guaranteeing itself and so should not be passed on to the private sector. Rather, in other countries, it was noted that it is the implementing agency shouldering the fees.

Participants appreciated much the frank and comprehensive sharing of perspectives. Knowing the concerns of proponents and financiers should assist government authorities address these pro-actively using available mechanisms considering limitations of law and fiscal prudence, so that PPP can contribute more fully to infrastructure catch-up program of government. More structural solutions, including those requiring legislation, will likewise be explored jointly with development partners.

4.5 Applicability of JICA's ODA Loan and Other Financial Support

This section would expand the previous section, illustrated the four PPP financial systems in the world, to consider how JICA is able to provide financial support to those PPP financial system in the Philippines. The JICA Study Team has identified the following three as effective methods.

(1) Direct Financial Support to the Four Financial Systems

At the beginning, it has to be well considered how these financial facilities could finance to the PPP projects. It is understood that while PDMF, VGF, and CL facility would provide subsidies, Long Term

Financial Facility would provide a loan to the project. This differentiation of providing loans or grants is critical to pursue effectivity and manageability of the financial systems. Providing loan is appropriate for Long-Term Financing Facilities, while providing grants is favored for PDMF, VGF, and CL facility.

If JICA could support plural facilities among the four, necessary support amount would become larger, and then JICA's request to utilize its financial support to only Japanese enterprises could be negotiable. Among the four financial systems, VGF and Long-term Financing Facilities shall be a good combination for JICA's financial assistance, because financial support from these two facilities is the most crucial to be the winner of the bidding.

(2) Collaboration between ODA Loan by JICA to a project and to Financial System could be enhanced

This collaboration could be recommended particularly for the case of huge project with hybrid system which need definitely huge amount of money to be financed from various sources. In this case, Japanese benefit could be reserved due to its expected huge amount of financial assistance.

(3) JICA's ODA Loan as Policy Loan

The policy loan, based on Policy Matrix, is a possible candidate for JICA's ODA loan to be used for budget support. Although it was not turn out this time mainly due to the government concern on debt increase, there would be a chance to be reconsidered when the government faces the difficulty to implement its PPP policies. In that opportunity however, policy loan could be better provided together with international financial organizations such as ADB in considering.

(4) Points to be Noted

Below are the points to take notes in the process of implementing the financial support above.

a. Incongruousness between Liquidity in the Market and Capital Necessary for Infrastructure Projects

It should be noted that even though there are abandon liquidity in the market, this liquidity does not necessarily match the needs of financing infrastructure projects. Infrastructure projects, therefore, requires public financial facility which plays catalytic functions to extract financial source from the market to the PPP projects.

b. Independency of Financial System from the Government

In order to implement the large number of infrastructure projects, an independent public financial agency would be necessary as to bundle multiple financial sources and provide financing to each project. Long-term financial institution would be especially valued in this regard. The government is expected to consider the way of improvement of the financial institutions without paying so much concerns the negative legacy of public financial institution.

c. Expected JICA's Flexibility to Utilize its Financial Sources

These Public Financial Systems need various kind of funds for its efficient operations. In this concern, JICA's loan is very much expected. JICA is expected to finance to the single project from its various financial sources with different conditions and terms so that the project could become more viable.

Chapter 5. Quantitative Analysis on the Needs and Potential Benefits of Guarantee Function

5.1 Introduction

As mentioned in the previous chapters, the non-performance of the government of its obligations specified in the concession agreement has been identified as an urgent issue to be addressed in the Philippines. In particular, it was observed that appropriate compensation due to private proponents (including compensation for CL) has not been sufficiently done. For example, as often seen in cases such as, delay in land acquisition, delay in obtaining permission of a project, delay in the approval of tariff structure, there is no information obtained wherein IA paid the private proponent compensation in any form.

The GoP has created measures such as Public Undertaking (PU) and Multi-Year Obligation Authority (MYOA) in order to carry out these obligations. The former is stipulated in the revised implementing rules and regulations of the Build-Operate-Transfer (BOT) Law and allows the GoP to compensate the private proponent when there is default in government's contract obligation. And the latter allows the GoP to fulfill the multi-year government's payment obligations. However, the GoP requires approval from the Congress by budgeting such compensations following a due process and there is no guarantee that the Congress will always approve such budget item. Obviously, the government administration cannot control the intention of the legislature, which means that as long as this approval process is embedded in the law and there is no effective device to address this issue, private proponents will always be exposed to "appropriation risk". For private proponents, it effectually means that IA is not actually shouldering the risks agreed in the concession agreement.

In order to solve these types of issues, the JICA Study Team has been considering the effectiveness of creating a Contingent Liability Fund (CL Fund) in the context of PPP in the Philippines. This section shows the methodology of quantitative analysis to verify the effectiveness and meaning of the CL Fund).

Based on these background and recognition, the JICA Study Team conducted a quantitative analysis on CL to verify the needs and effects of the CL Fund based on six PPP infrastructure projects, such as toll road, railway, and airport projects. The following sections show the framework, methodology, and the results of the CL quantitative analysis.

Note that the purpose of this analysis is to understand the effects of the CL Fund, using data of various projects that have already been implemented. Such purpose is different from that of the CL analysis conducted by DOF which aims to quantify expected CL burden for particular projects that are now being prepared for bidding.

5.2 CL Analysis Framework and Methodology

5.2.1 Analytical Framework

(1) Assumed CL Fund

In this analysis, the JICA Study Team assumed the functions of the CL Fund, as follows:

- The CL Fund is created as a public or semi-public body.

- It will have some sort of agreement, such as a recourse agreement or a guarantee agreement, between IAs and project proponents.
- The project proponent may claim the payment for CL damage from the CL Fund if CL payments are not made by IAs.
- The CL Fund will independently and automatically advance with the procedure, including assessment of proponents' claim and disbursement.
- The payment for CL damage will be paid quickly to satisfy the needs of the claimants.

The CL Fund, which is assumed here, is one kind of guarantee fund which addresses the risks related with contingent liabilities. However, it is assumed that the CL Fund does not address the direct liabilities. Therefore, the CL Fund is different from a Guarantee Fund (GF) in the sense that the coverage area is limited to CL risks. Table 5.2-1 shows the difference of coverage of GF and CL Fund.

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Table 5.2-1 Difference of GF and CL Fund

	Coverage	
	Direct Liability (DL)	**Contingent Liability (CL)**
GF	○	○
CL Fund	―	○

Source: JICA Study Team

(2) Government Burden in PPP

The effectiveness of the CL Fund was analyzed by comparing the government burden (government obligation) without CL Fund, and with CL Fund. Table 5.2-2 shows the classification of the government burden as well as examples of expenditure items.

Table 5.2-2 Government Burden in a PPP Concession Agreement

Classification	Example
a) Direct Liability (DL)	Land acquisition costs, government subsidy, purchase cost of service
b) Contingent Liability (CL)	Public burden of contracting agency due to force majeure or accidental failure of procuring entities

Source: JICA Study Team

Of the above, the amount of DL is set in the concession agreement, and it is relatively easy to carry out the computations. On the other hand, the amount of CL exposure could not be calculated from the concession agreement alone. The following formula shows the definition of government burden in the analysis:

Government Burden = **DL** ＋**CL**…...….....…….....Formula 1

Obviously, there is a question on how to quantify the CL exposure. Here, "CL exposure" refers to the amount of risk that IA has been exposed in a PPP concession agreement. The amount of CL exposure of a project can be calculated, assuming the impact and probability of occurrence of related risks and the government's total exposure to PPP can be calculated as the summation of CL exposure in each project, as shown in the following formula:

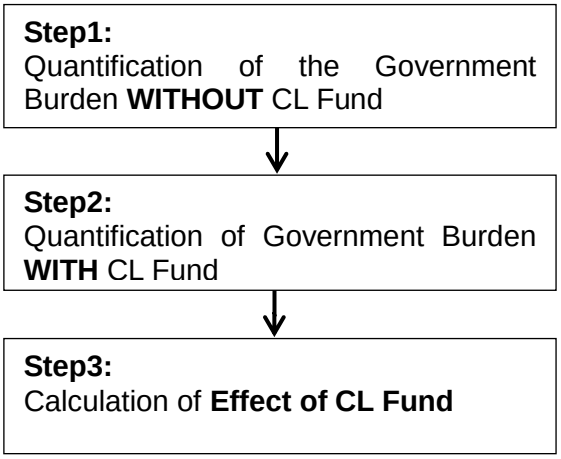
$$CL = \sum P_r \times I_r \quad \text{Formula 2}$$

* Here, "P" refers to the probability of risk occurrence, "I" refers to the impact (debt) of the risk occurrence, and "r" refers to the type of CL.

The JICA Study Team conducted the analysis using the abovementioned definition and formula.

(3) Framework and Flow of Analysis

The framework and flow of analysis is shown in Figure 5.2-1. The first step is to calculate the government burden (DL + CL exposure) without CL Fund. Since the CL Fund does not currently exist, the amount of government burden is supposed to be the same as the government burden at present. The second step is to calculate the government burden with CL Fund. The third step is to calculate the effects of reducing government burden by comparing between government burden without CL Fund and with CL Fund.



Source: JICA Study Team

Figure 5.2-1 Framework and Flow of Analysis

The effectiveness of the CL Fund on individual project is measured using actual project samples in sectors such as roads, airports, and railways. In this analysis, six pipeline projects were selected. The JICA Study Team conducted the financial analysis using the existing reports, other related documents, and information acquired from interviews with private proponents and banks. The projects used in the CL quantitative analysis are shown in Table 5.2-3.

Table 5.2-3 Projects Used for CL Quantitative Analysis

Sector	Project
Road	CALAx, and NAIAx
Airport	Tacloban, Zamboanga, and Visayas
Railway	MRT 7

Source: JICA Study Team

5.2.2 Calculation Methods of CL Fund Effect on Government Burden

This section shows the procedure for calculating the concrete amount of government burden in a PPP project. As mentioned in the previous section, it is necessary to estimate both with CL Fund and without CL Fund in this analysis. The following items below show the procedure for calculating government burden.

(1) Quantification of Government Burden "Without CL Fund" (Step 1)

The amount of government burden in a PPP project consists of DL and CL. Fixed debt may include the costs for land acquisition, VGF, service purchase payment, depending on the project type and conditions.

a. Calculation of DL

Without the CL Fund, the JICA Study Team assumed that the private proponents and banks require their equity internal rate of return and interest rate which includes the cost of the CL. In order to realize higher equity internal rate of return (IRR) and interest rate, the private proponents shall require more VGF in case where the project cannot recover the capital and operation expenditure from the business revenue.

Table 5.2-4 is an example of a simple cash flow model of PPP projects without CL Fund. The amount, which IA pays as VGF to the private proponent, can be calculated using these assumptions and figures.

The model example shows that the required equity IRR is 15%, and the interest rate is 10%, which reflect the CL costs. Since private proponents cannot achieve equity IRR of 15% by toll revenue alone, a total amount of PhP 2 billion is paid as VGF to the private proponent.

Table 5.2-4 Example of Simple Cash Flow Model

Conditions and Assumptions:

Project period	12 years (2-year construction period, 10-year operating period)
Initial investment	PhP 12 billion (1st year 50%, 2nd year 50%)
VGF (subsidy)	PhP 2 billion (1st year 50%, 2nd year 50%)
Private funding	PhP 10 billion
Equity ratio	30.0%
Debt ratio	70.0%
O&M costs	PhP 500 million (First year of operation)
Borrowing repayment period	10 years (annuity)
Interest repayment of borrowings	10%
Inflation rate(Operating period)	5.0%/year
Request rate equity IRR	15.0%
WACC (Discount rate)	11.5%
Revenue management	PhP 2.05 billion (First year of operation)

Simple PPP Cash Flow:

Classification	Item	1	2	3	4	5	6	7	8	9	10	11	12	Total
Cash out	Initial Investment	60.0	60.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	120.0
	O&M	0.0	0.0	5.0	5.3	5.5	5.8	6.1	6.4	6.7	7.0	7.4	7.8	62.9
	Debt Repayment	0.0	0.0	4.4	4.8	5.3	5.8	6.4	7.1	7.8	8.6	9.4	10.4	70.0
	Interest Payment	0.0	0.0	7.0	6.6	6.1	5.5	5.0	4.3	3.6	2.8	2.0	1.0	43.9
	Subtotal	60.0	60.0	16.4	16.6	16.9	17.2	17.5	17.8	18.1	18.4	18.8	19.1	296.8
Cash in	Investment	30.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	30.0
	Borrowing	35.0	35.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	70.0
	* Borrowing Outstanding	35.0	70.0	65.6	60.8	55.5	49.6	43.2	36.1	28.3	19.8	10.4	0.0	-
	VGF	10.0	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	20.0
	Toll Revenue	0.0	0.0	20.5	21.5	22.6	23.7	24.9	26.2	27.5	28.8	30.3	31.8	257.8
	Subtotal	75.0	45.0	20.5	21.5	22.6	23.7	24.9	26.2	27.5	28.8	30.3	31.8	377.8
Net cash flow	(Dividends)	15.0	-15.0	4.1	4.9	5.7	6.6	7.4	8.4	9.4	10.4	11.5	12.7	81.0
Equity IRR	15%	-30.0	0.0	4.1	4.9	5.7	6.6	7.4	8.4	9.4	10.4	11.5	12.7	-

Source: JICA Study Team

b. Calculation of CL

The CL without CL Fund is assumed as zero because the CL, which is already borne by the government, shall not be calculated as CL with CL Fund; furthermore, it will not affect the results of the quantitative analysis of CL Fund effect.

(2) Calculation of Government Burden With CL Fund (Step 2)

a. Calculation of DL

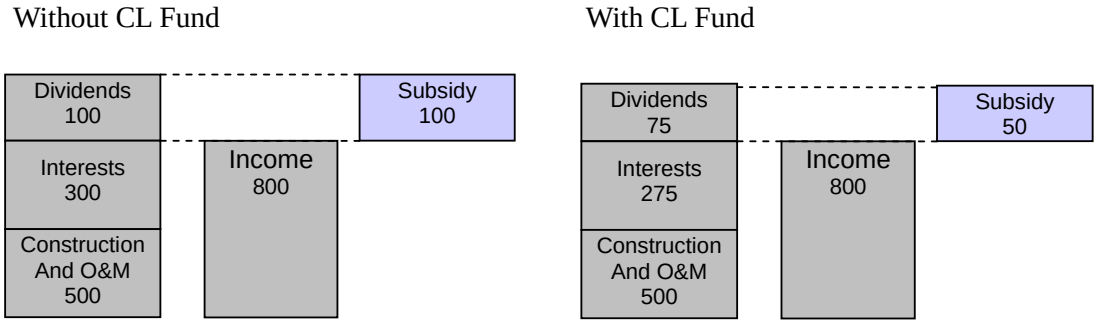
If CL Fund exists, CL payment would be made surely to the private proponent. If this is realized, then the exposure risks faced by investors and lenders will be smaller. Also there is a high possibility that the required level of equity IRR and interest rates will be lowered. As a result, it may end with a reduction of VGF to be provided by the government.

The following two ways are considered as practically possible to grasp the effects of decreasing rates of required equity IRR and interest rates:

- Option 1): Interviews with investors and lenders.
- Option 2): Estimate the government's risk exposure to CL based on the financial statements of the private proponents.

As for option 1), the JICA Study Team conducted interviews with investors and lenders having records of investments in PPP and related projects in the Philippines as well as abroad. And if these investors/lenders have experiences of utilizing CL facilities and/or policies, the question was made on the kind of effects that had been brought to the project's financial procurement conditions.

As for option 2), the estimations were made in the amount of CL exposure by using the financial statements of the private proponent. To be more concrete, an assumption is made that a private proponent shoulders the CL risks where the government or IA is supposed to shoulder. This reflects the costs of shouldering the CL risk on the private proponent's financial plan or can be called as "risk premium". If the CL risk shouldered by the private proponent can be calculated, the private proponent's project costs and required returns when there is a CL Fund can reasonably be assumed and the private proponent do not have to shoulder the CL risk. It can reasonably be assumed that the required equity IRR and interest rates should be lowered if the investors and lenders are free from such kind of CL risk and this will end with a decrease or reduction of VGF (fixed debt). Figure 5.2-2 shows the effects of CL Fund. The figure also shows how dividends and interests are lowered, and subsidy reduced by introducing the CL Fund.



Source: JICA Study Team

Figure 5.2-2 Diagram of CL Fund Effects

In quantifying the risk, the most popular method is the Monte Carlo simulation. However, this requires detailed statistical information about the amount of damage and the probability of occurrence of risk, which are deemed not available in the analysis at this time. Thus, it is necessary to come up with another method. The following sentences explain how the CL quantitative analysis can be carried out in the Study.

Firstly, the detailed contents of the CL should be examined. According to the past practices in PPP projects in the Philippines, the four risks listed below have relatively high possibility of occurrence and significance of impacts. CL I listed below is the cause of delay in tariff adjustment (Effect A in subsequent analysis), and CL I to III are the causes of delay in the commencement of operation (Effect B).

- CL I: Delay in the issuance of tariff adjustment approval
- CL II: Delay in ROW acquisition
- CL III: Delay in the issuance of construction permit
- CL IV: Delay in the issuance of completion certificates

In order to calculate the CL exposure on those risks, the following information (data) are required (see Formula 2) for the calculation of CL exposure:

a) Probability of risk occurrence,
b) Timing of risk occurrence, and
c) Impact of risk occurrence (liquidated damage (LD)) including direct cost and indirect cost (lost profit).

Based on the above, the JICA Study Team devised with a calculation methodology, as discussed below.

As for Effect A (delay in the approval of tariff adjustment), first, based on past experience of PPP projects in the Philippines, data on probability of occurrence and length of delay in the approval of tariff adjustment shall be collected and reasonable assumptions will be made. Timing of risk occurrence can be estimated from the tariff adjustment plan in the concession agreement or feasibility study. Impact of risk occurrence needs to be estimated as combination of direct and indirect costs (see Formula 3). In order to calculate indirect cost (lost profit), the amount of income increased by the tariff adjustment needs to be calculated through the financial projection model.

As for Effect B (delay in the commencement of operation), first, as mentioned in Effect A, information and data for items a)~c) above will be collected from past PPP experiences in the Philippines and analysis shall be made on the delay in the commencement of operation.

Impact of risk occurrence (LD) caused by the private proponent is calculated using the following formula:

LD＝Direct Cost (Newly generated costs) + Indirect Cost (Lost of profit)…….Formula 3

The value of damage should depend on the extent, effects, and causes of damage. Thus, it is necessary to have reasonable, logical, and practical support to estimate the values. The JICA Study Team based on the practices observed in the Philippines and abroad, identified the following major costs as direct cost (newly generated costs) due to the occurrence of CL risks (Note that these are not considered in the quantification exercise of this study due to data constraints):

- Costs for the amendment of the operator's business plan (including financial planning),
- Costs for the amendment of various business-related contracts,
- Costs for the amendment of the loan agreement with financial institution/commission, and

- Costs for the attorney's fees in accordance with the above transactions.

"Lost profit" means profit that a private proponent should have received if the risk did not occur. This can be calculated from the financial model of the future cash flow projection of a private proponent.

(3) Calculation of CL Fund Effect (Step 3)

The effect of the CL Fund is calculated by the following steps. First, the benefit of CL Fund (DL (VGF) reduction) will be calculated by the following formula:

Benefit of CL Fund (DL (VGF) reduction)
= DL (VGF) without CL Fund – DL (VGF) with CL Fund….....Formula 4

Second, the cost of the CL Fund (CL payment) will be calculated using the following formula:

Cost of CL Fund (CL payment)
= CL without CL Fund – CL with CL Fund….....…….....….Formula 5

Finally, effect of the CL Fund will be calculated using the following formula:

Effect of CL Fund
= Benefit of CL Fund (DL (VGF) reduction) + Cost of CL Fund (CL payment).....Formula 6

A summary of the analysis output is shown in Table 5.2-5.

Table 5.2-5 Output Summary of the CL Fund Effect Calculation
(Case 1: The GoP does not shoulder CL risk without CL Fund)

	DL (VGF)	CL	Amount of Government Burden
Without CL Fund (A)	100	0	100
With CL Fund (B)	90	8	98
Effect of CL Fund (A)-(B)	10	-8	2

Source: JICA Study Team

This case assumed that the government does not shoulder CL risk. Logically and theoretically, it is assumed that the amount of the government burden will decrease in case of with CL Fund, because the financial requirements needed by the private side is lowered (therefore DL (VGF) amount will decrease) and the CL risk will be managed well by the government (therefore the CL risk itself will be smaller).

It is also possible to assume that the government now shoulders certain CL risks. In that case, the analysis result is shown in Table 5.2-6. As mentioned previously, the amount of CL without CL Fund was assumed as zero because CL, which is already borne by the government, will not be calculated as CL with CL Fund in the analysis.

Table 5.2-6 Output Summary of the CL Fund Effect Calculation
(Case 2: The GoP shoulders certain CL risk even without CL Fund)

	VGF	CL	Amount of Government Burden
Without CL Fund (A)	100	2	102
With CL Fund (B)	90	10	100
Effect of CL Fund (A)-(B)	10	-8	2

Source: JICA Study Team

5.3 Setting Assumptions and Project Selection for the Analysis

5.3.1 Assumptions of the Analysis

The CL evaluation is done using the cost benefit analysis. The benefits and costs of the GoP are estimated independently by making reasonable assumptions. The benefit is estimated by a contingent valuation method (CVM) in which the JICA Study Team interviewed and asked prospective investors on how much they are willing to push down costs of financing (interest rates and equity IRR) if appropriate budget is provided for CLs. The cost is estimated by a risk valuation method in which specific CLs are valued using three elements, i.e., scenario, probability, and impact.

First, the benefit side is considered. The interview survey conducted by the JICA Study Team revealed the following factors: (i) the private investors are willing to lower the equity IRR by 2-4% for BOT type of projects should conceivable CLs are certain and time guaranteed, and (ii) the lenders will lower the interest rates by 0.5-1.0% for build-transfer-operate (BTO) (annuity) type and zero for BOT (real toll). Accordingly, the JICA Study Team adopted the conservative figures of 2% and 0.5%, respectively. The lower cost of finance eventually reduces the GoP's expenditure for VGF. This reduction in VGF is recognized as a benefit for the GoP.

Afterward, the cost side is considered. The CL Fund guarantees the private sector against adverse impacts (losses) resulting from the GoP's non-performance of its obligations (generally on payment). This is defined as the CL realized. The CL Fund pays the private sector's claims for CL if it occurs. CL is a risk. Thus, the CL is determined by three elements, i.e., the scenario (risk event), probability of its occurrence, and the size of its impact if it happens. This calculation gives the payment amount for CL that is recognized as the cost for the GoP.

The CL risk is usually valued using either Monte Carlo simulation or expert's opinion. The JICA Study Team could not use the Monte Carlo simulation since data on probability distribution of each CL scenario is not available; therefore, the second method (expert opinion) is used. Here, a single value of probability is assigned to each occurrence scenario elicited from expert's opinion for each sector. The assigned values used are as follows: 100% for 'certain to occur' category, 50% for 'very high' category, 20% for 'high' category, and 5% for 'medium' category. 'Low' and 'very low' categories are not considered because of their insignificance. This categorization is determined considering the nature of the project (greenfield or brownfield) and/or track record of the scenario identified.

The JICA Study Team identified four major CL scenarios that will likely or frequently occur in cases of the GoP's non-performance. These are: (i) delay in tariff adjustment, (ii) delay in ROW acquisition, (iii) delay in the issuance of construction permits, and (iv) delay in the issuance of completion certificates. These scenarios lead to adverse impacts of (a) increase in investment costs, and (b) reduction of toll revenues. For example, the JICA Study Team assumed that scenario (i) occurs for 12 months every time there is tariff adjustment (2–3 years interval). This results to impact (b). Similarly,

scenarios (ii), (iii), and (iv) cause impacts (a) and (b). The sum-product of probability assigned (100%, 50%, 20%, and 5%) and impacts of each scenario give the cost of the GoP.

5.3.2 Selection of the Case Study Projects

The basic approach (methodology) of CL valuation proposed in Chapter 2 was applied to actual pipeline projects. The JICA Study Team selected six projects – two expressways (CALAx, NAIAx), three airport terminal projects (Tacloban, Zamboanga, and Visayas), and one railway (MRT 7). The project features are shown in Table 5.3-1. All of these require positive VGFs (capital subsidy) ranging from 16% (Visayas) to 54% (Tacloban) averaging 42% (MRT 7 which annuity payment method is excluded from the average) based on the assumptions (the ratio is the subsidy divided by the total project cost).

The data used in the case study are fictional and does not reflect the true values; this is only for case study purposes.

Table 5.3-1 Outline of Case Study Projects

Name	Project Costs in PhP (excluding IDC*)	Type of PPP Scheme	Concession Period (in years)	Debt/Equity Ratio (%)
CALA(Cavite Section Only) Expressway	27,159 million	BOT	36 years (6 years construction, 30 years operation)	70:30
NAIA Expressway	1,228 million	BOT	34 years (4 years construction, 30 years operation)	70:30
Tacloban Airport	1,581 million	BOT	26 years (4 years construction, 22 years operation)	70:30
Zamboanga Airport	2,387 million	BOT	25 years (5 years construction, 20 years operation)	70:30
Visayas Airport	2,198 million (Phase 1: 1,505 million , Phase 2: 692 million)	BOT	33 years (3 ys construction, 30 ys operation)	70:30
Metro Line 7	71,621 million (Government amortization: 97,438 million)	BTO	29 years (4 years construction, 25 years operation)	75:25

Note: *IDC- Interest during construction
Source: JICA Study Team

5.4 CL Analysis Results

5.4.1 Results of the CL Quantitative Analysis

Comparing the base case (without CL Fund) and Case 1(with CL Fund), the net-benefit (net savings in the GoP's expenditure) is positive for all six projects, with a combined total savings of PhP 6,005 million (present value discounted by 12%). The benefit-cost (B/C) ratio ranges from 1.3 to 2.3. The net benefit ratio to the total project cost (TPC) ranges from 1% to 8%. This concludes that CL Fund is

worth doing and the GoP with CL Fund is coherent.

It is interpreted that the net benefit (benefit minus cost) reflects the 'option value' for private investors, taking the benefit as 'option price' and the cost as 'expected compensation'. Provision of a reliable CL Fund induces the private sector willingness to pay more than the CL risk revealed (cost). This is recognized by private investors as the 'option value' which is surplus enhancement above the revealed cost.

Table 5.4-1 Summary of Case Study Results

Base Case (Without GF) (Present Value, Mil P)

Case	GF	PIPFF	VGF Pool	Subsidy	Total Project Cost (A)	Subsidy/Total Project Cost	Benefit of GoP (B)	Cost of GoP (C)	Net Benefit of GoP (D)=(B)−(C)
CALAX	−	−	−	7,135	17,566	41%	−	−	−
NAIAX	−	−	−	4,155	8,646	48%	−	−	−
Tacloban	−	−	−	649	1,198	54%	−	−	−
Zamboanga	−	−	−	619	1,582	39%	−	−	−
Visayas	−	−	−	206	1,300	16%	−	−	−
MRT 7	−	−	−	42,021	58,279	72%	−	−	−
Total/Average	−	−	−	54,784	88,571	62%	−	−	−

Case 1 (With GF) (Present Value, Mil P)

Case	GF	PIPFF	VGF Pool	Subsidy	Total Project Cost (A)	Subsidy/Total Project Cost	Benefit of GoP (B) *1	Cost of GoP (C) *2	Net Benefit of GoP (D)=(B)−(C)	NB/TPC =(D)/(A)	B/C =(B)/(C)
CALAX	●	−		5,284	17,566	30%	1,850	1,009	842	5%	1.8
NAIAX	●	−		3,307	8,646	38%	848	431	417	5%	2.0
Tacloban	●	−		585	1,198	49%	64	47	16	1%	1.3
Zamboanga	●	−		507	1,582	32%	111	81	30	2%	1.4
Visayas	●	−		56	1,300	4%	150	64	86	7%	2.3
MRT 7	●	−		33,835	58,279	58%	8,186	3,572	4,614	8%	2.3
Total	●	−		43,574	88,571	49%	11,209	5,204	6,005	7%	2.2

*1: Benefit of GoP (Amount of Subsidy Reduction) = Subsidy of Base Case − Subsidy of Cases 1

*2: Cost of GoP (Cost of GoP to Gurantee CL) = Cost for Delay of Tariff revision + Delay of Commencement of Operation

Source: JICA Study Team

Table 5.4-2 shows the payment schedule for CLs of the six projects. As can be seen, the total payment varies yearly, and during peak times the annual amount reaches as high as the project cost of typical airport terminal projects (around PhP 2 billion). The table may help the GoP to identify a budget for payment for CLs and assess the fiscal impact and burden in terms of the GoP's overall budget for contingency funds.

Table 5.4-2 Payment Schedule for CLs in the Case Study Projects

Contingent Liability

	PV	Total	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
CALAX	1,009	11,049	0	0	0	0	0	0	526	0	203	0	284	0	333	0	389	0
NAIAX	431	3,852	0	0	0	0	173	0	72	0	107	0	110	0	128	0	150	0
Tacloban	47	296	0	0	0	0	4	0	13	0	16	0	18	0	22	0	27	0
Zamboanga	81	377	0	0	0	0	0	71	0	0	26	0	0	37	0	0	43	0
Visayas	64	112	0	0	0	86	0	10	0	0	0	0	15	0	0	0	0	0
MRT 7	3,572	25,474	0	0	0	0	976	248	297	351	410	473	542	617	698	784	879	980
Total	5,204	41,161	0	0	0	86	1,153	330	909	351	761	473	969	653	1,180	784	1,487	980

(Mil P)

2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046
456	0	534	0	619	0	708	0	811	0	928	0	1,062	0	1,215	0	1,390	0	1,591
175	0	205	0	240	0	278	0	322	0	373	0	433	0	503	0	584	0	0
29	0	35	0	42	0	44	0	47	0	0	0	0	0	0	0	0	0	0
0	53	0	0	65	0	0	83	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1,028	1,080	1,134	1,191	1,250	1,313	1,378	1,447	1,520	1,596	1,676	1,759	1,847	0	0	0	0	0	0
1,689	1,133	1,908	1,191	2,215	1,313	2,408	1,530	2,699	1,596	2,976	1,759	3,342	0	1,718	0	1,974	0	1,591

Source: JICA Study Team

5.4.2 Expected Benefits of CL Fund to the GoP and Private Sector

Besides the effects of the reduction in government expenditure, it is expected that the CL Fund will bring the following benefits to the GoP, project service users, and the society as a whole.

(1) Increase in the number of bidders in PPP biddings

If the CL Fund is created, the confidence of business entities could be strengthened, and probably the number of bidders would increase. That will enhance more competition, and IAs might receive more advantageous proposals from the bidders.

(2) Decrease in tariff level (Results of more competitive biddings)

More active competitions result in making the bidders exert more efforts to squeeze the project costs, such as construction cost, operation cost, and financial cost. Because of these efforts, it might be possible to decrease the current tariff level.

(3) Improvement of business services (Results of more competitive bidding)

Same as the previous item, more competition will encourage active participation from the bidders to do more technical proposals, which might contribute in improving the service level of the projects. Also, in order to decrease the amount of VGF, bidders might seek all possible ways to maximize their revenues. This also may result in the increase of service level.

(4) Reduction of the possibility of risk occurrence (CL Fund is expected to provide stronger incentives to Implementing Agencies to manage well the risks)

If the CL Fund is created and eventually works very well, compensation to project proponents would be made and most probably, the payment amount will be coursed to IAs. It means that IAs will eventually be responsible in shouldering the compensation. It may work as incentive for IAs to avoid the risk occurrence or minimize the impact of the risk occurrence in order to mitigate IA's financial burden.

(5) Economic effects (As a result of an early and stable delivery of the project service)

If the CL Fund works well, then the construction works would go smoothly and the project would be operated steadily. It will support a stable business environment and activities, and it will eventually promote further economic growth in the surrounding regions.

5.5 Discussion in the CL Workshop

Under JICA's sponsorship and with the cooperation of the Philippine government, the Study Team conducted the workshop, "Government's risk management: enabling environment for PPP infrastructure development," on March 7, 2013. The purpose of the workshop is to get the views of the various parties involved in PPP on the question of further enhancing the attractiveness of PPP investments for the private sector so that it can be a more potent instrument for government to achieve its objectives of improving infrastructure. Workshop participants included government, development partners and private financiers.

Highlights of the different presentations are as follows:

- There has been significant underinvestment in the Philippines in the past decade and a half, including in vital infrastructure projects which various studies and surveys show have contributed to the country's reduced competitiveness and low rankings in terms of investment climate vs. other Asian countries, and have led to a vicious cycle of low and uneven economic growth.

- A catch-up infrastructure program requires indicative investments of over P3 trillion, with planned financing almost evenly split between government budget / ODA and private sector participation. (Note: latest internal information from ADB shows planned infrastructure investments through 2016 of roughly P2 trillion.)

- In most cases, the private investor in infrastructure projects looks to the government to provide some form of financial support to make the projects financially attractive (explicit subsidies or guarantees, which in many cases do not have explicit mechanisms for computing default payments). Given the Philippine system where the budget process is exposed to political risk in the form of failure of the executive or of congress to include these financial support (even for the regular, known amounts) in the annual budget (termed "non-appropriation risk"), private investors have tended to mistrust government promises under the long-term contracts and have either attached a high risk premium to hurdle rates or completely stayed away from such projects.

- Because of this and other risks, local banks have provided financing on the basis of project sponsors' balance sheet rather than on the basis of project cashflows. This has necessarily limited the number of potential participants in PPP given that (a) on the side of lenders, banks have prudential limits on lending to single borrowers and sectors and (b) on the side of borrowers, only a few large companies have the balance sheets needed to support large infra projects. On the other hand, for banks to rely more on project finance requires clearer assignments and management of risks under PPP contracts and more definite assurances from government that it will deliver on its promises under the contract, including timely payments of financial liabilities, timely delivery of right of way and adjustments of tariffs as well as clearer rules for determining and accounting for termination payments.

- As it is, not only do current PPP contracts require greater clarity in payment rules, government's current budget instrument (MYOA) for assuring the private sector of its commitment to meet future claims has not provided as much comfort to private proponents a it has hoped since the MYOA does not commit congress. A key finding of the Study Team is the need for a dedicated fund that can be structured in a variety of ways that will allow government to pay for contingent claims under PPP contracts in a timely manner, can provide private parties more assurance and thus, bring in more players/ bidders in PPP projects. Based on the Study Team's discussions with private companies, removal of non-appropriation risk as well as other government-related risks via such a fund can potentially reduce their required hurdle rates by as much as 2 percentage points.

- Government reported on the Treasury's current efforts to set up a contingent liability fund primarily to help government manage fiscal risks, noting three options with both pros and cons - (a) actual cash can be set aside in a "true fund" but the key concern is the opportunity cost of parked monies given competing uses for government's scarce resources, (b) a line item may be included in agency budgets that will be funded as the need arises but this will compete for the agency's fiscal space, and (c) a lump-sum budget can be centrally managed in DBM but will be difficult to justify to congress . In any of these options, it noted that the key issue is to allow the Treasury to "fund" the fund, i.e., for congress to approve a line item in the annual budget, with the Treasury partial to putting a line item for contingent liabilities under the "unprogrammed fund" item of the budget.

In several Q&As following the presentations, discussions dwelt on:

- Constraints on government. This included (a) openness of congress to lump-sum funds, especially since it has already reduced the validity of appropriations from two to one year starting in the 2013 budget and (b) even if congress agreed, there are specific conditions for releasing funds from the "unprogrammed fund" item, i.e., a) new revenue source b) loan contract signed with a lender and c) availability of additional unprogrammed revenues. It was also noted that efforts to work with congress in moving into a medium-term expenditure framework that will permit multi-year appropriations have not been successful to date. Finally, the issue of how to quantify how much to budget was also raised.

  DBM: I share DOF's concern on the funding on this. If we just go back to that slide on "True Fund"…Yes, on our side, we're discussing it…In the past, the validity of our appropriations were good for two years; starting 2013 it is only for 1 year…If agencies do not obligate within the fiscal year, the budget will lapse. Given that, this lump sum budget only have 1 year validity if there is no claim on it or if the claim is not processed on time, for which the proponent will have to wait for the next fiscal year. What if Congress will not approve budgeting of CL even in the unprogrammed fund? Unprogrammed funds are released subject to: a.) new revenue source b.) loan contract signed with a lender, and; c.) additional revenue like a surge in the price of oil…Still, this is contingent on Congress putting a budget annually. "Within the budget"…this is the most difficult thing because you're locking up precious resources…
  "True Fund", I understand is a special account in a general fund (SAGF)…It will require a law to set up a SAGF…The apprehension is that if there is a SAGF and there is appropriation for it, the amount will be have a negative carry.
  I would like to suggest an innovative way…It is in the concept of a bank account …You have in your account an amount but the bank may not actually have cash in its vaults when you need to withdraw some money but that the bank has to come up with the cash...Conceptually, NT of the Philippines will have to raise the money if there is need…Right now, we have a of funds in Land Bank supposedly for loaning operations but they are not used…If that special fund can be swapped in, then you have no fear of idle cash carrying costs…Then you have a true fund…

  Mr. Bernardo: Thank you DBM…The other consideration is the mismatch between the timing of pursuing PPP projects and the government component that is coming late…Do you see that the Philippines has more durable funding mechanism like a multi-year appropriation by Congress?

  Bureau of Treasury: The closest to that is the medium-term fiscal or expenditure framework. We have already committed a fiscal space over a 3-year period…We do estimates and make proposal to Congress when the time comes. Selling this to Congress and making it more permanent is quite difficult…If we are not going to lock them up in a 3-year budgeting regime, a fiscal accord, then we have to agree with NEDA on a medium term plan.

  NEDA: It is really a question of credibility…Even if it is annual but credible, I think people will judge over time…Nowadays, we have greater transparency and greater respect for contract…I think observers would re-affirm that there is less and less risk in the budget process. In the US, they would say that Congress would not allow them to commit…Why do we have a different standard? The world is demanding too much from us…

  DPWH: Our concern is that if the fund is in the budget, it will compete in our capital outlays…The difficulty, I think, is not with Congress…The problem is that it will sum up to the absorptive capacity of the department…The other concern is how do we estimate the lump sum amount? Do we have a formula? We've been discussing with the Bureau of Treasury about the likelihood of events happening…We don't have a good formula how to estimate on the default. This is another concern…The suggestion of DBM (the concept of a bank) is good but it should not be in the name of the agency because it will compete with the capital outlays…It should remain with DOF or DBM that the agency can draw from…Maybe it can be through the PDMF…The agency would reimburse later and then budget it for the next fiscal year…That for sure, we can utilize in our budget…

> **Bureau of Treasury:** I completely agree with you…We don't want to tie hands of agencies…As for the lump sum, I think your point is that there is a lot of quantifications…While we don't have actual figures, the quantification will give us an idea of the magnitude involved…As long as there is an item in the budget, I'm sure there are several ways DBM can do as the need arises…The preparations we do will make our job a lot easier and make the payments much faster…

- Private sector demands on government, which officials noted may be too much considering that non-appropriations risk is present in other countries as well and that over time, as budget processes become more transparent, risks should go down as well, making contingent liability funds unnecessary. In any event, officials noted that in the past, government had always paid, albeit with lags as any amount will have to be appropriated by congress.

> **Bureau of Treasury:** (Slide 5: CL Management) It's an achievement to have agencies talk about this. We have a lot of roles to fill in as regards CL management. Line agencies, since they are in the first in line, are the first to know, among others, what events are going to be triggered. It is crucial for us, BTr and DOF, to make the necessary calculations…NEDA and the PPP Center take charge of monitoring of the PPP projects…We'll be relying on you to get the information from the agencies concerned. BTr will be primarily concerned about the number and finding ways to come up with the cash. Finally, it is important that DBM find some space in the budget so we actually pay for those obligations on time. The most important thing now is to have a mechanism for us to pay for those obligations as they arise…We don't want claims to be dragging on for years before we compensate the private proponent. While financiers would love to have automatic appropriation, similar to the treatment of debt obligations…Well, the private sector would just to assume that risk and they have to trust us just as we trust them. Appropriation risk is also a problem in other countries…
> The purpose here is not to establish guidelines on managing CL but to start a line of communication.

- Financiers' (a) assessment of risks which focuses on the proper allocation between the public and private sectors (noting that demand risk should be shouldered by the public sector especially for greenfield projects), and (b) willingness to go beyond plain vanilla debt financing into riskier financing structures through e.g., subordinated debt (currently provided by project sponsors and thus counted as equity) or buying project bonds. It was also noted that while banks are now highly liquid and eager to find investment outlets, the liquidity does not directly translate into bankability, which depends on specific project characteristics.

- Alternative structures for the proposed contingent liability (CL) fund, which as presented by the Study Team included (a) using a GOCC to manage the fund, (b) expanding the scope of the PDMF to include CL, (c) setting up a new trust fund within DOF, and (d) pooling the SSF within DBM. Comments from government are (a) that the fund be managed by committee within the central government, (b) that it be a special fund that will not lapse but if actual monies put in, will be allowed to grow to minimize carrying costs, (c) that it will be a lump sum fund so as not to crowd out agency budgets, and (d) the need for spending authority for such a fund. On the question of guarantee premiums, it was noted that the CL fund is essentially government guaranteeing itself and so should not be passed on to the private sector. Rather, in other countries, it was noted that it is the implementing agency shouldering the fees.

Participants appreciated much the frank and comprehensive sharing of perspectives. Knowing the concerns of proponents and financiers should assist government authorities address these pro-actively using available mechanisms considering limitations of law and fiscal prudence, so that PPP can contribute more fully to infrastructure catch-up program of government. More structural solutions, including those requiring legislation, will likewise be explored jointly with development partners.

> **Bureau of Treasury:** … (Slide 4: CL-Funding) I make distinction between funding and financing. The former pertains to putting a line item in the budget. The latter is coming up with

the money…The problem with a fund is that there are opportunity costs—while there are social projects that can be done, resources are locked up in a fund…

IFC: Just following up on that one…That CL fund…I was wondering if the government was able to exploit how it can work…It is a guarantee facility to guarantee political risk…My concern is that you have projects being rolled out…I don't know if JICA will have a facility…In IFC, we have MIGA…

Bureau of Treasury: For the guarantee facilities…in the past, to my understanding, guarantee facilities were not really taken because they hit our borrowing envelope for each individual institution…We prefer loans to guarantees…Considering the current thrust, we are going to more domestic financing…

ADB: The premium in CL fund in Colombia is paid by IA. Since it is government, it is not passed on…This is to give more comfort to investors…May I just ask DBM Can a CL fund be a revolving fund? Can the agency pay the premium and budget for the premium?

DBM: In our budgeting system, there are two kinds of appropriations: a.) the annual which lasts for the fiscal year and the automatic until revoked by Congress, and; b.) that which continues until the fund is exhausted…All of them have to be passed by Congress. Whether the fund is revolving or continuing, it is up to Congress. A revolving fund subsists on its own, to our definition. You put in the seed money and it generates more money so there is no need for more appropriation. If so, then BTr has to manage it such that the seed capital will earn enough to meet CL eventualities…What we are just looking at is a special fund, whether revolving or not. The more important thing is that it should not lapse…It should not carry cost if cash is there… Agencies may not budget it because it will kick out some budgetary space…So put it in a lump sum fund, instead…

Chapter 6. Capacity Development for Implementing Agencies

6.1 Introduction

The government's institutional capacity is currently being strengthened in order to effectively promote and implement public-private partnership (PPP) projects in the Philippines. The Asian Development Bank (ADB) with AusAID and CIDA have been implementing jointly the capacity development technical assistance (CDTA), which aims to achieve a) capacity building of staffs to improve the government's PPP systems and capacity to manage PPP projects, and b) funding of the Project Development and Monitoring Facility (PDMF) for i) PPP project preparation, ii) financial analysis, iii) preparation of bidding documents, and iv) support to bidding process and contract negotiations. Item a) above consists of the following four components: 1) strengthened PPP enabling framework, 2) strengthening the capacity of the PPP Center, and 3) capacity building of PPP-involved staff members of the National Economic Development Authority (NEDA), the Department of Finance (DOF) and line agencies in PPP processing.

Almost one and a half years have passed since the inception of CDTA in November 2011. The consultants of the technical assistance (TA) have been engaged in capacity building for the management as well as funding of the PDMF. During an interview with the PPP Center on December 4, 2012 in the course of the Study, it was reported that the training of IAs staff would be conducted in the form of training of trainers (TOT) based on the national government agency (NGA) manual, which is now under preparation. There seems to be no clear guidelines on capacity development for IAs staff.

Under such circumstances, the previous JICA Study entitled the Study on PPP Institutional Improvement in the Philippines (Phase 1), which started in April 2011, recommended capacity development of IAs in the area of PPP project preparation for the key sectors (toll road, airport, railway, water supply, and energy). Then in August 2012, "The Study on Institutional Building in the Philippines (Phase 2)" has started. In this study, a capacity and needs assessment survey and trial training courses for IAs in the key sectors were conducted. One of the special topics included in the training courses was on mitigation of risks including CL. The input of JICA in this trial training was successful in terms of direct benefits to IAs staff in the key sectors. This chapter discusses the capacity and needs assessment, trial training courses, and way forward for further capacity development.

6.2 PPP Capacity and Needs Assessment of IAs

6.2.1 Target, Methodology, and Assessment Items

The JICA Study Team collected the assessment of IAs officers-in-charge of PPP regarding the capacity and needs of PPP related operations. This was an important step in planning the appropriate PPP capacity development programs for the key IAs in the course of the Study. The assessment was mainly conducted through the form of questionnaire complemented by interviews. The assessments were conducted for the following IAs based on the terms of reference (TOR) of this Study:

- Road sector (Department of Public Works and Highways (DPWH));
- Railway sector (DOTC) and Light Rail Transit Authority (LRTA));
- Airport sector (DOTC, Mactan-Cebu International Airport Authority (MCIAA), Manila International Airport Authority (MIAA), and Civil Aviation Authority of the Philippines (CAPP));
- Water sector (Metropolitan Waterworks and Sewerage System (MWSS) and Local Water Utilities Administration (LWUA)); and
- Energy sector (Department of Energy (DOE) and Philippine National Oil Corporation (PNOC)).

Questionnaires were provided to management level officers (sub-directors and managers) who are supposed to have experiences in project preparation, such as study, formulation, planning, transaction or monitoring, of PPP projects. The positions of the officers who answered the questionnaires are indicated in the following sections in the analysis results of each IA.

The questionnaire consists of three parts: (1) Present Capacity Level (Self Evaluation), (2) Needs for Capacity Development, and (3) Current Issues. The questions in (1) and (2) involve the following ten items, all of which are deemed essential for the formulation, planning, transaction, and implementation of PPP projects:

Table 6.1-1 Contents of the Questionnaire

1	Knowledge on principles of partnerships, appropriate risk sharing, project financing	PPP Project Selection/Identification
2	Knowledge on PPP project selection/identification process, methodologies, and criteria	Business Case Study, Knowledge and skills on objective, study items, and methodologies of business case study
3	Financial Analysis	Knowledge and skills on financial statements, financial analysis, and value for money (VFM) analysis
4	Risk Analysis	Knowledge and skills on risk allocation, quantification, and mitigation
5	Project Scheme Analysis	Knowledge and skills on PPP modality and modality selection criteria
6	Bid Document Preparation	Knowledge on necessary bid documents, their contents and preparation process
7	Proposal Evaluation	Knowledge on appropriate proposal evaluation procedure and criteria
8	Project Monitoring (Construction)	Knowledge and skills on monitoring during project construction stage
9	Project Monitoring (Operation)	Knowledge and skills on monitoring during project operation stage

The assessment results of each agency are shown in the successive sections.

6.2.2 Assessment Results: Road Sector (DPWH)

In the road sector, the capacity and needs assessments were conducted by means of questionnaire and interview survey of six staff from the Project Management Office-Build-Operate-Transfer (PMO-BOT) and Project Management Office-Feasibility Study (PMO-FS) of DPWH. The sections and positions of the respondents are shown in 6.2-1.

Table 6.2-1 Section and Position of Respondents (Road Sector)

Agency	Section	Position
DPWH	PMO-BOT	Head
DPWH	PMO-FS	OIC Planning Office II
DPWH	PMO-BOT	Project Management
DPWH	PMO-BOT	PM-1
DPWH	PMO-BOT	Engineer V
DPWH	PMO-BOT	Engineer V

Source: JICA Study Team

The results of the capacity and needs assessment of the road sector are discussed below.

(1) Present Capacity Level

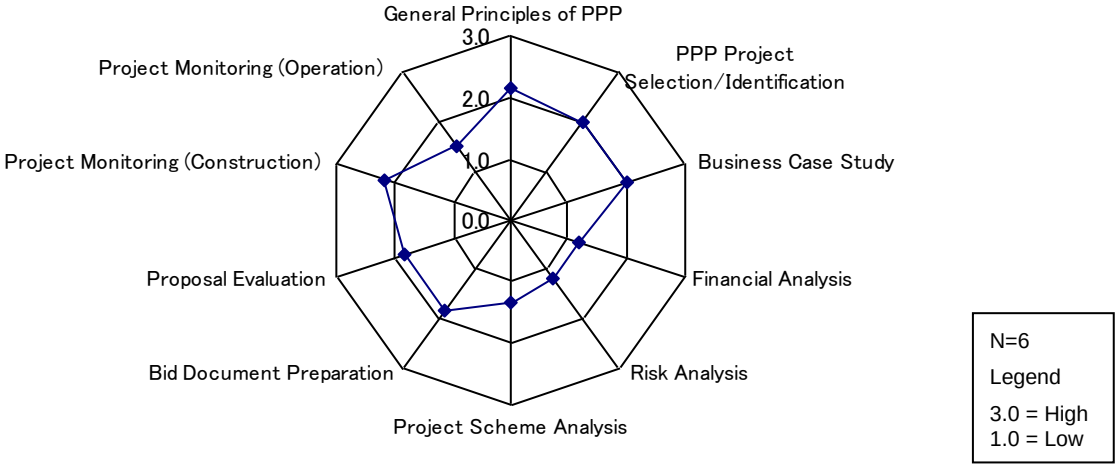
The JICA Study Team asked the respondents to score the present capacity level of the road sector staff regarding the ten check items. The results are shown in Table 6.2-2.

Table 6.2-2 Capacity Assessment Results (Road Sector)

Check Item	Respondents (Six Persons)						Average	Rank
	A	B	C	D	E	F		
General Principles of PPP	2	2	3	2	2	2	2.17	1
PPP Project Selection/Identification	2	2	2	2	2	2	2.00	3
Business Case Study	2	2	2	2	2	2	2.00	3
Financial Analysis	1	1	1	2	1	1	1.17	8
Risk Analysis	1	1	1	2	1	1	1.17	8
Project Scheme Analysis	1	1	1	2	1	2	1.33	10
Bid Document Preparation	2	1	2	2	2	2	1.83	5
Proposal Evaluation	2	1	2	2	2	2	1.83	5
Project Monitoring (Construction)	3	1	2	2	3	2	2.17	1
Project Monitoring (Operation)	2	1	2	2	1	1	1.50	7

Note: High Level = 3.0, Middle Level = 2.0, Low Level = 1.0
Source: JICA Study Team

A graph of the capacity assessment results is shown in Figure 6.2-1.



Source: JICA Study Team

Figure 6.2-1 Capacity Assessment Results (Road Sector)

The capacity levels of the following were rated as middle level: business case study (for selection of the best PPP modality), bid document preparation, bid evaluation, and project monitoring (construction). This reflects that the PMO-BOT basically has well-trained staff responsible for works from the study to the monitoring stages. On the other hand, their knowledge and understanding in the three areas (financial analysis, risk analysis, and project scheme) were low mainly because these areas are usually carried out by consultants.

(2) Needs for Capacity Development

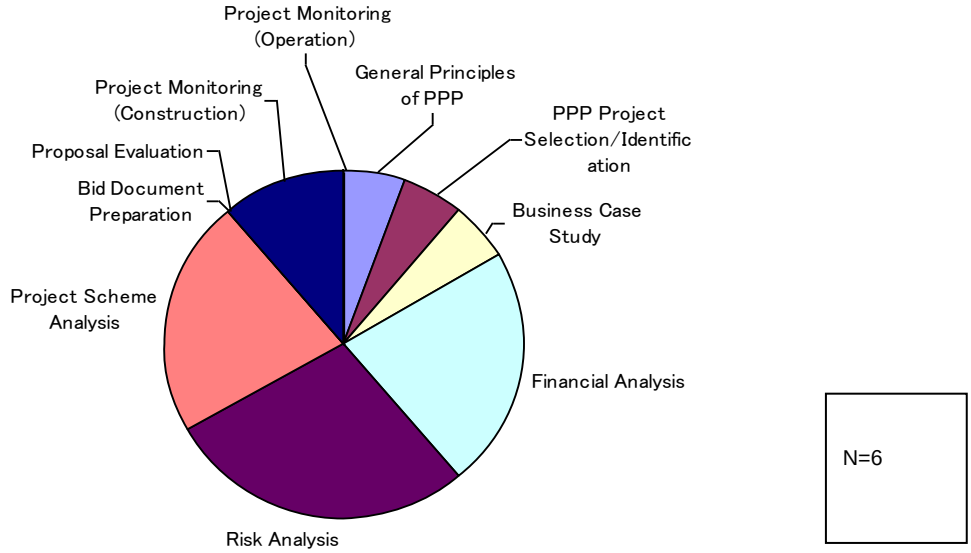
The JICA Study Team asked the respondents to check the top three items necessary for the improvement of PPP capacity. The results are shown in Table 6.2-3.

Table 6.2-3 Needs Assessment Results (Road Sector)

	Respondents (Six Persons)						Total Score	Rank (Needs)
	A	B	C	D	E	F		
General Principles of PPP						1	1	5
PPP Project Selection/Identification						1	1	5
Business Case Study						1	1	5
Financial Analysis	1	1	1		1		4	2
Risk Analysis	1	1	1	1	1		5	1
Project Scheme Analysis	1	1		1	1		4	2
Bid Document Preparation							0	-
Proposal Evaluation							0	-
Project Monitoring (Construction)			1	1			2	4
Project Monitoring (Operation)							0	-

Note: Five respondents checked the top three needs for PPP capacity development according to them. In the figure, a higher score indicates higher need.
Source: JICA Study Team

A graph of the needs assessment results is shown in Figure 6.2-2.



Note: Five respondents checked the top three needs for PPP capacity development according to them. In the figure, a higher percentage indicates higher need.
Source: JICA Study Team

Figure 6.2-2 Needs Assessment Results (Road Sector)

Clearly, the needs of respondents for capacity development were high in the three areas where their capacity levels were low. Financial analysis of PPP projects from investors' viewpoint appears to be complex, demonstrating equity internal rate of returns (IRRs) of the different cash flows based on a combination of amount of equity and subsidy, financial impact on IRR by lending condition of debt portion. As such, a comprehensive financial analysis is quite new to staff members of the PMO-BOT. There turns out to be no need for i) bid document preparation, ii) proposal evaluation, and iii) project monitoring (operation). This is because bid documents preparation and proposal evaluation are being fully assisted by DOF and the PPP Center, while project monitoring is under the responsibility of the Toll Regulatory Board (TRB).

Aside from the needs for capacity development in PPP processing, DPWH, as the agency responsible for road development, exposes and takes the risks of CL caused by delay in right-of-way (ROW) acquisition, issuance of construction permission and final completion. This agency, including the PMO-BOT, requires efforts to reduce occurrence of CL and must quantify the cost of government

guarantee to compensate liquidity damages, which are otherwise burdened by private proponents.

(3) Issues

The respondents raised the following issues:

- Inadequate know-how on financial analysis and tools (risk analysis software and financial model);
- Legal interpretation of government subsidy, undertakings and variations;
- Lack of traffic demand software and simulation model;
- Not enough knowledge on BOT scheme;
- Insufficient number of staff members; and
- Not enough knowledge on risk analysis and inadequate parameters for project monitoring.

6.2.3 Assessment Results: Railway Sector (DOTC and LRTA)

In the railway sector, the capacity and needs assessments were conducted by means of questionnaire and interview survey of two staff from DOTC and three staff from the LRTA. The sections and positions of the respondents are shown in Table 6.2-4.

Table 6.2-4 Sections and Positions of Respondents (Railway Sector)

Agency	Section	Position
DOTC	Rail Transport Program Division	Sr. Transportation Development Officer
DOTC	Railway Transportation Planning Division	Chief of Division
LRTA	Planning Department	Planning Dept. Manager
LRTA	Planning Department	Corporate Planning and Research Division
LRTA	LRTA - PMO	Principal Engineer

Source: JICA Study Team

The results of the capacity and needs assessment of the railway sector are discussed below.

(1) Present Capacity Level

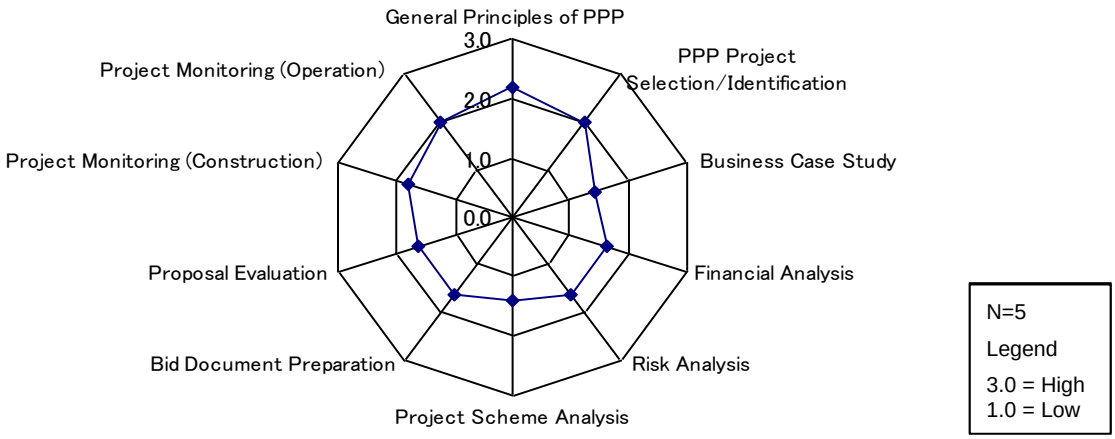
The JICA Study Team asked the respondents to score the present capacity levels of the railway sector staff regarding the ten check items. The results are shown in Table 6.2-5.

Table 6.2-5 Capacity Assessment Results (Railway Sector)

Check Item	Respondents (Five Persons)					Average	Rank
	A	B	C	D	E		
General Principles of PPP	1	3	2	2	3	2.2	1
PPP Project Selection/Identification	1	3	2	2	2	2.0	2
Business Case Study	1	2	1	1	2	1.4	9
Financial Analysis	1	2	1	1	3	1.6	5
Risk Analysis	1	2	1	2	2	1.6	5
Project Scheme Analysis	1	2	1	1	2	1.4	9
Bid Document Preparation	1	1	1	2	3	1.6	5
Proposal Evaluation	1	3	1	1	2	1.6	5
Project Monitoring (Construction)	1	2	1	2	3	1.8	4
Project Monitoring (Operation)	1	2	2	2	3	2.0	2

Note: High Level = 3.0, Middle Level = 2.0, Low Level = 1.0
Source: JICA Study Team

A graph of the capacity assessment results is shown in Figure 6.2-3.



Source: JICA Study Team

Figure 6.2-3 Capacity Assessment Results (Railway Sector)

The capacity level was rated as low level in the stages of PPP processing from project identification to project evaluation. This is because majority of the respondents are from the Railway Planning Division (RPD), which is primarily responsible for the sector plan. The capacity level in project monitoring is comparatively high because staff of the RPD currently conducts monitoring of railway projects. The problem is the weak capacity of staff of the Project Development Team (PDT) in terms of railway sector specific PPP processing because the current PDT staffs working in the project development stage have little knowledge about any specific sector such as railway. The assessment of the present capacity of respondents is shown in Figure 6.2-3.

(2) Needs for Capacity Development

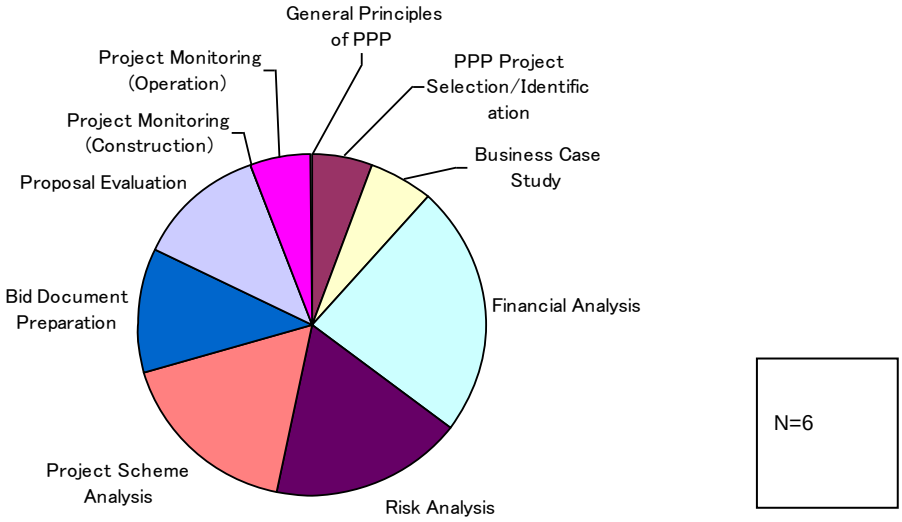
The JICA Study Team asked the respondents to check the top three items necessary for the improvement of PPP capacity. The results are shown in Table 6.2-6.

Table 6.2-6 Needs Assessment Results (Railway Sector)

	Respondents (Six Persons)					Total	Rank
	A	B	C	D	E		
General Principles of PPP						0	-
PPP Project Selection/Identification					1	1	6
Business Case Study					1	1	6
Financial Analysis	1	1	1	1		4	1
Risk Analysis	1	1	1			3	2
Project Scheme Analysis	1			1	1	3	2
Bid Document Preparation	1	1				2	4
Proposal Evaluation	1			1		2	4
Project Monitoring (Construction)						0	-
Project Monitoring (Operation)			1			1	6

Note: Five respondents checked the top three needs for PPP capacity development according to them. In the figure, a higher score indicates higher need.
Source: JICA Study Team

A graph of the needs assessment results is shown in Figure 6.2-4.



Note: Five respondents checked the top three needs for PPP capacity development according to them. In the figure, a higher percentage indicates higher need.
Source: JICA Study Team

Figure 6.2-4 Needs Assessment Results (Railway Sector)

According to the results of the capacity and needs assessments of staff of DOTC and LRTA conducted in October 2012, DOTC has little experience of PPP project implementation in the railway sector. As observed in Figure 6.2-4, the items that are highly needed for capacity development in the railway sector are in the areas of business case study, financial analysis, risk analysis, and project scheme analysis. Besides that, there is a high demand for capacity development programs on practical contents such as parametric formula, penalties, minimum standards, termination payments under concession agreement, etc.

(3) Issues

Among the issues to be listed below, the survey revealed the discontinuity by the changes in the administration and the absence of in-house capacity as urgent issues.

Therefore, in addition to securing and developing human resources, the establishment of a consistent organization and a definite procedure for PPP project promotion in DOTC are needed. The followings are the main issues on PPP project implementation in DOTC Railway sector.

- Change of administration
- No continuity in project planning and implementation.
- Lack of in-house capacity in all aspects
- Difficulty of ROW acquisition
- Re-evaluation of ROW claimants, expropriation proceedings on ROW, and resettlement of informal settlers

The demarcation of responsibilities among sectors in the railway division of DOTC appears to be unclear. As clarified in the comment made by the Assistant Secretary for Planning in the Study, the agency intends to strengthen its project development functions (PDT). More important is the consistency of PPP processing from entry (planning) to preparation (project development). The key point will be the clarification of the roles of organizations in the railway division with respect to PPP processing.

The railway sector encounters delay in ROW acquisition and high ridership risk. The former is exemplified by the LRT 1 South Extension Project wherein it was difficult for the private sector to qualify for bidding as heard from private sectors during the Team's hearing survey. Meanwhile, the latter is stressed on by a private investor saying that revenue lower than what was originally estimated brings about a serious drawback to investors. It implicates the government compensation for minimum revenue guarantee (direct liability).

6.2.4 Assessment Results: Airport Sector (DOTC, MCIAA, MIAA, and CAPP)

In the airport sector, the capacity and needs assessments were conducted by means of questionnaire and interview survey of seven staff in total from: i) the Air Transport Planning Division (ATPD) of DOTC, ii) MCIAA, iii) MIAA, and iv) CAAP. The sections and positions of the respondents are shown in Table 6.2-7.

Table 6.2-7 Sections and Positions of Respondents (Airport Sector)

Agency	Section	Position
DOTC	Air Transport Planning Division	Chief, Transport Development Officer (TDO)
DOTC	Planning Service - Air Transportation Planning Division	Supervising TDO
MCIAA	Legal and Finance	Legal Manager and Finance Dept.
MCIAA	Legal Office	Corporate Attorney
MIAA	Plans and Programs Division	OIC-PPP
CAAP	Admin and Finance Service	OIC, Admin and Finance
CAAP	Engineering Department	Accounting Department Manager

Source: JICA Study Team

The results of the capacity and needs assessment of the airport sector are discussed below.

(1) Present Capacity Level

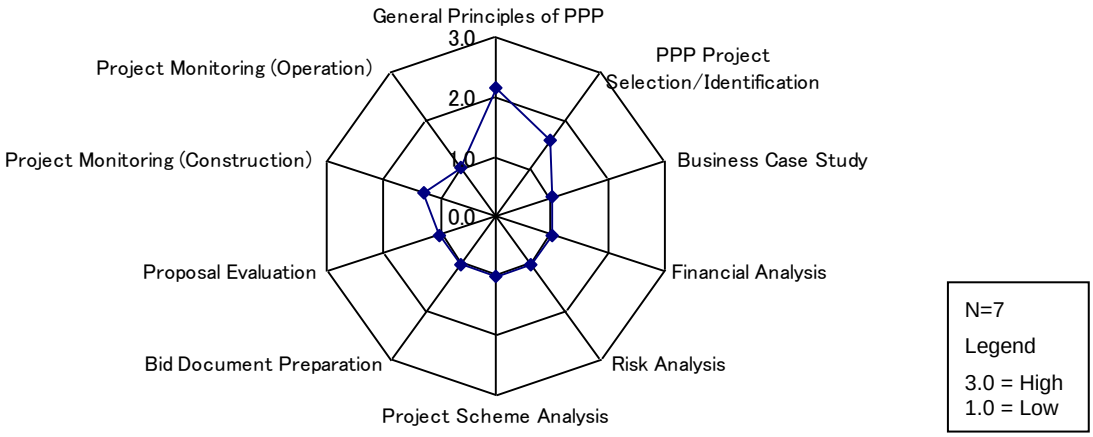
The JICA Study Team asked the respondents to score the present capacity levels of the staff of the relevant agencies regarding the ten check items. The results are shown in Table 6.2-8.

Table 6.2-8 Capacity Assessment Results (Airport Sector)

Check Item	Respondents (Seven Persons)							Average	Rank
	A	B	C	D	E	F	G		
General Principles of PPP	2	2	3	3	2	1	2	2.1	1
PPP Project Selection/Identification	1	2	2	2	2	1	1	1.6	2
Business Case Study	1	1	1	1	1	1	1	1.0	4
Financial Analysis	1	1	1	1	1	1	1	1.0	4
Risk Analysis	1	1	1	1	1	1	1	1.0	4
Project Scheme Analysis	1	1	1	1	1	1	1	1.0	4
Bid Document Preparation	1	1	1	1	1	1	1	1.0	4
Proposal Evaluation	1	1	1	1	1	1	1	1.0	4
Project Monitoring (Construction)	1	2	1	1	2	1	1	1.3	3
Project Monitoring (Operation)	1	1	1	1	1	1	1	1.0	4

Legend: High Level = 3.0, Middle Level = 2.0, Low Level = 1.0
Source: JICA Study Team

A graph of the capacity assessment results is shown in Figure 6.2-5.



Source: JICA Study Team

Figure 6.2-5 Capacity Assessment Results (Airport Sector)

The capacity level was rated as low level in all stages of PPP processing. This is because majority of the respondents are responsible for national aviation planning (ATPD) and monitoring of project construction, and operations and maintenance (O&M) (other institutions).

(2) Needs for Capacity Development

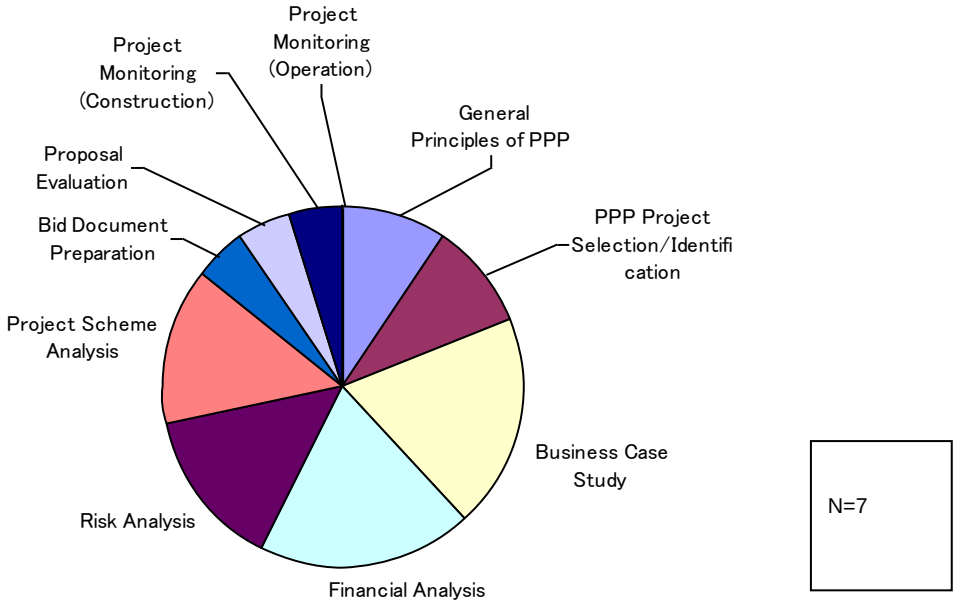
The JICA Study Team asked the respondents to check the top three items necessary for the improvement of PPP capacity. The results are shown in Table 6.2-9.

Table 6.2-9 Needs Assessment Results (Airport Sector)

	Respondents (Seven Persons)							Total Score	Rank (Needs)
	A	B	C	D	E	F	G		
General Principles of PPP						1		1	6
PPP Project Selection/Identification	1					1		2	5
Business Case Study	1	1				1	1	4	1
Financial Analysis		1	1	1			1	4	1
Risk Analysis		1	1	1				3	3
3Project Scheme Analysis	1		1	1				3	3
Bid Document Preparation					1			1	6
Proposal Evaluation					1			1	6
Project Monitoring (Construction)							1	1	6
Project Monitoring (Operation)								0	-

Note: Five respondents checked the top three needs for PPP capacity development according to them. In the figure, a higher score indicates higher need.
Source: JICA Study Team

A graph of the needs assessment results is shown in Figure 6.2-6.



Note: Five respondents checked the top three needs for PPP capacity development according to them. In the figure, a higher percentage indicates higher need.
Source: JICA Study Team

Figure 6.2-6 Needs Assessment Results (Airport Sector)

The need for capacity development was high in the areas of business case study, financial analysis, risk analysis, and project scheme analysis, while the need was low for bid document preparation, project evaluation, and project monitoring (construction and operation) because most of the respondents are engaged in such works. The skills and expertise on PPP projects preparation, particularly in the early stage (business case study, PPP feasibility study, and financial analysis) are needed.

A typical PPP modality of an airport project would be separation of airport services between landside (private proponent) and airside (government). Staff members in the airport sector are looking for successful PPP projects, such as an international airport handling millions of passengers that is expected to receive ample revenue that may be suitable for a build-operate-transfer (BOT) scheme.

The respondents answered the following airport projects in connection with training of relevant staff for PPP processing.

- Mactan-Cebu International Airport Passenger Terminal Building;
- O&M of Laguindingan Airport;
- O&M of Puerto Princesa Airport;
- Kalibo International Airport; and
- Caticlan Airport.

(3) Issues

The airport sector in the Philippines has undertaken only two PPP projects in the recent past. These are the NAIA Terminal 3 BOT Project in 1997-2008, and the Caticlan Airport Project in 2008. The NAIA Terminal 3 Project, which is the first PPP airport project in the country, encountered numerous problems. This project left various lessons related to concession agreement. On the other hand, the

second PPP airport project, the unsolicited Caticlan Airport Project, has less legal and technical issues so far.

DOTC has learned lessons from these two PPP projects. Currently, however, the progress of the promotion and implementation of PPP airport projects is still slow. Capacity development appears to be necessary in the area of selection and identification of PPP airport projects, including business case studies.

The two different sets of PPP rollout airport projects in 2011 and 2012 also gives an indication that there is no established selection system for airport PPP projects in DOTC. The results of the capacity building assessment survey also attest to the necessity for PPP project selection and identification.

Of particular interest and significance to DOTC are topics involving business case studies, financial analysis and risk analysis, and project scheme analysis toward PPP project development and implementation.

Considering the long gestation period of PPP projects based on the project cycle, i.e., from project identification to preparation of proposals and draft concession agreements, the JICA Study Team recommends that appropriate sector specific capacity development programs for selected DOTC staff should be developed and implemented. Participants to these training programs should involve not only members of the Project Development Team (PDT) under the Office of the Assistant Secretary for Planning but also staff from DOTC's ATPD and Project Management Service (PMS), CAAP's Aerodrome Development and Management Service (ADMS), MIAA's Plans and Programs Department (PPD), and an appropriate department of MCIA .

6.2.5 Assessment Results: Water Sector (MWSS and LWUA)

In the water sector, the capacity and needs assessments were conducted by means of questionnaire and interview survey of four staff from MWSS and five staff from LWUA. The sections and positions of the respondents are shown in Table 6.2-10.

Table 6.2-10 Section and Position of Respondents (Water Sector)

Agency	Section	Position
MWSS	Engineering and Operations	Deputy Administrator
MWSS	Engineering and Project Management Dept. (EPMD)	PMO-A
MWSS	EPMD	PMO-A
MWSS	EPMD	PMO-A
LWUA	AG Operations, Planning/Design	Division Manager
LWUA	Area G	Acting Manager
LWUA	Special Project Officer	Acting Department manager
LWUA	Loans and Water Rates Evaluation - Luzon Area 1	Acting Manager Area 1
LWUA	Area Operations Visayas	Project Planning Division Acting Division Manager

Source: JICA Study Team

(1) Present Capacity Level

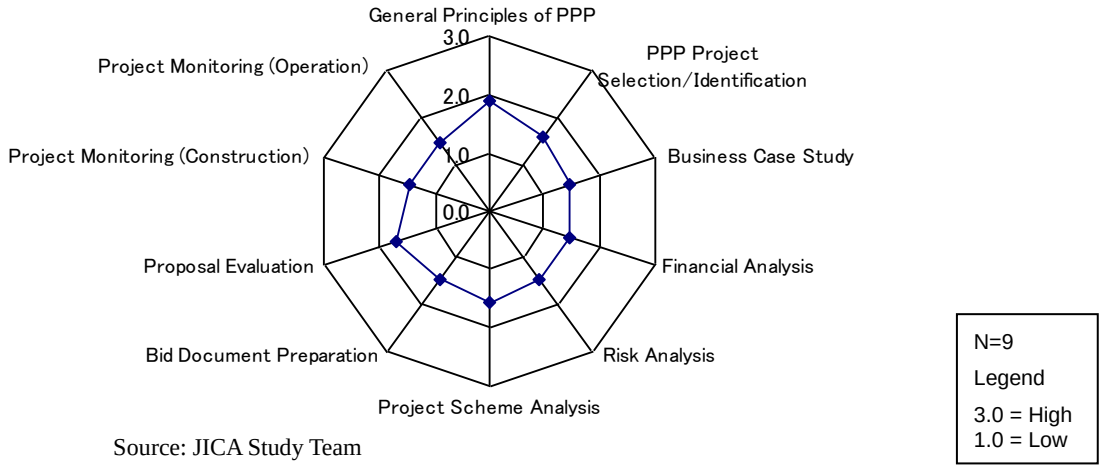
The JICA Study Team asked the respondents to score the present capacity level of the water sector staff regarding the ten check items. The result is shown in the Table 6.2-11

Table 6.2-11 Capacity Assessment Results (Water Sector)

Check Item	Respondents (Nine Persons)									Average	Rank
	A	B	C	D	E	F	G	H	I		
General Principles of PPP	3	2	2	3	1	1	2	2	1	1.9	1
PPP Project Selection/Identification	2	2	2	3	1	1	1	1	1	1.6	3
Business Case Study	3	1	2	2	1	1	1	1	1	1.4	5
Financial Analysis	3	1	2	2	1	1	1	1	1	1.4	5
Risk Analysis	3	1	2	2	1	1	1	1	1	1.4	5
Project Scheme Analysis	2	2	2	3	1	1	1	1	1	1.6	3
Bid Document Preparation	2	1	2	2	1	1	2	1	1	1.4	5
Proposal Evaluation	3	1	3	3	1	1	1	1	1	1.7	2
Project Monitoring (Construction)	2	2	2	2	1	1	1	1	1	1.4	5
Project Monitoring (Operation)	2	2	2	2	1	1	1	1	1	1.4	5

Source: JICA Study Team

A graph of the present capacity levels of respondents is shown in Figure 6.2-7.



Source: JICA Study Team

Figure 6.2-7 Present Capacity Level (Water Sector)

(2) Needs for Capacity Development

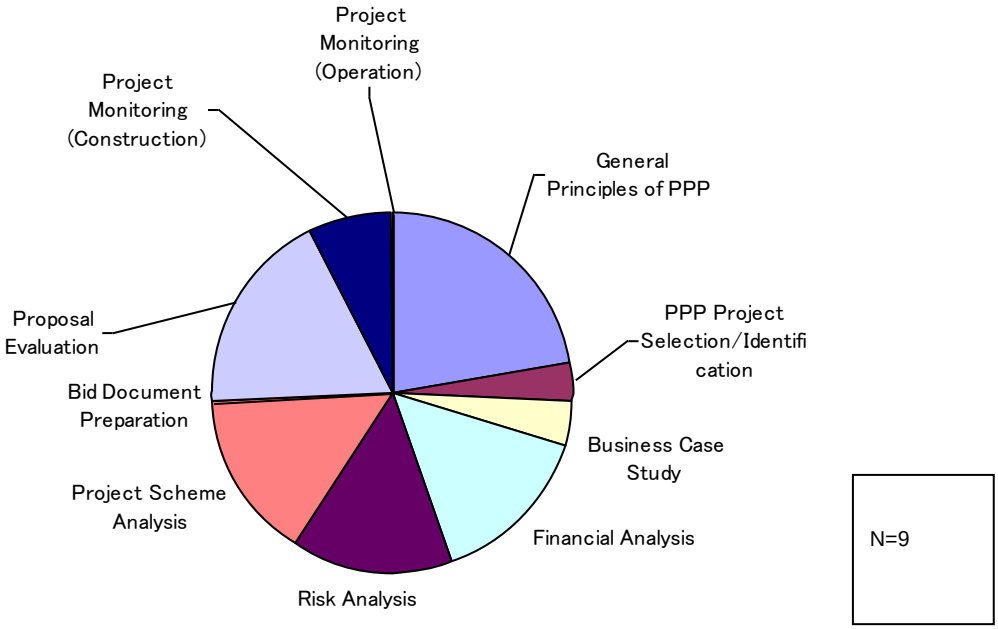
The JICA Study Team asked the respondents to check the top three items necessary for the improvement of PPP capacity. The results are shown in Table 6.2-12.

Table 6.2-12 Needs Assessment Results (Water Sector)

	Respondents (Nine Persons)									Total	Rank
	A	B	C	D	E	F	G	H	I		
General Principles of PPP			1		1	1	1	1	1	6	1
PPP Project Selection/Identification							1			1	7
Business Case Study								1		1	7
Financial Analysis	1	1				1		1		4	3
Risk Analysis	1	1		1			1			4	3
Project Scheme Analysis	1		1		1				1	4	3
Bid Document Preparation										0	-
Proposal Evaluation		1		1	1	1			1	5	2
Project Monitoring (Construction)			1	1						2	6
Project Monitoring (Operation)										0	-

Source: JICA Study Team

A graph of the needs assessment results is shown in Figure 6.2-8.



Source: JICA Study Team

Figure 6.2-8 Needs Assessment Results (Water Sector)

The need for capacity development was recognized for each field in PPP processing, which implies that MWSS is ready for strengthening the capacity of their staff on PPP project preparation. Under such circumstance, a seminar on studying new bulk water supply projects involving existing reservoirs under BOT contract scheme would help them in the preparation of upcoming PPP water supply projects. This could contribute to business expansion of MWSS, and enhancement of their capacity development. The needs assessment results are shown in Figure 6.2-8.

(3) Issues

A growing demand for new bulk water supply projects, including dam construction, highlights the role of MWSS as an implementing agency under BOT scheme; however, private proponents are reluctant to commit themselves to such greenfield projects mainly because of financial infeasibility. MWSS needs very concessional loans (i.e., ODA loan) particularly for financing dam construction; however, MWSS has been constrained by a government policy aimed at reducing its borrowing of ODA loans from donors. Under such circumstance, a hybrid type of water supply project comprising dam construction, financed by ODA loan, and water transmission facility, financed by private proponent, would be preferable as a pipeline project in the water sector.

6.2.6 Assessment Results: Energy Sector (DOE)

In the energy sector, PPP or its projects are not in the mainstream so that the target to be interviewed is not DOE but its affiliate organ where the likely PPP project is to be implemented. The capacity and needs assessments were conducted by means of questionnaire and interview survey of five staff from PNOC. The sections and positions of the respondents are shown in Table 6.2-13.

Table 6.2-13 Sections and Positions of Respondents (Energy Sector)

Agency	Section	Position
PNOC	Corporate Planning Department	Manager
PNOC	Engineering	Manager
PNOC	Treasury Department	Deputy Manager
PNOC	Management Service	Vice President
PNOC	Legal Department	OIC-Manager

Source: JICA Study Team

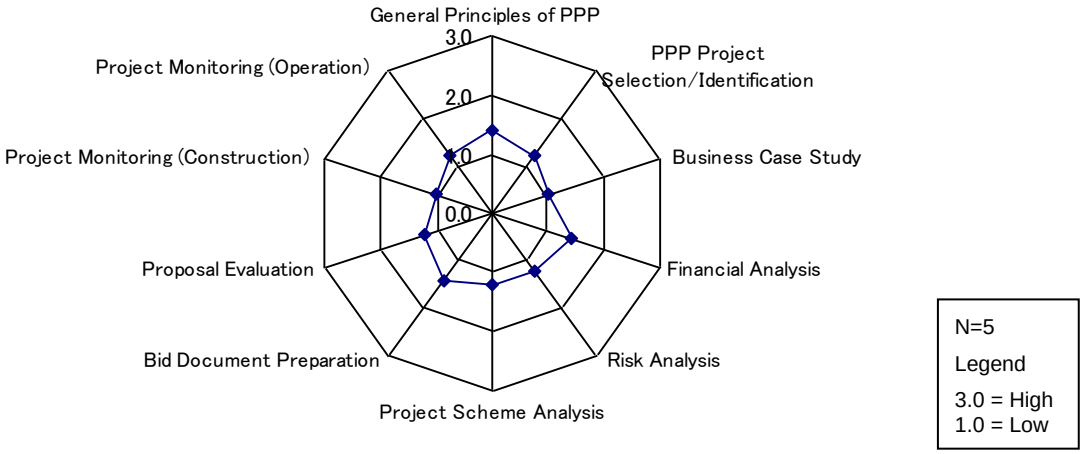
(1) Present Capacity Level

The JICA Study Team asked the respondents to score the present capacity levels of the energy sector staff regarding the ten check items. The results are shown in Table 6.2-14.

Table 6.2-14 Capacity Assessment Results (Water Sector)

Check Item	Respondents (Five Persons)					Average	Rank
	A	B	C	D	E		
General Principles of PPP	2	1	1	1	2	1.4	1
PPP Project Selection/Identification	2	1	1	1	1	1.2	4
Business Case Study	1	1	1	1	1	1.0	9
Financial Analysis	3	1	1	1	1	1.4	1
Risk Analysis	1	1	1	1	2	1.2	4
Project Scheme Analysis	2	1	1	1	1	1.2	4
Bid Document Preparation	2	1	1	1	2	1.4	1
Proposal Evaluation	2	1	1	1	1	1.2	4
Project Monitoring (Construction)	1	1	1	1	1	1.0	9
Project Monitoring (Operation)	2	1	1	1	1	1.2	4

Source: JICA Study Team



Source: JICA Study Team

Figure 6.2-9 Present Capacity Level (Energy Sector)

(2) Needs for Capacity Development

The results of the needs assessment are shown in Figure 6.2-10. The fundamental issues regarding the needs for capacity development on PPP are the following:

First, PNOC is preparing the Batangas-Manila Natural Gas Pipeline (BATMAN) 1 Project. For instance, PNOC, as the implementing agency, would be responsible for the ROW acquisition needed for the installation of gas pipelines along national roads from Batangas to Metro Manila. However, PNOC has no experience of ROW acquisition, thus DPWH may assist it in such.

In addition, gas development in the country is not an issue of project but that of industry. The DOE will need the following information and expertise in establishing a gas industry suited for the Philippine business environment:

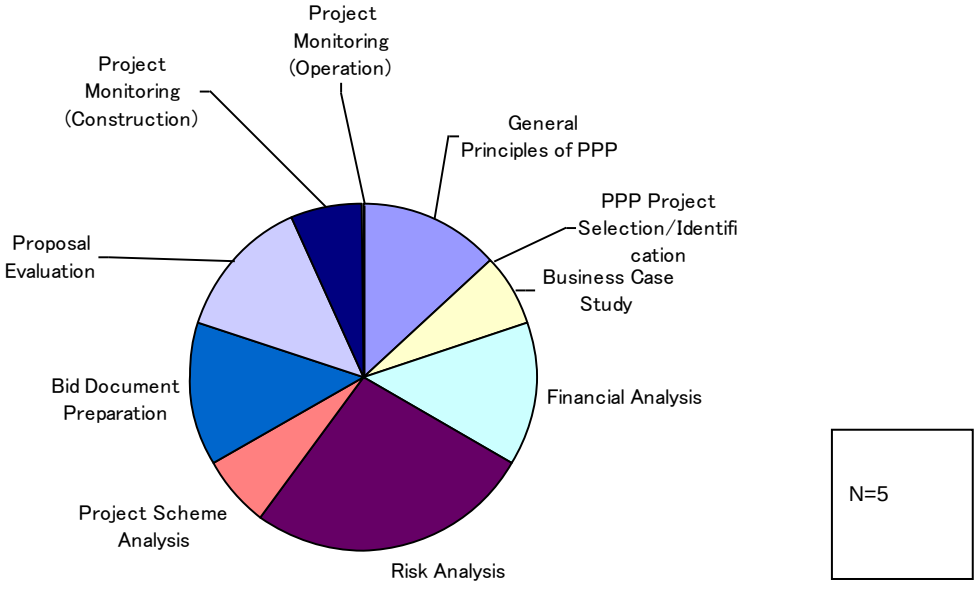
- Regulations (private companies entering gas business and prices) on gas industry (DOE);
- Organization and tasks to be entrusted to a special company for gas industry under PNOC; and
- TOR of the FS of the BATMAN 1 Project particularly detailed financial analysis of the PPP model for BATMAN and other projects.

Table 6.2-15 Needs Assessment Results (Water Sector)

	Respondents (Five Persons)					Total	Rank
	A	B	C	D	E		
General Principles of PPP		1		1		2	2
PPP Project Selection/Identification						0	-
Business Case Study	1					1	6
Financial Analysis			1	1		2	2
Risk Analysis	1	1	1		1	4	1
Project Scheme Analysis			1			1	6
Bid Document Preparation				1	1	2	2
Proposal Evaluation		1			1	2	2
Project Monitoring (Construction)	1					1	6
Project Monitoring (Operation)						0	-

Source: JICA Study Team

A graph of the needs assessment results is shown in Figure 6.2-10.



Source: JICA Study Team

Figure 6.2-10 Needs Assessment Results (Energy Sector)

(3) Issues

The country is still facing chronic problems such as: i) combined market power across power generation and distribution in the Luzon grid, ii) energy insecurity particularly in Mindanao, and iii) high level of debt of the National Power Corporation (NPC). Accordingly, DOE is expected to take a leadership role in solving these issues. The fundamental approach is to determine up to what extent the government should be responsible for such issues under the Electric Power Industry Reform Act (EPIRA).

6.3 Trial Implementation of PPP Capacity Development Training

6.3.1 Planning and Implementation of Trial PPP Capacity Development Training

According to the prior surveys, the current PPP trainings provided by ADB are mainly focused on oversight agencies, such as the PPP Center and DOF. The JICA Study Team identified that IAs has potentially great needs for PPP capacity development.
Based on this finding and recognition, a trial PPP capacity development training for selected IAs, i.e., DPWH, DOTC, MWSS, and LWUA, was planned in the Study. The objectives of the training are (1) to answer the urgent needs for PPP capacity development of each IA, and (2) to grasp IA's real capacity and needs with regard to PPP.

The JICA Study Team tried to plan "tailor-made" programs that would specifically meet the needs and expectations of each agency. The findings regarding the capacity and needs of the selected agencies, as taken from the needs and capacity assessments conducted by the JICA Study Team, are shown in Table 6.3-1.

Table 6.3-1 Findings from the Capacity and Needs Assessments

Agency	PPP Capacity	Training Items of High Need
DPWH	Relatively High	1) Risk Analysis including CL 2) Financial Analysis 3) Project Scheme Analysis
DOTC	Middle	1) Financial Analysis 2) Risk Analysis including CL 3) Project Scheme Analysis
MWSS and LWUA	Relatively Low	1) General Principles of PPP 2) Proposal Evaluation 3) Financial Analysis, etc.

Source: JICA Study Team

The training programs were prepared to meet those levels and needs. Also, in the process of preparation, further discussions and consultations were made among the following key persons of each agency:

- DPWH: Head of BOT-PMO
- DOTC: Undersecretary and Assistant Secretary
- MWSS: Undersecretary and Deputy Administrator

After going through these processes, the JICA Study Team arranged the tailor-made training programs, as shown in Table 6.3-2, and carried them out as planned. Generally, members of the JICA Study Team served as lecturers of each course; however, officers of DPWH also conducted some parts of the program such as the workshops for the road sector.

Table 6.3-2 Contents of Trial Capacity Development Training

Sector/ IA	Training Contents		
	Date	Program	Contents
Road (DPWH)	DAY 1 March 12, 2013	(1) Toll road PPP modality (2) Project implementation/monitoring (3) Issues/problems encountered (workshop)	(1) PPP modalities with respect to profitability and public sector involvement (2) Responsibility of DPWH at each stage of project preparation (3) Various issues raised during trainees' group discussion.
	DAY 2 March 13, 2013	(1) CL of the Government of the Philippines (the GoP) and TCA (2) Impact of government risk to financial conditions of proponent (3) Measures to reduce CL risks (workshop)	(1) How is CL specified in Toll Concession Agreement? (2) Simulation of the government Payment for CL risks. (3) Trainees' group discussion about how to reduce costs caused by delay in ROW acquisition.
	DAY 3 March 14, 2013	(1) Financial basics and exercises	(1) Basic financial analysis (2) Exercise of financial models for case studies (road projects)
Railway and Airport (DOTC)	DAY 1 March 14, 2013	(1) PPP modality and BCS (2) PPP project risk management	(1) Modality selection examples (2) Revenue risk management. (3) Appropriation risk undermining CL payment
	DAY 2 March 15,2013	(1) Financial basics and exercises	(1) Basic financial analysis (2) Exercise of financial models for case studies (railway and airport)
Water (MWSS and LWUA)	DAY 1 March 19, 2013	(1) Global trend of PPP in water sector and good practice (2) PPP project cycle management, (3) PPP modality (bulk water supply) (4) Financial analysis (5) CL analysis	(1) Water PPP project trend by region and modality (2) What to do at each stage of project preparation (3) Water PPP modality options (4) Basic financial analysis/Exercise of financial models for case studies (5) Quantification of CL

Note: BCS means business case study, and TCA means toll concession agreement.
Source: JICA Study Team

A three-day course was held for the road sector staff because their capacity level was relatively high and there was a strong request to DPWH to conduct three-day training. A two-day course was jointly held for the railway and airport sectors, and a one-day course was held for the water sector. These also reflected the current needs of related agencies.

Table 6.3-3 shows the number of participants from each agency.

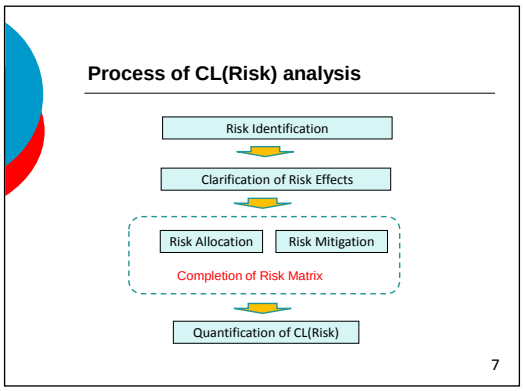
Table 6.3-3 Participants of the Trial Capacity Development Training

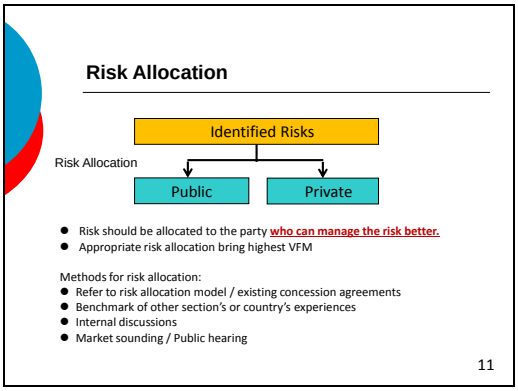
Sector	Number of Participants	Participating Agencies
Road Sector	27	DPWH and the PPP Center
Railway and Airport Sectors	22	DPWH and the PPP Center
Water Sector	35	MWSS and LWUA

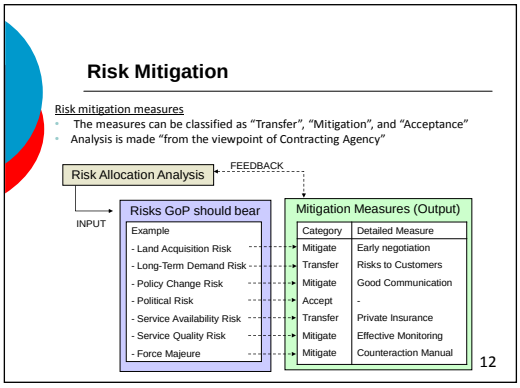
Source: JICA Study Team

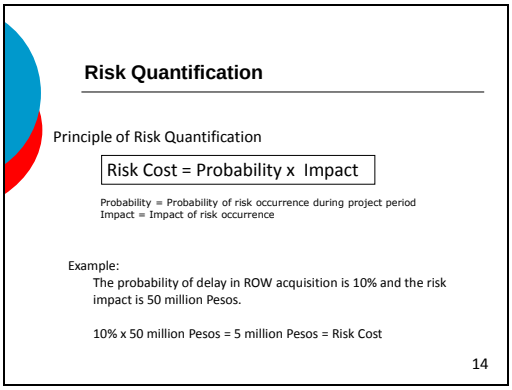
Some excerpts of the materials used for the training are shown below.

(1) Materials Used for CL Analysis at MWSS (Excerpt)

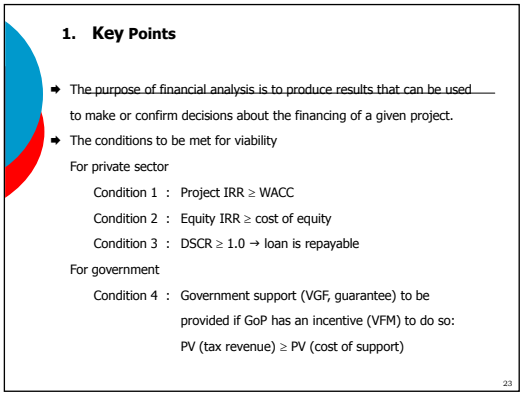


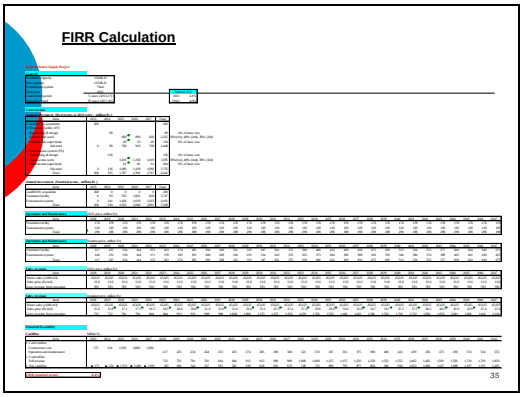


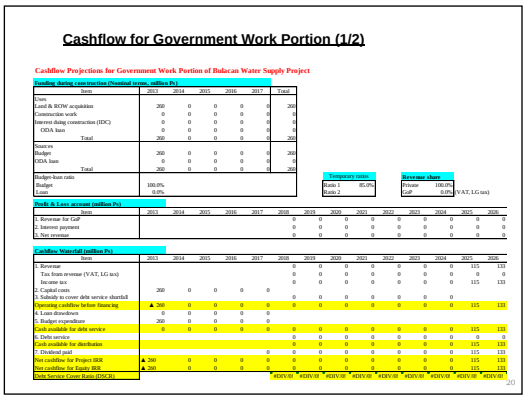


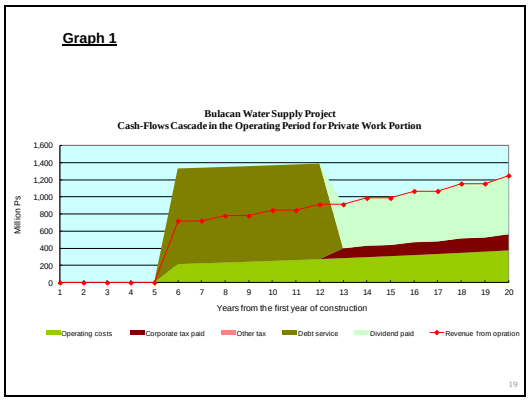


(2) Materials Used for Financial Analyses at MWSS (Excerpt)









Source: JICA Study Team

The following are some photos taken during the training (All the pictures are taken by the JICA Study Team).

(1) DPWH

(2) DOTC

(3) MWSS

Source: JICA Study Team

At the completion of training for each sector, the JICA Study Team conducted a simple questionnaire survey, asking the participants' opinions and feedback about the program. The following are the opinions obtained from the participants.

DPWH (Road Sector)
Comments:

1. The topics on PPP capacity development were well-appreciated.
2. Gained enough understanding on BOT law.
3. The topics were good but there was limited time.
4. Financial analysis should be separated from other topics due to wider coverage.
5. The workshop (capacity building) was a big help to the participants to learn ideas.
6. We now have a better understanding on financial analysis. By using the trial and error in the financial model provided, we are able to determine the relationship of the viability gap fund (VGF) and the IRR, thus, we can analyze which financial model will meet the requirements of PPP projects.
7. This type of seminar is recently the most interesting as such has become a more and more popular project concept thrust by the government.
8. The seminar was very interesting and informative.
9. Thanks a lot to JICA for conducting the capacity development program.

Suggestions:

1. The JICA Study Team should have provided exercises on how to quantify/value CL.
2. Capacity building with regards to quantification of risks is also necessary.
3. Needs further capacity building on the following:
    a. Traffic study,
    b. Minimum performance standards and specifications (MPSS) and key performance indicators (KPIs),
    c. Toll system including toll plaza, and
    d. Concession agreement.
4. Thorough discussion on the following:
    a. Limitation of VGF to be provided,
    b. Financial evaluation from scratch using sample infrastructure projects (no values yet indicated in the excel worksheet),
    c. Recommendations from consultants on how to avoid CL,
    d. Risk management,
    e. STRADA, and
    f. Traffic simulation.
5. At least one week before the seminar, it may be better to furnish participants the handouts/topics for discussion, or a brief summary of topics to be tackled.
6. Furnish in advance (at least one week before) to participants a glossary/definition of terms/acronyms for easier comprehension.
7. Since it takes time to create/understand scenario of the financial model, maybe a longer time is needed for understanding.
8. Topics dealing with different subject/s such as financial, technical, etc., should be conducted separately for different participants per subject.
9. Regarding risk management, maybe a systematic approach on how to lessen a stakeholder's risk could be provided by showing some values or quantitative analysis.
10. More demonstrative/illustrative examples must be considered for every details being discussed.
11. Financial terminologies should be adequately explained in layman's terms.
12. Ample time should be given for exercises.
13. If we could have instructional guidelines on computations in financial analysis.
14. Further financial model application through more seminars.
15. Prepare and provide the participants instruction manuals on how to use the model.
16. Even it took time to learn how to run the financial model, the model was created but clueless where the figures came from.
17. A more detailed and probably longer session for the financial analysis is needed.
18. Discussion on standard provisions for PPP contracts.
19. Capacity development on contract negotiation management.

DOTC (Railway and Road Sectors)
Comments:
1. The training was very interesting and educational.
2. The staffs were very friendly and accommodating.
3. The resource persons were good and have demonstrated their knowledge in the subject.

Suggestions:
1. Two days is very short to make a significant impact on the improvement of PPP capabilities of the agencies.
2. The JICA program seemed to focus on financial modeling, which is not bad, but [I expect to have trainings on] risk sharing, transaction structuring, and skills in contract drafting and negotiations.
3. I am looking forward that more training and seminars will be conducted, especially in the field of rail operations and project management.

MWSS/LWUA (Water Sector)
Comments:
1. The topics presented were very useful for the proposed PPP projects of MWSS.
2. The training gave additional insights on PPP which helped us appreciate it better.
3. As a Bids and Awards Committee (BAC) member of a PPP project, I want to learn more on this topic especially.
4. The seminar was brilliant and very helpful.
5. Presentations were very clear.
6. It was quite interesting.

Suggestions:
1. Topics to Cover:
    a. There should be further discussions/leaning sessions on CL analysis. I would like to learn more about CL.
    b. There should be a seminar on risk allocation.
    c. International experiences and/or standards regarding CL should be discussed.
    d. Discussion on VFM and risk allocation should be included.
    e. Should cover monitoring, such as compliance with KPIs.
2. On the Financial Model Exercise
    a. The "goal seek" function in excel should be used to determine equity internal rate of return (EIRR) (like in the case study) instead of "find and error".
    b. I would like to know the specific locations of projects where the financial models were applied.
    c. Limitations of the financial models should be discussed.
    d. Wish there were more clarifications and clear explanations especially on the financial analysis topic.
3. Duration
    a. Duration of the seminar was not enough.
    b. The seminar covered a lot of topics but the time was limited.

6.3.2 Lessons and Feedback from the PPP Capacity Development Program

This PPP capacity development training was taken as a trial demonstration, from which lessons are learned and the feedback applied for more effective capacity development of IAs.

The trial training prepared based on the needs assessment survey was successful to some extent in terms of i) enhancement of knowledge and expertise and ii) active communication between trainees coming from the different sections. The more positive outcome expected from the capacity development training would be the direct benefits on the current task of staff members engaged in PPP project preparation in terms of the following: i) improvement of PPP processing tasks, ii) establishment of risks mitigation method, and iii) communications network with the PPP Center.

Based on the trial PPP capacity development program, the JICA Study Team realized the following areas which need to be improved with high priority at present for better planning and implementation of PPP projects.

(1) PPP Projects Preparation Knowledge and Skills

a. Business Case Study (PPP Modality Selection)

The significance of the selection of the best PPP modality was acknowledged by all trainees, but a business case study (BCS) for modality selection has not been institutionalized in the process of PPP project preparation in IAs except DPWH. Accordingly, the target of the training should include staff members at the management level (directors) in order to institutionalize a BCS in the process of PPP project preparation. A BCS may lead to a PPP feasibility study (FS) financed by the PDMF under the management of the PPP Center. In this respect, training should include staff members of the PPP Center to discuss linkage with PDMF.

b. Financial Simulation

Many comments from the trainees are concentrated on financial analysis and the model applied in the case studies presented in the training course. The reason for it is supposed to be the peculiarity of financial analysis of PPP projects, which is VFM, equity IRR, quantification of risks anticipated, and amount of subsidy. Moreover, financial analysis of PPP projects is different by sector or project because of the different modality selected and sectors' characteristics.

A short-day training on financial simulation of PPP projects is not enough for trainees to understand the basic of PPP financial analysis. An appropriate guidebook used mainly for training of staff members of IAs even those of the PPP Center will be necessary for trainees to understand the financial analysis of PPP projects.

(2) Risk Management Knowledge and Skills

Effective training on risk management would be possible only if trainees are involved in active discussion on how to reduce or mitigate risks (including CL) anticipated. The group discussion was conducted about problems/risks at the stages of ROW acquisition, detailed design, construction and O&M in the training course of the PMO-BOT of DPWH. Such discussion results would be useful in the compilation of a manual on risk management.

(3) Contract Development and Management Skills and Knowledge

A PPP agreement is the key document which is agreed upon by the government agency and private proponent regarding major clauses such as duties and obligations owed by contractors. The contracting agency (IA) is particularly sensitive to direct and contingent liabilities owed by IA, but there are few

standard models of contract so far. Under such circumstance, the preparation of a model contract was part of the scope of works of the FS of a PPP toll road project (DPWH).

The request for training of staff in IAs regarding specific issues (i.e., penalty, compensation for CL, and termination payment) stipulated in the contract was actually made by DOTC and DPWH in the course of the Study; however, all of IAs' requests were not met due to the short duration of training and the limited number of trainers (the JICA Study Team). Legal advisors working at each IA could be appropriate target for training of trainers (TOT) to give instructions on making improvements in model contracts so that donor financed PPP FSs would emphasize the subject of a model contract for which foreign consultants cooperate with local legal advisors.

6.4 Ideas for Further PPP Capacity Development

Based on the results of the capacity and needs assessments and trial capacity development training, the JICA Study Team verified that there is strong necessity for PPP capacity development of IAs, particularly, DPWH, DOTC, and MWSS. The following are descriptions of the proposed capacity development programs to be organized in the near future.

(1) Target Agency

According to the results of the Study, it was found out that DPWH, DOTC, and MWSS have high interests and needs for PPP capacity development. Therefore, these three agencies as well as other related agencies can be candidate target agencies for PPP capacity development. The JICA Study Team recognizes that ADB has been providing PPP TA, which is mainly aimed at oversight agencies such as the PPP Center and DOF. It is important to avoid overlapping with ADB's TA but rather try to create a synergy through good coordination and consultation with ADB, as well as other related entities.

(2) Training Component

The JICA Study Team considers that the following ten items, as used in the capacity and needs assessments, correspond to basic knowledge and skills on PPP:

- General Principles of PPP
- PPP Project Selection/Identification
- Business Case Study
- Financial Analysis
- Risk Analysis
- Project Scheme Analysis
- Bid Document Preparation
- Proposal Evaluation
- Project Monitoring (Construction)
- Project Monitoring (Operation)

The program shall be organized specifically for each agency, choosing the prioritized theme from among the abovementioned items.

(3) Training Methods

There are several methods of training, such as the following:

- Basic Training (e.g., provision of lectures to gain/improve knowledge and basic skills on PPP)
- On-the-Job Training (OJT) (e.g., support studies and preparation of transaction documents)

- Overseas Training (e.g., visit Japan and/or other countries to learn their experiences and lessons)
- Technical Training (e.g., conduct detailed financial analysis, VFM analysis, and quantitative risk analysis using specific software)
- Support for Guideline/Manual Development (e.g. provide advice and comments on drafts)

It is worth noting that OJT is the most effective and efficient way to acquire necessary knowledge and skills. Therefore, the JICA Study Team strongly recommends to include this in the program. Also, none of IAs has developed its own operations manual for PPP projects. It would greatly help if the training can support the development of such guidelines or manuals.

(4) Training Terms

It is considered that it requires approximately two years for trainers to truly acquire necessary knowledge and skills, and apply them into practice.

An outline of the PPP capacity development training is given in Figure 7.4-1.

Target Agency	Selected key IAs (e.g., DOTC, DPWH, MWSS, etc.)
Period	Two years
Target Staff (Main)	Head and staff of PPP Section and Planning Section
Target Capacity	Project formation, F/S and transaction preparation

Main Component	Necessity	TA Contents
Support for Development of PPP Guideline/Manual	Currently, no PPP specific guidelines and manual for IAs	- Sector Guideline - Operation Manual as a "PPP Bible"
Basic Training	Currently, no comprehensive and tailor-made training for IAs	- Lectures on PPP - Sector specific workshops and discussions
On-the-Job Training	Most effective training for capacity development	- Planning of actual project - Preparation of prequalification (PQ) documents
Training in Japan and/or Third World Country	Learn the experiences of Japan and/or other countries regarding PPP	- Training in Japan - Training in third world countries
Tools and Software Provision and Exercise	Strong needs for analysis software and tools	- Risk analysis software - Excel model for financial analysis

Source: JICA Study Team

Figure 6.4-1 Outline of PPP Capacity Development Training Program

Annex

Annex

Annex 1. Complementary Discussion on IA's Credit Worthiness

The literature is replete with analysis on why the Philippines has lagged behind its peers in development. A key factor has been the low level of infrastructure development, with government under spending (2 to 3 percent of GDP, versus over 5% by its peers) explaining much of it. In 2011, government infrastructure spending as percent of GDP is 2.6%, going down slightly to 2.4 in 2012[29].

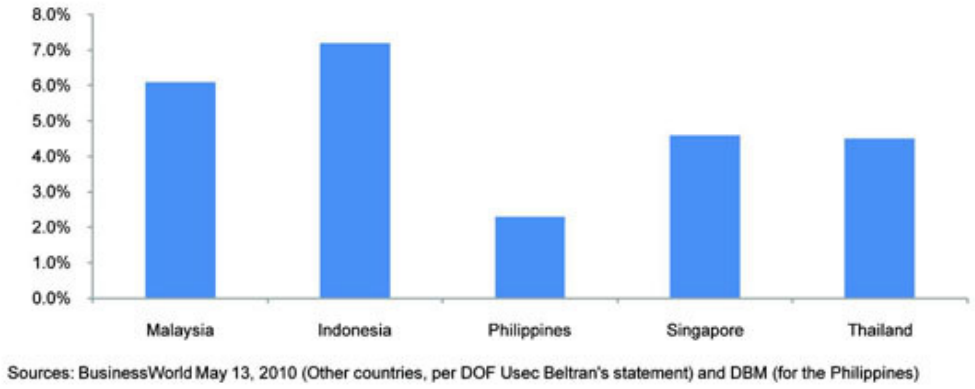


Figure A.1-1 Infrastructure Spending of ASEAN-5, % GDP, 1980-2009 (annual average)

In an official press release, the government expressed optimism that the recently earned investment-grade status by the country will drive infrastructure spending to 5% of GDP by 2016[30]. To achieve this objective, government infrastructure spending in that year may have to reach about 720 billion pesos[31]. The government's proposed infrastructure spending in 2013 is 404.6 billion pesos[32] (or roughly USD9.6 billion) which could translate to 3.54% of GDP[33].

Constraints in government's fiscal situation explain the current government's thrust to leverage off its resources by promoting private sector investment in infrastructure through PPP. However, these same diagnostic studies on Philippine underperformance have likewise identified underinvestment by the private sector (in infrastructure, as well as other industries) to be linked to the low confidence in government's ability to provide an enabling legal, political and regulatory environment.

[29] Arangkada Philippines, 05 March 2013, Government eyes increase in infrastructure spending to 5% of GDP, http://www.investphilippines.info/arangkada/govt-eyes-increase-in-infrastructure-spending-to-5-of-gdp/. The report states that government's infrastructure spending in 2011 is 250 billion pesos; 2012, 249 billion pesos. The National Statistical Coordinating Board estimates that the nominal GDP in 2011 is 9,736 billion pesos; in 2012, 10,568 billion pesos, an 8.6% growth vis-à-vis its 2011 level.

[30] The Official Gazette, 31 March 2013, DBM: Fitch upgrade to drive infra spending to 5% of GDP, http://www.gov.ph/2013/03/31/dbm-fitch-upgrade-to-drive-infra-spending-to-5-of-gdp/

[31] The base year is 2012. Nominal GDP in 2012 is 10, 568 billion pesos. Assuming 8% annual growth rate, 2016 nominal GDP will be around 14, 378 billion pesos. Infrastructure spending by has to reach 720 billion pesos if the 5% ratio is to be achieved.

[32] Reuters, 09 July 2012, UPDATE 1-Philippines plans record infrastructure budget for 2013 http://www.reuters.com/article/2012/07/09/philippines-budget-infrastructure-idUSL3E8I919H20120709

[33] Same assumptions as in footnote 3.

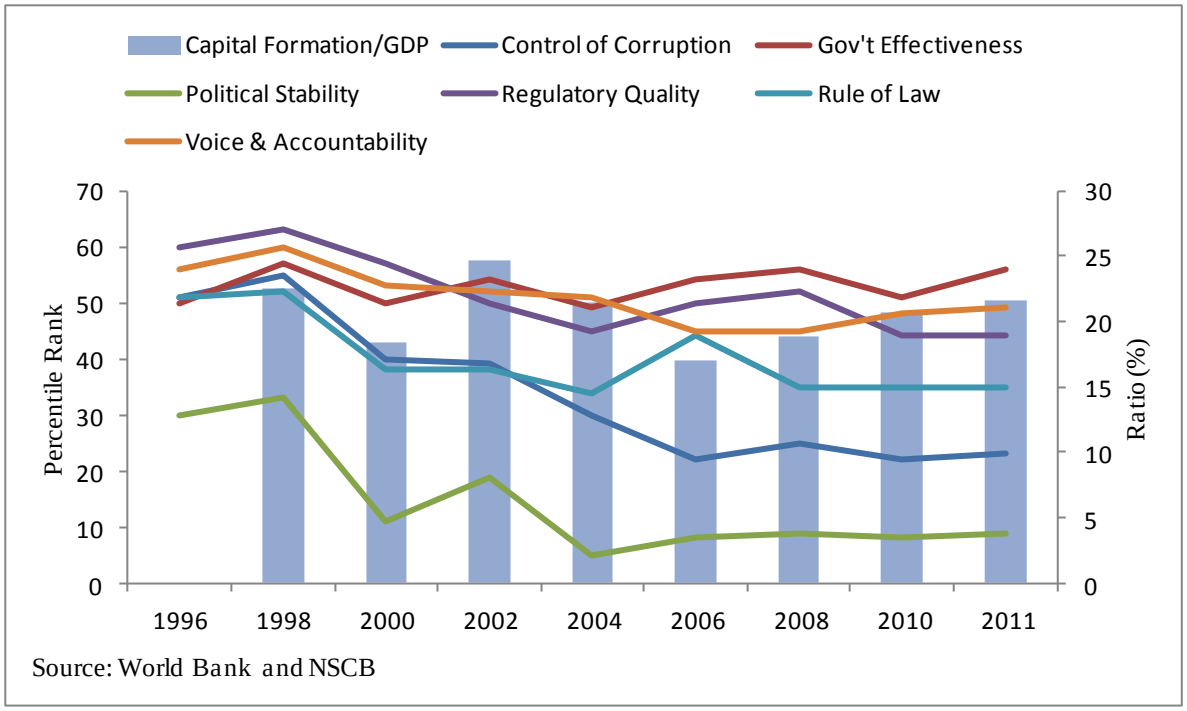


Figure A.1-2 Governance Indicators and Investments, 1996-2011

These impediments to investment have been well identified and studied, see for example, Arangkada Philippines (http://www.investphilippines.info/arangkada/home.php). Printed below are the 17 surveys Arangkada tracks that covered a wide range of subjects on investment environment including governance, investment climate, political stability, legal and regulatory environment, etc., which shows the Philippines did poorly in almost all of them (scoring last or second to the last among ASEAN 6 in most cases)[34].

Table A.1-1 Surveys Arangkada tracks

Survey Title	Years	Most recent RP ranking	ASEAN-6 position	Trend
ASEAN Regional Survey	2003-09	N/A	N/A	N/A
Best Countries for Business	2008-09	84 of 127	5 of 6	Improved
Failed States Index	2006-09	53 of 177	6 of 6	Deteriorating
Index of Economic Freedom	2001-10	109 of 179	4 of 6	Deteriorating
World Competitiveness Yearbook	2001-10	39 of 58	6 of 6	Improved
International Property Rights	2007-10	80 of 115	4 of 6	Deteriorating
Corruption Perceptions Index	2001-10	139 of 180	6 of 6	Deteriorating
Human Development Report	2001-10	105 of 182	4 of 6	Deteriorating
E-governance Readiness Survey	2002-10	78 of 183	4 of 6	Deteriorating
Doing Business	2007-10	144 of 183	6 of 6	Deteriorating
Investing Across Borders	2010	87 countries	N/A	N/A
Paying Taxes	2008-10	135 of 183	5 of 6	Deteriorating
Worldwide Governance Indicators	2002-09	212 countries	N/A	N/A
Global Competitiveness Report	2001-10	85 of 139	6 of 6	Deteriorating
Global Enabling Trade Report	2008-10	82 of 125	6 of 6	Deteriorating
Travel & Tourism Competitiveness	2007-10	86 of 180	5 of 6	Stable
Environmental Performance Index	2006-10	50 of 163	2 of 6	Improved

Source: Adopted from Arangkada Philippines [2010]

Improvements in governance, however, are evident with the assumption of the new administration.

[34] http://www.investphilippines.info/arangkada/growth/living-in-the-high-growth-neighborhood/

Corruption Perception Index (CPI) of Transparency International[35], for example, shows this. In 2012, out of a population of 176 countries and territories, the Philippines ranked 105th, a stride from 129th of 2011.

Table A.1-2 Corruption Perception Index for the Philippines

	2008	2009	2010	2011	2012*
Corruption Perception Index (CPI)	2.3	2.4	2.4	2.6	34
Rank	141	139	134	129	105
Number of Countries & Territories	180	180	178	183	176

Source: Transparency International

Note: Until 2011, CPI scale is from 0 (perceived to be highly corrupt) to 10 (perceived to have low levels of corruption)

*In 2012, scale is from 0 (highly corrupt) to 100 (very clean)

The marked improvement in governance aspect is also felt by the business sector. In a 2008 survey by the World Economic Forum (WEF)[36] about the most problematic factors for doing business[37], corruption and inefficient government bureaucracy are the two factors that received the most response. While they still are the two main factors come 2012, their corresponding percentage of responses significantly decreased.

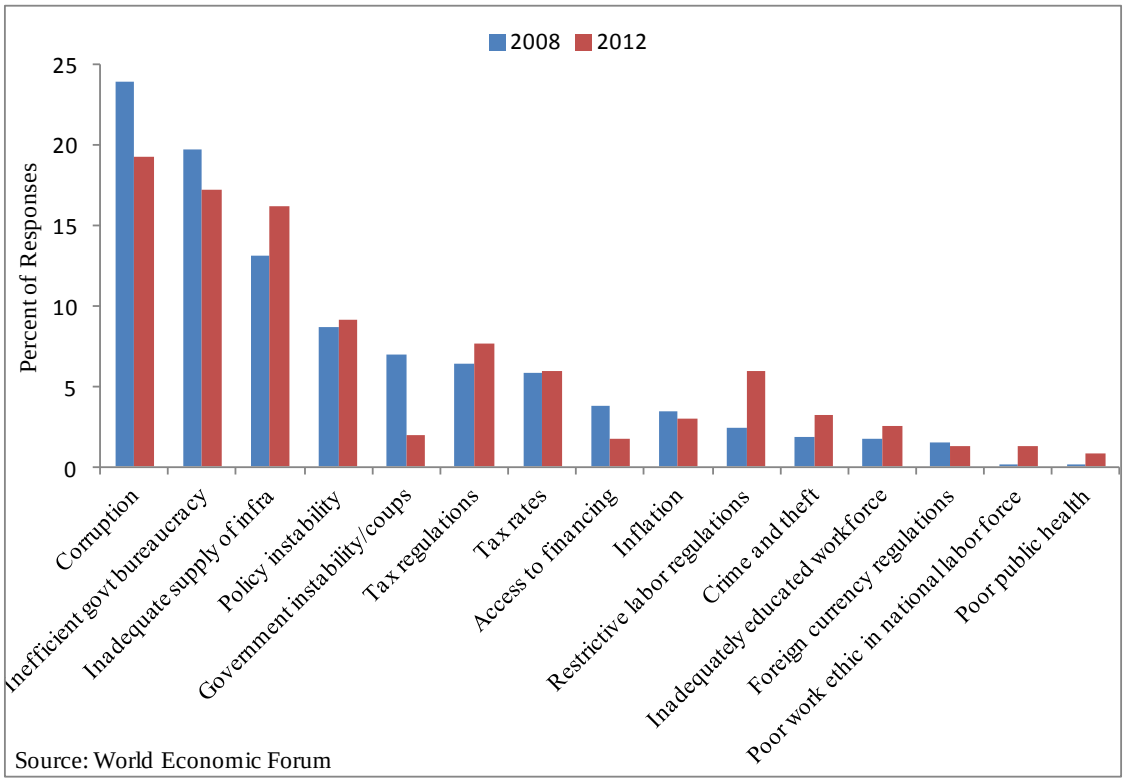


Figure A.1-3 The Most Problematic Factors for Doing Business in the Philippines

With the improvements in governance indicators, the business sector now considers inadequate supply

[35] www.transparecy.org

[36] www.weforum.org

[37] The WEF conducts the survey in the following manner: From a list of 15 factors, respondents were asked to select the five most problematic for doing business in their country and to rank them between 1 (most problematic) and 5. The bars in the figure show the responses weighted according to their rankings.

of infrastructure as the new serious issue to be dealt with. Indeed, in 2012, while the percentage of responses of corruption and inefficient government bureaucracy declined, that of inadequate supply of infrastructure significantly increased. Despite the improvements, the Philippines still ranks poorly compared to its ASEAN peers.

Investors and creditors to PPP projects are particularly vulnerable to such risks as infrastructure investments are huge, generally immobile/captured, and are financially exposed for as long as 20 years or even longer.

Annex 2 of this report describes legal cases whereby court action has had adverse impact on the private investor and investment climate for PPP.

- Agan vs. PIATCO (2003) —The Supreme Court ruled that the $ 350 million contract with a consortium involving German investment for the development of the NAIA International Passenger Terminal III is null and void. The Court invalidated the contract on the grounds of lack of required financial capability of the consortium and the existence of subsequent significant and material substantial amendments thereto that are contrary to public policy and that were not made in accordance with legally prescribed procedure.
- Francisco vs. Toll Regulatory Board (2010) - The Supreme Court invalidated the provision in the Supplemental Toll Operation Agreement for the extension of the North Luzon Expressway in which the Toll Regulatory Board agreed to pay monthly the difference in the toll fees actually collected by the concessionaire, MNTC, and that which it could have realized under said agreement. The Court ruled that said provision violates the very constitutionally guaranteed power of the Legislature, to exclusively appropriate money for public purpose from the General Funds of the Government.

- NPC vs. Province of Quezon (2009) - Notwithstanding the provision in the Energy Concession Agreement between the NPC and Mirant Pagbilao stating that the real property taxes due on the improvements on the power plant site shall be the responsibility of NPC, the Supreme Court upheld the Province of Quezon real property tax assessment against Mirant Pagbilao. The Court reasoned that statutory liability of Mirant Pagbilao as legal owner of the improvements during the concession period (as opposed to the mere expectancy of NPC to obtain ownership after the concession period) is not negated by said contractual provision, which at best could only operate to allow Mirant Pagbilao to demand reimbursement for said taxes from NPC.

The Arangkada document also cites other cases, as described below[38]

- Meralco— In 2003, Supreme Court disallowed a 20 year old accounting practice, ordered retroactive refunds that impair credit worthiness of the country's largest distribution utility, discouraged foreign bank lending to power projects;
- Pandacan Terminal Spot Zoning—Supreme Court sustained an LGU decision rezoning an oil storage area from industrial to commercial and forcing its relocation in 2008.

(See Table 69 'Supreme Court decisions with negative impact on business"[39] and also Table 77, "Instances where LGU actions harmed investment climate"[40] in Arangkada document).

Ideally, if all costs and risks in a PPP project can be properly priced, and if government is not constrained either fiscally or by institutional dysfunctions in the legislative budgetary processes, Government need only provide an upfront cash subsidy to close any viability gaps resulting from decisions to impose tariffs below cost-recovery rates. However, in a developing country like the Philippines, where the political, legal and regulatory environment may be a source of uncertainty,

[38] http://www.investphilippines.info/arangkada/a-dysfunctional-court-system-conclusion/

[39] http://www.investphilippines.info/arangkada/climate/judicial/#table69

[40] http://www.investphilippines.info/arangkada/climate/local-government/#table77

private investors typically demand stronger assurances by way of government guarantees to enter into risky, long-term PPP contracts.

More specifically in the Philippines, there is a problem of the Government not being able to make good on its obligations under various types of PPP contracts even when Government is in clear breach of a payment obligation and recognizes such without dispute or even when there may already be an enforceable court or third party judgment in favor of the private contracting party from bodies which the Government has agreed to be governed by within the terms of the PPP contract (e.g., arbitration in Singapore-based International Chamber of Commerce (ICC) under the MWSS concession agreement).

In many situations, the Government is not legally able to make good on a payment obligation in the absence of enabling budget appropriation for it.

Basically, there are two categories of the problem. The first involves certain payments that Government needs to make but which requires multi-year budget authority under a Philippine budgetary system that only provides for annual authority, thus exposing the private proponent to non-payment due to lack of Congress appropriation for the payment.

Examples of PPP contracts with these types of budget appropriation risk include the take-or-pay contracts of the National Power Corporation, capacity fee payments for MRT Line 3 and more recently, the amortization/lease payments for the Department of Education's PSIF. In some of these cases, government is the only source of revenue for the private sector thus making this its key project risk.

The second involves true contingent liabilities involving government guarantee of various risks that the private proponent will need to be covered against for the PPP project to be bankable.

The most common examples of government failure to deliver on its commitments include failure to deliver right of way, failure to adjust tariffs by formula, changes in law that may affect project finances and an assortment of construction related disputes. While the contract may provide for formula-based compensatory mechanisms in case of breaches (e.g., rate adjustment), in most cases, there is uncertainty on trigger mechanisms and actual computation government payment giving rise to further delays in arriving at what is "fair" compensation.

Based on past experience, under more friendly cases government breaches have commonly been remedied by an extension of the contract period or extraordinary adjustments in tariffs to compensate for income losses, but under major dispute cases have also ended in the private proponent demanding termination payment

In the past, government has generally structured its PPP contracts by having a GOCC, like the National Power Corporation (NPC) for IPP contracts; PNCC, Philippine National Construction Corporation (PNCC), Bases Conversion and Development Authority (BCDA) and Public Estates Authority (PEA) (now the Philippine Reclamation Authority), for toll road contracts; Metropolitan Waterworks and Sewerage System (MWSS), for water concession, National Irrigation Administration for a water cum power project; etc., which can legally be guaranteed by the national government as the implementing agency. Where there is default by these corporations, the national government can immediately make good on the default as such is converged by automatic appropriation since Section 26, Chapter 4, Book VI of the Administrative Code of 1987, includes national government guarantees of obligations that are drawn upon in the items that are covered by automatic appropriation. Indeed DOF has a fair record of making good on its guarantee commitments. This is more clear-cut for loan agreements than for PPP contracts where there are usually more areas for contention.

This is an important reason why this structure was adopted where feasible in the past even when a national agency could have likewise been the designated agency (e.g. PNCC, PEA and BCDA instead of DPWH), and why this has provided sufficient comfort for the bankability of these projects to

investors and creditors alike. Where this structure was not or could not have been adopted, i.e. where the implementing agency is a national agency and not a corporation, the issue has arisen of how to make good on payment obligations when budget appropriation may not be secured with certainty and in a timely manner. In the case of the MRT Line 3 contract, there has been actual failure to make direct liabilities to investors in accordance with the contract a number of times.

The following factors are relevant to consider in providing clarity and certainty in assurance of government's ability to discharge its contract commitments:

- Importance of generating more projects and investor interest to address the large infrastructure backlog in the past as mentioned earlier, especially as limited fiscal resources become more of a constraint with government's enhanced institutional capability to develop PPP projects.
- The need for more competition, as this impacts on cost to the government/public, and the quality of execution.
- Need to develop "bankability" of projects to broaden and deepen pool of financing for projects, especially of the non-recourse, non-balance sheet type, from both domestic and international financial markets, and thus lower cost of project financing and project costs.

High risks relating to government's inability to discharge contract obligations may of course be compensated by other project features—e.g., healthy existing revenue stream not too dependent on government action, as characterized by many of the "brownfield projects" in the pipeline, and varying risks appetites of bidder. Moreover, consideration needs to be given to unintended advantage given to players who may have unduly high risk appetites or can maneuver through regulatory/budgetary/legal opaqueness better (adverse selection).

As government's pipeline of projects becomes fuller, with more greenfield projects being developed, and as fiscal space becomes more constrained, there would be greater need to provide a high level of certainty and clarity in its ability to fulfill its obligations. Consideration may need to be given to mechanisms for doing so, including having a dedicated specialized institution for such.

Annex 2. Possible Options for Establishing a Guarantee Fund

Two options are being studied and considered for the establishment of the envisioned guarantee facility:

- A guarantee facility as a GOCC, whether the same shall be newly created or one that is already existing, with some modifications in its charter, if necessary; or
- A guarantee facility as a special trust fund directly administered by DOF.

As a corporate entity or GOCC, the guarantee facility may be patterned after the IIGF, which, as explained in the World Bank project document (Indonesia Infrastructure Guarantee Fund, August 21, 2012), addressed concerns of private investors in the following ways:

> "a) Facilitate PPP deal flow by providing GOI guarantees to mitigate risk to private sector stemming from government actions (or inactions) in well prepared PPP projects;
> b) Improve the quality of PPPs by establishing a single window for appraising all PPP's requiring GOI guarantees and providing guidance to contracting agencies on how to prepare bankable PPPs.
> c) Provide clear and consistent rules for how CAs can take advantage of guarantees vis-à-vis the IIGF for well prepared PPPs;
> d) Ring-fence GOI liability vis-à-vis guarantees to PPPs."

However, while the basic concept and functions of the guarantee facility may be patterned after the IIGF, establishing the guarantee facility on the same scale as the IIGF might not be necessary at the outset considering that there are other government agencies which already play key roles in enabling PPP in the Philippines (*i.e.*, The PPP Center, Project Development and Monitoring Facility).

To be effective, the guarantee facility will have to be adequately funded. Funding for a GOCC may come in the form of equity directly from Government or another GOCC (in the case of a subsidiary). Support may also come in the form of debt from multilateral agencies. In this regard, it would be important that the guarantee facility is, by its charter, empowered to borrow and issue debt instruments, and is able to obtain a guarantee from DOF or possibly another GOCC with guarantee functions such as the Philippine Export-Import Credit Agency ("PHILEXIM").

The guarantee facility, as a GOCC, may be effective as it will be able to more readily make guarantee payments without the severe restrictions of annual budgetary appropriation. A GOCC's board of directors is charged with the management of its resources and may so disburse its funds as it may see fit. It may be noted that the same result may possibly be achieved by establishing the guarantee facility as a DOF-administered trust fund similar to the Municipal Development Fund. The mechanisms and characteristics of a guarantee facility as a GOCC may well be mimicked by a specially-constituted office within DOF. The essential difference between the two approaches, however, is that setting up the trust fund (to be administered by DOF or some other office) has to be legislated while establishing a GOCC need not.

What follows is a more detailed explanation of the benefits as well as the steps that may be undertaken to establish the guarantee facility through either of the above-mentioned two options.

(1) The guarantee facility as a GOCC

A GOCC is legally defined as "an agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its

outstanding capital stock."[41]

A GOCC, much like any corporation, has a juridical personality separate and distinct from its shareholders, including the Government.[42] Moreover, a GOCC has all the powers of a corporation as enumerated in its enabling statute, whether the same is a special law or the Corporation Code of the Philippines. As incident to a GOCC's having a juridical personality of its own, it has the express power to hold and possess assets and properties of its own[43] and to transact business outside direct interference of its shareholders. As such, a GOCC enjoys greater independence and flexibility in its operations than government agencies, because, unless otherwise specifically provided in law, only the approval of its Board of Directors is required in order for it to enter into ordinary business transactions.

As opposed to the foregoing, certain stringent legal requirements have to be met with respect to government agencies. For instance, the funds of a government agency form part of the pool of funds of the National Government, no part of which may be disbursed out of the National Treasury without a corresponding appropriation made by law.[44] Thus, if the guarantee facility shall be established under the administration of a government agency like DOF, amounts to be disbursed out of the same, or at least amounts which may be necessary to replenish the same, may have to be (as a general rule) included in the annual General Appropriations Act.

Establishing the guarantee facility in a GOCC may help avoid the restrictions resulting from the budgetary process and afford it some flexibility enjoyed by private enterprises so that it may meet its payment obligations as and when they become due.

a. Newly Created GOCC

The guarantee facility may be established through the enactment by the Congress of a law specifically creating a GOCC which will handle its envisioned functions, and appropriating public funds (which may be sourced from official development assistance loans) for that purpose. However, establishing a GOCC through legislation will be long and tedious as the measure will have to go through the mandatory processes of both Houses of Congress.[45] The legislative procedure will be arduous, and the

[41] Section 3(o) of RA No. 10149, or the GOCC Governance Act of 2011.

[42] National Electrification Administration vs. Morales, 528 SCRA 79 (2007).

[43] See National Development Company vs. City of Cebu, 215 SCRA 382 (1992).

[44] Section 29 (2), Article VI of the 1987 Constitution.

[45] The passage of a law in the Philippines goes through Congress, which is composed of two Houses – the Senate and the House of Representatives. First, any Senator or a Member of the House of Representatives must agree to sponsor a bill proposing a law. Said sponsored bill shall then undergo three readings in the originating House (i.e. Senate or House of Representatives). After the first reading of the bill, it shall then be referred to the appropriate committee/s for deliberation and conduct of public hearings, if necessary (i.e. the Senate Committee on Government Corporations & Public Enterprises, the House of Representatives Committee on Government Enterprises and Privatization). Based on the result of the public hearings or Committee discussions, the Committee may introduce amendments to the proposed bill, consolidate it with others on the same subject matter, or propose a substitute bill. The Committee shall then prepare a Committee Report for the Plenary. During the second reading at Plenary, there shall occur the period of sponsorship and debate, the period of amendments, and actual voting. All amendments, if any, are consolidated in the bill which shall undergo third reading, during which no more amendments shall be allowed. If the bill is approved by majority vote of the Members present, it shall be transmitted to the other House, in which the same legislative process shall be followed. If the bill is not approved, the bill is transmitted to the Archives.
If there are certain differences to the versions of the bill approved by either House, a Bicameral Conference Committee is constituted and is composed of Members from both Houses of Congress to settle, reconcile or thresh out differences or disagreements on any provision of the bill. The Conference Committee may also introduce new provisions germane to the subject matter or come up with an entirely new bill on the subject. The Conference Committee Report is then submitted for consideration and approval of both Houses.
Copies of the bill, signed by the Senate President and the Speaker of the House of Representatives and certified by both the Secretary of the Senate and the Secretary General of the House, are transmitted to the President. The President shall have thirty (30) days from date of receipt thereof within which to approve or veto the bill. If the bill is approved or is not vetoed within said thirty (30) days, the bill is assigned a Republic Act number and transmitted back to the originating House.
If the bill is vetoed, the bill is transmitted to the originating House with a message citing the reason for the veto. The

result uncertain.

A new GOCC may instead be created by going through an administrative, rather than legislative process, by registering the same with the Securities and Exchange Commission ("SEC"). In said case, the government agency seeking to establish a GOCC must, prior to SEC registration, submit its proposal to the Governance Commission for GOCCs ("GCG"), recently created under Republic Act ("RA") No. 10149, or the GOCC Governance Act of 2011. The GCG is tasked to review such proposal and thereafter determine whether to recommend the same for the President's approval.[46] Prior to making its recommendation, the GCG shall require the submission of various documents[47], evaluate the same and thereafter conduct formal consultation with the proposing agency as well as other stakeholders affected, if any. In evaluating such a proposal, the GCG seeks to establish that the establishment of the new GOCC is necessary and is germane to the current policy of government, among others. The SEC shall not register the articles of incorporation ("AOI") and by-laws of the proposed GOCC unless the application for registration is accompanied by an endorsement from the GCG stating that the President has approved the same.[48]

The SEC shall likewise require various documents[49] and conduct its own evaluation procedure. Assuming an applicant passes the process, the incorporation of the GOCC through SEC registration shall be effective, and the corporate existence and juridical personality of said GOCC shall commence, upon the issuance by the SEC of a Certificate of Incorporation under its official seal.[50]

Based on an inquiry with the Insurance Commission ("IC"), an endorsement from the IC is also required in order to register a corporation whose primary functions include guaranteeing the obligations of another entity. We have been informed that, based on practice, the IC requires a secondary license to be obtained before a corporation may engage in the business of guaranteeing obligations.[51]

b. "Evolving" an Existing GOCC

As an alternative to the creation of a new GOCC, a number of current and existing GOCCs are available to be utilized as a corporate vehicle for the guarantee facility. An existing GOCC may be used by organizing a facility or specialized office under the said GOCC, or by having a GOCC, so

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Congress may override the veto if, upon separate reconsideration of both Houses, the bill is passed by a vote of two-thirds of the Members of each House. In such case, the bill shall then become a law.

46 Section 27 of RA No. 10149, or the GOCC Governance Act of 2011.

47 Attached as "Appendix (Documents Required by GGC)" is a list of documents ordinarily required by the GCG in its evaluation of the proposed creation of the GOCC.

48 Sections 5 and 27 of RA No. 10149, or the GOCC Governance Act of 2011.

49 Name Verification Slip (may be secured online or from SEC Name Verification Unit); AOI and By-laws; Treasurer's Affidavit; and Joint affidavit of two incorporators undertaking to change corporate name, as provided in its AOI or as amended thereafter, immediately upon receipt of notice or directive from the SEC that another corporation, partnership, or person has acquired a prior right to the use of that name or that name has been declared misleading, deceptive, confusingly similar to a registered name, or contrary to public morals, good customs or public policy. The Joint Affidavit shall not be required if the AOI has a provision on this commitment.

50 Section 19 of Batas Pambansa Blg. 68, as amended, or the Corporation Code of the Philippines.

51 It must be noted that while a contract of suretyship is expressly deemed to be an insurance contract, and is expressly covered by Presidential Decree No. 612, as amended, or the "Insurance Code", no other mention of a guaranty agreement is made under the Insurance Code. Instead, the provisions of the Civil Code govern ordinary contracts of guaranty.

In this connection, while suretyship agreements and ordinary guaranty agreements are similar in that both agreements involve a party (called the guarantor or surety) guaranteeing the performance by another party (called the principal or obligor of an obligation or undertaking) in favor of a third party (called the oblige), the guarantor in an ordinary guaranty agreement binds himself to fulfill the obligor's obligation only in case the latter should fail to do so, the surety in a suretyship agreement binds himself to be jointly and severally liable with the obligor and as such may be held primarily liable by the creditor. [Article 2047 of the Civil Code and Section 2 of the Insurance Code] Thus, the benefit of excursion generally enjoyed by guarantors of ordinary guaranty agreements, which protects said guarantors from being compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor,[51] is not applicable in suretyship agreements.

authorized under its charter, to create a subsidiary – another GOCC that shall be separate and distinct.

As mentioned earlier, all GOCCs are monitored by the GCG. The GCG has the power to assess the performance of a GOCC as well as the GOCC's relevance to the Philippines and recommend the reorganization, even abolishment, of GOCCs.[52]

For purposes of this report, several GOCCs that already have an existing power to guarantee obligations of another entity have been identified as possible candidates for conversion as the guarantee facility, namely: (1) National Development Company ("NDC"); (2) Philippine Export-Import Credit Agency ("PHILEXIM"); and (3) Government Service Insurance System ("GSIS").

c. National Development Company

Presidential Decree ("PD") No. 1648, which was later amended by PD Nos. 1787, 1846 and 1891 (the "NDC Charter"), provides that the NDC has a broad power to, among others, extend guarantees to commercial, industrial, mining, agricultural, and other enterprises, which may be necessary or contributory to the economic development of the country, or important to public interest.[53] In addition, the NDC has the power to make contracts and enter into such arrangements as it may consider convenient and advantageous to its interests. Clearly, not only is NDC empowered by its Charter to issue guarantees, it is also allowed to enter into contractual arrangements, such as the envisioned Recourse Agreement, akin to the contemplated guarantee facility.

However, some concerns regarding the finances and track record of the NDC have been aired in some conferences we conducted with several public officials. Concerns on finances, including capital inadequacy were identified. In this connection, the possibility of reorganizing the capital structure of NDC has been suggested. Of course, NDC or its subsidiary may be capitalized with cash. It may also be capitalized with other properties. However, if real property is considered to be infused as capital of NDC's subsidiary, the SEC will also have to conduct an evaluation of the valuation of said assets to be infused to ensure that no watered stocks are issued.[54]

Based on an inquiry with the GCG, we have been informed that while the GCG is expressly given the power to reorganize GOCCs under the GOCC Governance Act of 2011,[55] said power of reorganization relates only to the objectives and purposes of GOCCs and does not include capital

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[52] Based on an inquiry with the GCG, it is the position of the GCG that the amendment of the mandate of any GOCC, whether the same be a chartered GOCC or a SEC-registered GOCC, may be done through the GCG, subject to the approval of the President, as formalized through the issuance of an Executive Order. Following this theory, the charter of any existing GOCC may be amended through the submission of a proposal to the GCG, subject to the favorable recommendation of the GCG and the issuance by the President of an Executive Order approving the amendment of the primary purpose/s of the GOCC.

[53] Section 4, NDC Charter.

[54] For this purpose, the following documents must also be submitted to the SEC:

(1)Description of the property showing the name of its registered owner, location, area, Transfer Certificate of Title ("TCT") No., tax declaration number and the basis of the transfer value (market value/assessed value/ zonal value or appraised value), signed by the treasurer of the corporation;

(2)Copy of TCT and tax declaration sheet, as certified by the Register of Deeds and the Assessor's Office, respectively;

(3)If transfer value is based on zonal value, latest zonal valuation certified by the BIR;

(4)If transfer value is based on appraised value, appraisal report by a licensed real estate appraiser (not more than six [6] months old);

(5)Deed of assignment with primary entry by the Register of Deeds;

(6)If property is mortgaged, mortgagee/creditor's certification on the outstanding loan balance and his consent to the transfer of property;

(7)For assignment of a building where the assignor is not the owner of the land, lease contract on the land and consent of the land owner to the transfer;

(8)Affidavit of the transferor that the building/condominium unit is existing and in good condition; and

(9)Affidavit of undertaking by any incorporator or director to submit the proof of transfer of the property within the prescribed period.

[55] Section 5 of RA No. 10149, or the GOCC Governance Act of 2011.

reorganization. The GCG is of the position that anything that has to do with the finances of a GOCC and any item in its balance sheet is within the jurisdiction of DOF.

Aside from capitalizing the NDC through equity, the NDC can also seek financing through its express power to contract loans. Another important characteristic of the NDC, apart from its power to guarantee and to enter into contracts, is the guarantee which it, in turn, receives from the National Government for indebtedness it incurs. It may incur debts from financial institutions, including multilaterals on the strength of a sovereign guarantee which is deemed automatically issued under the NDC Charter.[56]

The NDC also has the power to organize subsidiary companies to undertake the same powers and engage in the same activities as the NDC.[57] Moreover, the NDC has the power to guarantee the loans and other evidence of indebtedness issued by such subsidiaries.[58] The President is expressly authorized to guarantee the guarantees issued by the NDC for the loans of its subsidiaries. Further, in its Opinion No. 16, series of 1982, the Department of Justice has affirmed that obligations of the NDC are backed by the full faith and credit of the Government.

Thus, instead of the NDC being utilized as the guarantee facility, the NDC may establish a subsidiary that can act as the guarantee facility considering that subsidiaries of the NDC, so organized, may similarly exercise the same powers granted under the NDC Charter. Using an NDC-subsidiary as the guarantee facility may insulate the National Government from further exposure from contingent liabilities if the guarantee facility is adequately capitalized and if the guarantee agreement limits the guarantee obligation to the guarantee facility. This may effectively ring-fence the risk in the NDC-subsidiary. The subsidiary is also a fresh company with a clean slate and thus, need not be burdened by NDC's previous track record. Although new, it may likely avail of the expertise of some of NDC's officers and staff until it is able to organize its own workforce and develop the requisite know-how and competence.

d. Philippine Export-Import Credit Agency

Under PD No. 550, as revised by PD No. 1080 ("PHILEXIM Charter"), PHILEXIM has the power to guarantee investments of any entity, enterprise or corporation organized to engage in business in the Philippines.[59] Hence, there is basis to believe that PHILEXIM can act as the guarantee facility by guaranteeing the investments of the private proponent in the PPP contract by ensuring that the National Government fulfills its obligations under the PPP contract.

However, the flexibility of the PHILEXIM Charter is limited. A main function of PHILEXIM is issuing guarantees for loans or credit accommodations.[60] Since a PPP contract is neither a loan nor a credit contract, there may be question as to whether the PHILEXIM Charter allows PHILEXIM to issue guarantees for obligations under a PPP contract. Because of said limitations identified in the mandate of PHILEXIM, the PHILEXIM Charter may have to be amended through the GCG in accordance with the procedure earlier discussed in order that the PHILEXIM may perform the envisioned functions of the guarantee facility.

It may be argued that obligations of the Government under a PPP contract to pay sums of money are, or at least akin to, loans from the private proponent. Should this view be taken, then PHILEXIM may arguably be able to act as the guarantee facility by guaranteeing the Government's payment obligations under a PPP contract. PHILEXIM representatives we have discussed the matter with have

[56] Section 12, NDC Charter.

[57] Section 4(16) of the NDC Charter specifies that the NDC can "organize subsidiary companies to undertake any of the activities" that NDC is empowered to do under Section 4 of the NDC Charter.

[58] Section 4 (11) and (16), NDC Charter.

[59] Section 2 (d), PHILEXIM Charter.

[60] Section 2 (a) and (b), PHILEXIM Charter.

taken the latter or more liberal view that is that PHILEXIM's mandate under its Charter allows it to cover contractual obligations.

The PHILEXIM Charter also limits PHILEXIM's guaranteeing power by providing that PHILEXIM is not allowed to guarantee a single borrower in an amount exceeding PHILEXIM's subscribed capital stock, nor may PHILEXIM's aggregate outstanding guarantee obligations exceed fifteen (15) times its subscribed capital stock plus surplus.[61] To increase PHILEXIM's guarantee power, it may also be necessary to increase PHILEXIM's authorized capital stock to increase the limits to its guaranteeing power. Notably, under the PHILEXIM Charter, increasing PHILEXIM's authorized capital stock only requires approval from the PHILEXIM Board and the President of the Philippines (and thus, does not require legislation).

Obligations of PHILEXIM are also fully guaranteed by the National Government. However, unlike the NDC, PHILEXIM does not have an express power to create subsidiaries, nor guarantee obligations of such subsidiaries.

e. Government Service Insurance System

The GSIS has also been suggested as a possible candidate for the guarantee facility. Basis for the suggestion is found in Section 7 of the BOT Law which provides:

> "SECTION 7. Contract Termination. — In the event that a project is revoked, cancelled or terminated by the government, through no fault of the project proponent or by mutual agreement, the Government shall compensate the said project proponent for its actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination: Provided, That the interest of the Government in these instances shall be duly insured with the Government Service Insurance System or any other insurance entity duly accredited by the Office of the Insurance Commissioner: Provided, finally, That the cost of the insurance coverage shall be included in the terms and conditions of the bidding referred to above.
>
> In the event that the government defaults on certain major obligations in the contract and such failure is not remedied or if remediable shall remain un-remedied for an unreasonable length of time, the project proponent/contractor may, by prior notice to the concerned national government agency or local government unit specifying the turn-over date, terminate the contract. The project proponent/contractor shall be reasonably compensated by the Government for equivalent or proportionate contract cost as defined in the contract." [Emphasis supplied]

However, it is unclear whether the interest to be insured with the GSIS in the above-quoted provision only refers to the assets of the project or whether it pertains to the payment obligation of the government because of the contract termination.

In any event, it must be noted that under RA No. 8291 (the "GSIS Charter"), the funds of the GSIS may not be used for purposes other than what are provided under the GSIS Charter.[62] In this regard, the GSIS Charter provides that aside from the GSIS Social Insurance Fund which shall be used to finance the statutorily provided benefits of government employees, the GSIS shall also administer the government employees' optional insurance fund, the government employees' Compensation Insurance Fund created under PD No. 626, and the General Insurance Fund created under RA No. 656.

RA No. 656 created and established the Property Insurance Fund (renamed as the General Insurance Fund by PD No. 245) in order to indemnify or compensate the Government for any damage to, or loss of, its properties due to fire, earthquake, storm, or other casualty.[63] RA No. 656 requires that all

[61] Section 6(f) of the PHILEXIM Charter.

[62] Section 34 of the GSIS Charter.

[63] Section 2 of RA No. 656.

Government property be insured by the GSIS against all insurable risk,[64] and authorizes the GSIS to engage in the business of all types of insurance using the said General Insurance Fund, expressly including the issuance of surety and/or performance bonds both in Philippine peso and/or in any foreign currency, provided that the amount of the bond to be issued on any one risk or undertaking shall be limited to 10% of the net worth of the General Insurance Fund, and that the excess over said limit be reinsured with domestic and/or foreign insurance and reinsurance companies.[65]

The foregoing may serve as basis for the GSIS to issue an insurance product (*e.g.* a surety bond) that will serve to guarantee payment to a private proponent in case the Government fails to fulfill its obligations in a PPP project. Through the issuance of said insurance product, the GSIS may perform the functions of the guarantee facility.

Based on an inquiry from the GSIS Insurance and Legal Departments, the GSIS has never issued such type of insurance before. What the GSIS normally issues, consistent with the GSIS Charter, is a surety bond in favor of a government agency, to compensate the same in the event of default of the private party under the PPP contract, and not the other way around. Nevertheless, it is the GSIS' position that the GSIS may issue such type of insurance, since the GSIS may issue an insurance product as long as a government agency requests for the same. For instance, if the terms of reference or bid documents of a BOT project issued by the implementing agency shall provide that such an insurance (*i.e.* one that shall insure payment to a private proponent in case the Government fails to fulfill its obligations in a PPP project) should be obtained from the GSIS, said provision in the terms of reference or bid documents shall serve as sufficient basis for the GSIS to issue said insurance product. Although said insurance product is one that ultimately redounds to the benefit of a private party and not the Government, and technically does not cover any property of the Government, the same may be viewed as a liability insurance obtained by the government agency to insure against its own liability in the event that it fails to fulfill its obligations in the PPP contract. In this regard, a "contract of insurance", as statutorily defined, expressly includes an agreement whereby one undertakes for a consideration to indemnify another against loss, damage **or liability** arising from an unknown or contingent event.[66]

Notwithstanding the foregoing, even if there is basis for the GSIS to issue said insurance product on the argument that it covers insurable risks belonging to the Government, it is highly plausible that the same may be met with objections, considering that the GSIS funds which are originally meant only to secure the pension benefits of government employees, are sought to be used for other purposes, no matter how socially desirable said purposes are.

(2) Establishment of guarantee facility as a Special Fund Administered by DOF

Another option available for creating the guarantee facility is to establish a special fund directly administered by DOF (or any other office) similar to the Municipal Development Fund ("MDF"), which is currently administered by the Municipal Development Fund Office ("MDFO") under DOF.

A special fund, such as the one referred to above, must be distinguished from the general fund of the National Government. Section 136 of the Government Accounting and Auditing Manual ("GAAM") defines the General Fund as:

> "…that fund which is available for any purpose to which the legislative body may choose to apply it, and is composed of all receipts or revenues which are not by law or by contractual agreement applicable to specific purpose or purposes. It is used to finance the ordinary operations of a government unit."

All revenues or receipts of the Government accrue, unless otherwise provided by law, to the general

[64] Section 5 of RA No. 656.

[65] Section 3 of RA No. 656.

[66] Section 2 of the Insurance Code.

fund.[67] It is the pool of funds annually allocated or apportioned by Congress through the General Appropriations Act for use in the ordinary course of running government. Balances of appropriations authorized in a General Appropriations Act that are unexpended also revert back to the general fund.[68]

However, Section 45 of the Administrative Code of 1987 provides that receipts of the government may not accrue to the general fund if a law has authorized the recording of such receipts as income of special funds:

> "SECTION 45. Special, Fiduciary and Trust Funds. — Receipts shall be recorded as income of Special, Fiduciary or Trust Funds or Funds other than the General Fund, only when authorized by law and following such rules and regulations as may be issued by a Permanent Committee consisting of the Secretary of Finance as Chairman, and the Secretary of the Budget and the Chairman, Commission on Audit, as members. The same Committee shall likewise monitor and evaluate the activities and balances of all Funds of the national government other than the General fund and may recommend for the consideration and approval of the President, the reversion to the General fund of such amounts as are (1) no longer necessary for the attainment of the purposes for which said Funds were established, (2) needed by the General fund in times of emergency, or (3) violation of the rules and regulations adopted by the Committee: Provided, that the conditions originally agreed upon at the time the funds were received shall be observed in case of gifts or donations or other payments made by private parties for specific purposes." [Emphasis supplied]

A special fund covers funds that have, by law, been designated for a specified or special purpose. It "is a fund which by legislative action, segregates specified revenues for limited purposes."[69] On the other hand, trust funds refer to "funds which have come officially into the possession of any agency of the government or of a public officer as trustee, agent, or administrator, or which have been received for the fulfillment of some obligation."[70]
Another type of special fund that can be established is a revolving fund:

> "Revolving funds shall be established and maintained only where said funds are expressly created and authorized by law.
>
> Receipts derived from business-type activities of departments, bureaus, offices or agencies which are authorized by law to be constituted into a Revolving Fund shall be separately recorded and deposited in an authorized government depository bank. This may be made available for operational expenses of the said activity of the agency subject to the conditions prescribed under the special provisions of the agency concerned and the rules and regulations as may be prescribed by the Permanent Committee created under Section 51 of PD 1177. The Revolving Fund shall be self-perpetuating and self-liquidating and all obligations or expenditures incurred by virtue of said business-type activities shall be charged against the Revolving Fund: PROVIDED, That interest and other income earned shall be deposited with the National Treasury and shall accrue to the Agency's General Fund pursuant to Section 65 of PD 1445 and Sec. 29(1) of Article VI of the 1987 Constitution."71

Parenthetically, the MDF mentioned earlier was created as a revolving fund capitalized and funded from proceeds of foreign loans, assistance or grants made available to local government units for specific purposes, project components and activities set forth in international agreement with foreign government and international organizations pursuant to a law, PD No. 1914.

Based on inquiries with the Department of Budget and Management ("DBM"), the only difference

[67] Section 44, Chapter 5, Book VI, Title II, Administrative Code of 1987.
[68] Section 28, Chapter 4, Book VI, Title II, Administrative Code of 1987.
[69] Section 136, GAAM.
[70] Section 136, GAAM.
[71] Section 121, GAAM.

between trust funds and revolving funds is that the latter earn income, which income is deposited in the same revolving fund for future use. Technically, a trust fund may become a revolving fund if the trust fund earns income, which income is deposited back to the trust fund.[72]

In any event, either type of fund provides certain flexibility with respect to the disbursement of money. As confirmed by a representative of DBM, once a special fund is set-up by law, the money that is placed into such a fund is excluded from the general fund. Thus, there is no need for further appropriation by Congress to be able to utilize such fund because Congress already "appropriated" the money for the special fund through the law creating the special fund. This is consistent with the Constitutional mandate that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[73] As previously discussed, the "law" mentioned by the Constitution is not limited to the General Appropriations Act but includes other laws, such as those providing for automatic appropriation.

The law creating the special fund can also specify the sources of the money to be deposited in the special fund. As an example, PD No. 1914 specifically provides that the MDF shall be funded from foreign loans, assistance and grants. As such, in case a loan is extended to the MDF, the money loaned is directly deposited to the MDF and does not go through the general fund.

Considering the foregoing, establishing the guarantee facility in a special fund, such as a trust fund or a revolving fund, will also provide the same benefit of establishing it in a GOCC – greater flexibility to disburse and to borrow funds. However, creating such a special fund has to be done by statue, which will have to undergo a lengthy procedure.[74]

[72] Note, however, that the income deposited back to the revolving fund only pertains to income that is specified under the law creating the revolving fund. Interest (from the fund being deposited in a depositary bank) and other incidental income of the revolving fund not specified under the law creating the revolving fund will accrue to the general fund.

[73] Section 29, Article VI, 1987 Constitution.

[74] *cf*. Note ix.

Annex 3. Legal Aspect of PIPFF

As discussed in Annex 2, GOCCs may be created by the National Government either through legislation, or through incorporation or registration with the SEC of a corporation at least majority or 51% of its capital stock is owned by the Government through any of its instrumentalities or agencies, including other GOCCs.

The other option in establishing the PIPFF is to use an existing GOCC by organizing a facility or specialized office under the said GOCC, or by having a GOCC, so authorized under its charter, to create a subsidiary – another GOCC that shall be separate and distinct. However, relevant processes with the GCG must be followed.

The following GOCCs may be considered to be utilized to handle the functions related to the operations of PIPFF:

- The Philippine Infrastructure Corporation ("PIC"), a wholly-owned subsidiary of the NDC may manage the PIPFF and directly lend funds from the PIPFF to qualified private proponents; and
- The PHILEXIM may guarantee the ODA loan to be extended to PIC for the establishment of the PIPFF.

(1) Necessary Steps Related to PIC and PHILEXIM

Before PIC and PHILEXIM may validly perform the foregoing functions, an amendment to the charter of PIC and an increase in the capital stock of PHILEXIM, which both do not require legislation, are necessary for the reasons discussed below.

In the Philippines, the functions of corporations, including GOCCs, are limited by their Articles of Incorporation ("AOI") or Charters. Under the current AOI of PIC, it is not expressly authorized to borrow nor to lend money.[75] An amendment of PIC's AOI is necessary before PIC may validly obtain an ODA loan for purposes of establishing the PIPFF and lend the funds to private proponents.

Currently, PIC's authorized capital stock amounts to Eighty Million Pesos (80,000,000.00 pesos).[76] In addition, we were advised by officials of the National Development Company, the owner of PIC, that PIC maintains a ten times (10x) gearing ratio of its debt and equity levels, for prudential reasons. For illustrative purposes, say an ODA loan in the amount of Twenty Five Billion Pesos (25,000,000,000.00 pesos), PIC's authorized capital stock must be increased to Two Billion Five Hundred Million Pesos (2,500,000,000.00 pesos), in order to maintain the 10:1 debt-equity ratio. Moreover, depending on the leverage requirement which may be imposed by the ODA loan provider, the capital of PIC may have to be increased further.

a. Approval by the Board of Directors and Shareholders of the PIC

In order to amend the AOI of PIC, the Corporation Code of the Philippines requires: (1) the majority vote of the board of directors; and (2) the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock of the corporation.[77]

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[75] The current Articles of Incorporation of PIC provides for the following purpose:

"To promote the overall economic development by developing, packaging, structuring and/or managing investments in infrastructure projects and commercial ventures related to the development of infrastructure in which the National Development Company wishes to participate/invest; and to engage only in activities and transactions that are directly related, necessary or incidental to accomplish the primary purpose. The Corporation shall not engage in any other activity or transaction outside or beyond its primary purpose."

[76] Based on PIC's Articles of Incorporation and General Information Sheet for the year 2012.

[77] Section 16 of Batas Pambansa Blg. 68, or the Corporation Code of the Philippines.

b. Notification to the Governance Commission for GOCCs ("GCG")

Being a GOCC[78], PIC is covered by the provisions of RA No. 10149, or the GOCC Governance Act of 2011. While the said law does not expressly require that the approval of the GCG be obtained for the amendment of the AOI of a GOCC,[79] it may be prudent to at least notify the GCG of any amendments to PIC's AOI, especially considering that the amendments involve an increase in capitalization and a change in the purpose of PIC.[80]

c. Approval of the SEC

Before the amendments to PIC's AOI can take effect, the approval of the SEC must first be secured.[81]

In addition, should assets, instead of cash, be infused to PIC in the course of increasing its capital, the SEC will also have to evaluate the valuation of said assets before the infusion can be recorded in the books of PIC.

(b) Increase in Capital Stock of PHILEXIM

As guarantor of the ODA loan to be extended to PIC for the establishment of the PIPFF, the team evaluated the extent of PHILEXIM's power to guarantee. Under its current Charter, PHILEXIM is not allowed to guarantee a single borrower in an amount exceeding PHILEXIM's subscribed capital stock, nor may PHILEXIM's aggregate outstanding guarantee obligations exceed fifteen (15) times its subscribed capital stock plus surplus.[82] In this regard, the PHILEXIM Charter provides that PHILEXIM's subscribed capital stock is Ten Billion Pesos (10,000,000,000.00 pesos). However, PHILEXIM has also disclosed that instead of computing the guarantee limits in its Charter based on its subscribed capital stock, they compute the guarantee limits based on PHILEXIM's net worth, which currently stands at P1.5 Billion.

Thus, considering the limitations on its guarantee powers, for PHILEXIM to be able to guarantee for example an ODA loan to PIC in the amount of Twenty Five Billion Pesos (25,000,000,000.00 pesos), its authorized capital stock, and ultimately, its net worth, must be increased to at least Twenty Five Billion Pesos (25,000,000,000.00 pesos). In this regard, the PHILEXIM Charter provides that its authorized capital stock may be increased by its Board of Directors, subject only to the approval of the President of Philippines, without the necessity of Congressional approval.[83]

(2) PIC Obtaining a Secondary License from the SEC

Aside from the amendment to its AOI, PIC must also obtain a secondary license from the SEC to be able to engage in lending activities. It may secure a secondary license either as a lending company or a financing company.

Basically, a lending company is a "corporation engaged in granting loans from its own capital funds or

[78] A GOCC is defined under Section 3(o) of the GOCC Governance Act of 2011 as "any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock."

[79] However, it must be noted that GCG endorsement is required for the creation of a new GOCC [Section 27 of the GOCC Governance Act of 2011].

[80] It is among the powers and functions of the GCG to reorganize, merge, streamline, abolish or privatize any GOCC based on its evaluation of the relevance of the GOCC's functions [Section 5(a) of the GOCC Governance Act of 2011].

[81] Section 16 of the Corporation Code of the Philippines.

[82] Section 6(f) of the PHILEXIM Charter.

[83] Section 7 of the PHILEXIM Charter.

from funds sourced from not more than nineteen (19) persons"[84], while a financing company is a corporation "primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property"[85]. Thus, while both a lending company and a financing company may engage in direct lending activities, a financing company may also engage in other activities, such as discounting of commercial papers and receivables, trading of contracts, leases, chattel mortgages and other evidence of indebtedness, and financial leasing of movable and immovable properties.

While securing a secondary license from the SEC as a financing company will allow PIC to engage in other functions aside from direct lending, this will also subject PIC to the supervision of the Bangko Sentral ng Pilipinas ("BSP"). Thus, since what is envisioned under the PIPFF is merely the lending of funds, it may be simpler if PIC secures a secondary license as a lending company, and not a financing company, to avoid additional regulations from BSP. [86]

(3) Possible Establishment of guarantee facility and PIPFF in a Single GOCC

The process involved in establishing the PIPFF through a GOCC is similar to that required for setting-up the guarantee facility, which is discussed in Annex 2. Thus, it appears that both processes may be undertaken simultaneously to create one GOCC that will serve as both the guarantee facility and the PIPFF, provided that the required authorities for the functions of both institutions are duly obtained. It is well to note that, in the quantitative analysis discussed in the earlier portion of this paper, it was also established that combining the guarantee facility with the PIPFF provides for far greater incremental benefits for the government.

[84] Section 3(a) of Republic Act No. 9474, or the Lending Company Regulation Act of 2007.

[85] Section 3(a) of Republic Act No. 5980, as amended by Republic Act No. 8556, or the Financing Company Act.

[86] In this regard, one concern that might crop up is the nationality restrictions applicable. Note that lending companies can only have foreign equity of up to forty nine percent (49%) while financing companies regulated by the SEC can have foreign equity of up to sixty percent (60%). *See* Section 6 of Republic Act No. 9474 and Section 6 of Republic Act No. 5980, as amended.

Annex 4. Case Studies on PIPFF

The purpose of this appendix is to verify the usefulness and benefits of PIPFF through case study of potential projects. Candidate projects are chosen from two sectors (expressways and airport) mainly on the grounds of availability of reliable F/S data. The sector report of Chapter 5 mentions briefly outline of the candidate projects. The case study is conducted by rigorous financial analysis technique using reliable F/S data.

(1) Assumptions and Criteria

The projects chosen are mostly of BOT type in which the project cost is basically funded by the private sector. The government support is minor in contribution in kind (provision of land) and/or cash (construction subsidy).

The project cost is funded by two sources: equity and loans. The equity/loan ratio is 25/75 to 30/70. There are two types for loan: commercial loan and PIPFF loan.

The commercial loan terms are tenor of 10-12 years at 200-300 bp over PHIBOR[87] (7-8% based on current market). Here it is assumed the tenor is 12 years (including grace period of 5 years) and the interest rate varies from 9% to 11% depending on project riskiness: 9% for low risk, 10% for medium risk and 11% for high risk considering current market responses.

The PIPFF loan terms are assumed at tenor of 25 years (including of 10-year grace period) and the interest at 50% of that of the counterpart commercial loans: 4.5% for low risk, 5% for medium risk and 5.5% for high risk.

Then the following requirements are set as the financial conditions to be met.

For financial viability of private investment

Debt service cover ratio (DSCR) >= 1.0
Equity IRR >= Cost of equity required
Project IRR >= Weighted Average of Cost of capital (WACC)

Condition 1 is for loans to be repayable. Condition 2 is for provision of equity with a reasonable return. Here E-IRR required is assumed as 15% for low risk, 16% for medium risk and 17% for high risk based on current market demands. Condition 3 is for basic requirement of financial feasibility (return > cost). WACC is calculated by the formula:

WACC=PD x CD + PE x CE

Where, PD: proportion of debt (70-75%)
CD: cost of debt
PE: proportion of equity (25-30%)
CE: cost of equity

Tax effect is not considered in calculation of WACC for conservatism.

Here CD is calculated at 100% of commercial loan rate for only commercial loan cases; and average of commercial loan rate and PIPFF loan rate for PIPFF loan cases. The hybrid loan assumes 50% commercial and 50% PIPFF.

[87] Philippines Inter Bank Offered Rate

For government support limitation

VGF (in cash/kind) <= 30% of project cost

This 30% hurdle ratio is desired for the GoP to maintain a positive cash flow (the tax revenue minus government expenditure) based on the anecdotal evidence.

The results of case study for the selected projects follow.

(2) CAVITE Expressway

The CAVITE Expressway is the Cavite section of CALAX (Cavite-Laguna Expressway). Reliable data are available from JICA F/S conducted in 2012. The project cost (base cost) is estimated at Ps.22,652m. The project riskiness is assumed as 'low' since the ROE acquisition is likely to go easily, and cost estimation and traffic forecast is robust. The debt/equity ratio is at 70:30. The FIRR is calculated at 11.2%.

Thus, the viability conditions are set:

Project IRR >= 10.8% (commercial loan only) and 9.2% (hybrid loans)
Equity IRR >= 15%
DSCR >= 1.0

The results of financial analysis are summarized below.

Table A.4-1 Summary of CAVITE Expressway Project

Case 1 (use commercial loan only)			Case 2 (use PIPFF loan)			Case 3 (commercial loan with VGF)		
Work sharing			**Work sharing**			**Work sharing**		
GoP work portion	ROW		GoP work portion	ROW		GoP work portion	ROW, VGF	
Private work portion	Construction		Private work portion	Construction		Private work portion	Construction	
Project cost (M.Ps)			**Project cost (M.Ps)**			**Project cost (M.Ps)**		
24,761			24,406			24,500.0		
Fund source ((M.Ps)		Share	**Fund source (M.Ps)**		Share	**Fund source (M.Ps)**		Share
Private	19,147	77.3%	Private	17,895	73.3%	Private	14,903	60.8%
ODA loan	0	22.7%	ODA loan	0	26.7%	ODA loan	0	**39.2%**
GoP budget	5,613		GoP budget	6,511		GoP budget	9,597	
Total	24,761		Total	24,406		Total	24,500	
Revenue share			**Revenue share**			**Revenue share**		
Private sector	86.0%		Private sector	86.0%		Private sector	86.0%	
Government	14.0%		Government	14.0%		Government	14.0%	
Debt service subsidy ((M.Ps)			**Debt service subsidy (M.Ps)**			**Debt service subsidy (M.Ps)**		
for private loan	0		for private loan	0		for private loan	0	
Financial indicators			**Financial indicators**			**Financial indicators**		
Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion
Project IRR (before tax)	12.1%	9.0%	Project IRR (before tax)	12.7%	8.1%	Project IRR (before tax)	14.4%	6.0%
Project IRR (after tax)	10.4%	9.0%	Project IRR (after tax)	10.9%	8.1%	Project IRR (after tax)	12.4%	6.0%
Equity IRR (after tax)	**11.7%**	9.0%	Equity IRR (after tax)	15.0%	8.1%	Equity IRR (after tax)	15.0%	6.0%
DSCR (Average)	1.00		DSCR (Average)	1.17		DSCR (Average)	1.04	
DSCR (Minimum)	1.00		DSCR (Minimum)	1.00		DSCR (Minimum)	1.00	
VFM indicators			**VFM indicators**			**VFM indicators**		
NPV of gov't cashflow ((M.Ps)	1,137	(12% discount)	NPV of gov't cashflow (M.Ps)	142	(12% discount)	NPV of gov't cashflow (M.Ps)	▲ 3,038	(12% discount)
PI of gov't cashflow	1.16	(12% discount)	PI of gov't cashflow	1.02	(12% discount)	PI of gov't cashflow	0.74	(12% discount)
Unacceptable for private			**Acceptable both for private and GoP**			**Acceptable for private, but not for G**		

Source: JICA Study Team

The study reveals:

1) Case 1 (commercial loan only) will not be doable since the equity IRR are less than the hurdle rate (15%).
2) Case 3 (commercial loan with VGF) will not be doable since VGF is needed at 39.2% of project cost.
3) The only solution is Case 2 (use of PIPFF loan). There is no VGF (subsidy for construction cost) required for this case except for payment for ROE acquisition.

Therefore, the usefulness of PIPFF loan is proved for this project.

(3) NAIA Expressway

Reliable data are available from JICA F/S conducted in 2012. The project cost (base cost) is estimated at Ps.13,608m. The project riskiness is assumed as 'medium'. The debt/equity ratio is at 70:30. The FIRR is calculated at 10.2%.

Thus, the viability conditions are set:

Project IRR >= 11.5% (commercial loan only) and 9.6% (hybrid loans)
Equity IRR >= 16%
DSCR >= 1.0

The results of financial analysis are summarized below.

Table A.4-2 Summary of NAIA Expressway Project

Case 1 (Commercial loan without VGF)			Case 2 (PIPFF loan with VGF)			Case 3 (Commercial loan with VGF)		
Work sharing			**Work sharing**			**Work sharing**		
GoP work portion	ROW		GoP work portion	ROW, VGF		GoP work portion	ROW, VGF	
Private work portion	Cosntruction		Private work portion	Cosntruction		Private work portion	Cosntruction	
Project cost (M.Ps)			**Project cost (M.Ps)**			**Project cost (M.Ps)**		
14,111			13,805			13,910		
Fund source ((M.Ps)		Share	**Fund source (M.Ps)**		Share	**Fund source (M.Ps)**		Share
Private	12,998	92.1%	Private	10,193	73.8%	Private	7,799	56.1%
ODA loan	0	7.9%	ODA loan	0	26.2%	ODA loan	0	43.9%
GoP budget	1,113		GoP budget	3,612		GoP budget	6,111	
Total	14,111		Total	13,805		Total	13,910	
Revenue share			**Revenue share**			**Revenue share**		
Private sector	100.0%		Private sector	100.0%		Private sector	100.0%	
Government	0.0%		Government	0.0%		Government	0.0%	
Debt service subsidy ((M.Ps)			**Debt service subsidy (M.Ps)**			**Debt service subsidy (M.Ps)**		
for private loan	0		for private loan	0		for private loan	0	
Financial indicators			**Financial indicators**			**Financial indicators**		
Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion
Project IRR (before tax)	10.7%	12.4%	Project IRR (before tax)	12.8%	8.0%	Project IRR (before tax)	15.4%	5.5%
Project IRR (after tax)	9.4%	12.4%	Project IRR (after tax)	11.0%	8.0%	Project IRR (after tax)	13.5%	5.5%
Equity IRR (after tax)	9.5%	12.4%	Equity IRR (after tax)	16.0%	8.0%	Equity IRR (after tax)	16.0%	5.5%
DSCR (Average)	1.00		DSCR (Average)	1.33		DSCR (Average)	1.14	
DSCR (Minimum)	1.00		DSCR (Minimum)	1.05		DSCR (Minimum)	1.00	
VFM indicators			**VFM indicators**			**VFM indicators**		
NPV of gov't cashflow ((M.Ps)	658	(12% discount)	NPV of gov't cashflow (M.Ps)	▲ 535	(12% discount)	NPV of gov't cashflow (M.Ps)	▲ 2,128	(12% discount)
PI of gov't cashflow	1.71	(12% discount)	PI of gov't cashflow	0.80	(12% discount)	PI of gov't cashflow	0.51	(12% discount)
Unacceptable for private			Acceptable for both private and GoP			Acceptable for private, but not for GoP		

Source: JICA Study Team

The study reveals:

1) Case 1 (commercial loan only) will not be doable since the project IRR and the equity IRR are less than the hurdle rates.
2) Case 3 (commercial loan with VGF) will not be doable since VGF is needed at 43.9% of project cost.
3) The only solution is Case 2 (PIPFF loan with VGF). The VGF required is 26.2% of project cost.

Therefore, the usefulness of PIPFF loan is proved for this project.

(4) SLEX Extension Road

Reliable data are available from JICA F/S conducted in 2010. The project cost (base cost) is estimated

at Ps.13,835m. The project riskiness is assumed as 'low' since the ROW has been mostly acquired, and cost estimation and traffic forecast is robust. The debt/equity ratio is at 70:30. The FIRR is calculated at 9.2%.

Thus, the viability conditions are set:

Project IRR >= 10.8% (commercial loan only) and 9.2% (hybrid loans)
Equity IRR >= 15%
DSCR >= 1.0

The results of financial analysis are summarized below.

Table A.4-3 Summary of SLEX Extension Project

Case 1 (Commercial loan without VGF)			Case 2 (PIPFF loan with VGF)			Case 3 (Commercial loan with VGF)		
Work sharing			**Work sharing**			**Work sharing**		
GoP work portion	ROW		GoP work portion	ROW, VGF		GoP work portion	ROW, VGF	
Private work portion	Cosntruction		Private work portion	Cosntruction		Private work portion	Cosntruction	
Project cost (M.Ps)			**Project cost (M.Ps)**			**Project cost (M.Ps)**		
14,624			14,309			14,290		
Fund source ((M.Ps)		Share	**Fund source (M.Ps)**		Share	**Fund source (M.Ps)**		Share
Private	14,169	96.9%	Private	11,365	79.4%	Private	8,176	57.2%
ODA loan	0	3.1%	ODA loan	0	20.6%	ODA loan	0	**42.8%**
GoP budget	454		GoP budget	2,943		GoP budget	6,114	
Total	14,624		Total	14,309		Total	14,290	
Revenue share			**Revenue share**			**Revenue share**		
Private sector	100.0%		Private sector	100.0%		Private sector	100.0%	
Government	0.0%		Government	0.0%		Government	0.0%	
Debt service subsidy ((M.Ps)			**Debt service subsidy (M.Ps)**			**Debt service subsidy (M.Ps)**		
for private loan	0		for private loan	0		for private loan	0	
Financial indicators			**Financial indicators**			**Financial indicators**		
Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion
Project IRR (before tax)	**9.1%**	16.3%	Project IRR (before tax)	11.0%	7.3%	Project IRR (before tax)	14.3%	3.4%
Project IRR (after tax)	7.7%	16.3%	Project IRR (after tax)	9.4%	7.3%	Project IRR (after tax)	12.6%	3.4%
Equity IRR (after tax)	**7.9%**	16.3%	Equity IRR (after tax)	15.0%	7.3%	Equity IRR (after tax)	15.0%	3.4%
DSCR (Average)	1.00		DSCR (Average)	1.19		DSCR (Average)	1.00	
DSCR (Minimum)	1.00		DSCR (Minimum)	1.10		DSCR (Minimum)	1.00	
VFM indicators			**VFM indicators**			**VFM indicators**		
NPV of gov't cashflow ((M.Ps)	1,005	(12% discount)	NPV of gov't cashflow (M.Ps)	▲ 331	(12% discount)	NPV of gov't cashflow (M.Ps)	▲ 2,349	(12% discount)
PI of gov't cashflow	3.68	(12% discount)	PI of gov't cashflow	0.83	(12% discount)	PI of gov't cashflow	0.40	(12% discount)
Unacceptable for private			**Acceptable for both private and GoP**			**Acceptable for private, not acceptable for GoP**		

Source: JICA Study Team

The study reveals:

1) Case 1 (commercial loan only) will not be doable since project IRR and equity IRR are less than the hurdle rates.
2) Case 3 (commercial loan with VGF) will not be doable since VGF is needed at 42.8% of project cost, which exceeds 30% limit.
3) The only solution is Case 2 (PIPFF loan with VGF). The VGF required is 20.6% of project cost.

Therefore, the usefulness of PIPFF loan is proved for this project.

(5) Visayas Airport (Landside work)

Reliable data are available from JICA F/S completed in August 2012. The project cost (base cost) is estimated at Ps.2,197m. The project riskiness is assumed as 'medium'. The debt/equity ratio is at 75:25. The FIRR is calculated at 13.7%.

Thus, the viability conditions are set:

Project IRR >= 11.5% (commercial loan only) and 9.6% (hybrid loans)

Equity IRR >= 16%
DSCR >= 1.0

The results of financial analysis are summarized below.

Table A.4-4 Summary of Visayas Airport (Landside work)

Case 1 (Commercial loan without VGF)			Case 2 (PIPFF loan without VGF)			Case 3 (Commercial loan with VGF)		
Work sharing			**Work sharing**			**Work sharing**		
GoP work portion	None		GoP work portion	None		GoP work portion	VGF	
Private work portion	Construction		Private work portion	Construction		Private work portion	Construction	
Project cost (M.Ps)			**Project cost (M.Ps)**			**Project cost (M.Ps)**		
1,647.3	(Phase 1)		1,609.4	(Phase 1)		1,621.8	(Phase 1)	
Fund source ((M.Ps)		Share	**Fund source (M.Ps)**		Share	**Fund source (M.Ps)**		Share
Private	1,647.3	100.0%	Private	1,609.4	100.0%	Private	1,350.8	83.3%
MoF loan	0.0	0.0%	MoF loan	0.0	0.0%	MoF loan	0.0	16.7%
GoP budget	0.0		GoP budget	0.0		GoP budget	271.0	
Total	1,647.3		Total	1,609.4		Total	1,621.8	
Revenue share			**Revenue share**			**Revenue share**		
Private sector	100.0%		Private sector	100.0%		Private sector	100.0%	
Government	0.0%		Government	0.0%		Government	0.0%	
Debt service subsidy ((M.Ps)			**Debt service subsidy (M.Ps)**			**Debt service subsidy (M.Ps)**		
for private loan	0.0		for private loan	0.0		for private loan	0.0	
Financial indicators			**Financial indicators**			**Financial indicators**		
Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion	Indicator	Private Portion	GoP Portion
Project IRR (before tax)	13.0%		Project IRR (before tax)	13.2%		Project IRR (before tax)	14.9%	14.1%
Project IRR (after tax)	11.1%		Project IRR (after tax)	11.4%		Project IRR (after tax)	12.9%	14.1%
Equity IRR (after tax)	**12.9%**		Equity IRR (after tax)	16.3%		Equity IRR (after tax)	16.0%	14.1%
DSCR (Average)	1.07		DSCR (Average)	1.41		DSCR (Average)	1.16	
DSCR (Minimum)	1.00		DSCR (Minimum)	1.21		DSCR (Minimum)	1.00	
VFM indicators			**VFM indicators**			**VFM indicators**		
NPV of gov't cashflow ((M.Ps)	409.1	(12% discount)	NPV of gov't cashflow (M.Ps)	400.0	(12% discount)	NPV of gov't cashflow (M.Ps)	198.1	(12% discount)
PI of gov't cashflow	#DIV/0!	(12% discount)	PI of gov't cashflow	#DIV/0!	(12% discount)	PI of gov't cashflow	1.90	(12% discount)
Unacceptable for private sector			**Acceptable for both private and GoP**			**Acceptable for both private and GoP**		

Source: JICA Study Team

The study reveals:

Case 1 (commercial loan only) will not be doable since the equity IRR are less than the hurdle rate (16%).
Case 3 (commercial loan with VGF) will be doable and the VGF is needed at 16.7% of project cost.
Case 2 (PIPFF loan without VGF) will also be doable since the conditions on project IRR and equity IRR are cleared.
Use of PIPFF pushes down the VGF from 16.7% of project cost to zero (no need of VGF).

Therefore the usefulness and the benefit of PIPFF loan are confirmed for this project.

(5) Zamboanga Airport (Landside work)

We reviewed and updated the data of DOTC F/S (2010). The project cost (base cost) is estimated at Ps.2,387m. The project riskiness is assumed as 'medium'. The debt/equity ratio is at 75:25. The FIRR is calculated at 10.4%.

Thus, the viability conditions are set:

Project IRR >= 11.5% (commercial loan only) and 9.6% (hybrid loans)
Equity IRR >= 16%
DSCR >= 1.0

The results of financial analysis are summarized below.

Table A.4-5 Summary of Zamboanga Airport (Landside work)

Case 1 (Commercial loan without VGF)

Work sharing	
GoP work portion	None
Private work portion	Construction

Project cost (M.Ps)
2,571.7

Fund source ((M.Ps)		Share
Private	2,571.7	100.0%
MoF loan	0.0	0.0%
GoP budget	0.0	
Total	2,571.7	

Revenue share	
Private sector	100.0%
Government	0.0%

Debt service subsidy ((M.Ps)	
for private loan	0.0

Financial indicators		
Indicator	Private Portion	GoP Portion
Project IRR (before tax)	**9.7%**	
Project IRR (after tax)	7.9%	
Equity IRR (after tax)	**7.9%**	
DSCR (Average)	1.00	
DSCR (Minimum)	1.00	

VFM indicators		
NPV of gov't cashflow ((M.Ps)	350.7	(12% discount)
PI of gov't cashflow	#DIV/0!	(12% discount)

Unacceptable for private sector

Case 2 (PIPFF loan with VGF)

Work sharing	
GoP work portion	VGF
Private work portion	Construction

Project cost (M.Ps)
2,488.3

Fund source (M.Ps)		Share
Private	1,882.1	75.6%
MoF loan	0.0	24.4%
GoP budget	606.2	
Total	2,488.3	

Revenue share	
Private sector	100.0%
Government	0.0%

Debt service subsidy (M.Ps)	
for private loan	0.0

Financial indicators		
Indicator	Private Portion	GoP Portion
Project IRR (before tax)	12.9%	7.6%
Project IRR (after tax)	10.9%	7.6%
Equity IRR (after tax)	16.0%	7.6%
DSCR (Average)	4.03	
DSCR (Minimum)	1.00	

VFM indicators		
NPV of gov't cashflow (M.Ps)	4.2	(12% discount)
PI of gov't cashflow	1.01	(12% discount)

Acceptable for both private and GoP

Case 3 (Commercial loan with VGF)

Work sharing	
GoP work portion	VGF
Private work portion	Construction

Project cost (M.Ps)
2,496.8

Fund source (M.Ps)		Share
Private	1,530.2	61.3%
MoF loan	0.0	38.7%
GoP budget	966.6	
Total	2,496.8	

Revenue share	
Private sector	100.0%
Government	0.0%

Debt service subsidy (M.Ps)	
for private loan	0.0

Financial indicators		
Indicator	Private Portion	GoP Portion
Project IRR (before tax)	15.3%	4.8%
Project IRR (after tax)	13.0%	4.8%
Equity IRR (after tax)	16.0%	4.8%
DSCR (Average)	1.00	
DSCR (Minimum)	1.00	

VFM indicators		
NPV of gov't cashflow (M.Ps)	▲ 181.5	(12% discount)
PI of gov't cashflow	0.70	(12% discount)

Acceptable for private, but not for GoP

Source: JICA Study Team

The study reveals:

Case 1 (commercial loan only) will not be doable since project IRR and equity IRR are less than the hurdle rates.
Case 3 (commercial loan with VGF) will not be doable since VGF is exceeding 30% limit.
Case 2 (PIPFF loan with VGF) will be doable since VGF needs is below 30% limit.
So Case 2 is the only option which brings win-win solution.

Therefore, the usefulness of PIPFF loan is proved for this project.

(6) Tacloban Airport (Landside work)

We reviewed and updated the data of DOTC F/S (2009). The project cost (base cost) is estimated at Ps.1,581m. The project riskiness is assumed as 'medium'. The debt/equity ratio is at 75:25. The FIRR is calculated at 7.7%.

Thus, the viability conditions are set:

Project IRR >= 11.5% (commercial loan only) and 9.6% (hybrid loans)
Equity IRR >= 16%
DSCR >= 1.0

The results of financial analysis are summarized below.

Table A.4-6 Summary of Tacloban Airport (Landside work)

Case 1 (Commercial loan without VGF)

Work sharing	
GoP work portion	None
Private work portion	Construction

Project cost (M.Ps)
1,738.6

Fund source ((M.Ps)		Share
Private	1,738.6	100.0%
MoF loan	0.0	0.0%
GoP budget	0.0	
Total	1,738.6	

Revenue share	
Private sector	100.0%
Government	0.0%

Debt service subsidy ((M.Ps)	
for private loan	0.0

Financial indicators		
Indicator	Private Portion	GoP Portion
Project IRR (before tax)	6.9%	
Project IRR (after tax)	5.7%	
Equity IRR (after tax)	5.5%	
DSCR (Average)	1.00	
DSCR (Minimum)	1.00	

VFM indicators		
NPV of gov't cashflow ((M.Ps)	119.4	(12% discount)
PI of gov't cashflow	#DIV/0!	(12% discount)

Unacceptable for private sector

Case 2 (PIPFF loan with VGF)

Work sharing	
GoP work portion	VGF
Private work portion	Construction

Project cost (M.Ps)
1,637.2

Fund source (M.Ps)		Share
Private	1,017.8	62.2%
MoF loan	0.0	37.8%
GoP budget	619.4	
Total	1,637.2	

Revenue share	
Private sector	100.0%
Government	0.0%

Debt service subsidy (M.Ps)	
for private loan	0.0

Financial indicators		
Indicator	Private Portion	GoP Portion
Project IRR (before tax)	11.7%	1.7%
Project IRR (after tax)	10.3%	1.7%
Equity IRR (after tax)	16.0%	1.7%
DSCR (Average)	3.77	
DSCR (Minimum)	1.00	

VFM indicators		
NPV of gov't cashflow (M.Ps)	▲ 315.6	(12% discount)
PI of gov't cashflow	0.32	(12% discount)

Acceptable for private, but not for GoP

Case 3 (Commercial loan with VGF)

Work sharing	
GoP work portion	VGF
Private work portion	Construction

Project cost (M.Ps)
1,643.5

Fund source (M.Ps)		Share
Private	869.3	52.9%
MoF loan	0.0	47.1%
GoP budget	774.2	
Total	1,643.5	

Revenue share	
Private sector	100.0%
Government	0.0%

Debt service subsidy (M.Ps)	
for private loan	0.0

Financial indicators		
Indicator	Private Portion	GoP Portion
Project IRR (before tax)	13.4%	0.6%
Project IRR (after tax)	11.9%	0.6%
Equity IRR (after tax)	16.0%	0.6%
DSCR (Average)	1.07	
DSCR (Minimum)	1.00	

VFM indicators		
NPV of gov't cashflow (M.Ps)	▲ 425.5	(12% discount)
PI of gov't cashflow	0.26	(12% discount)

Acceptable for private, but not for GoP

Source: JICA Study Team

The study reveals:

Case 1 (commercial loan only) will not be doable since project IRR and equity IRR are less than the hurdle rates.
Case 3 (commercial loan with VGF) will not be doable since VGF exceeds the 30% limit.
Case 2 (PIPFF loan with VGF) will also not be doable since VGF exceeds the 30% limit.

Therefore this project is no longer PPP-able. This is because the FIRR is as low as 7.7%. This implies the projects with FIRR 8% or less should go to the traditional public procurement route.

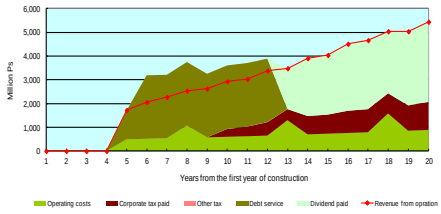
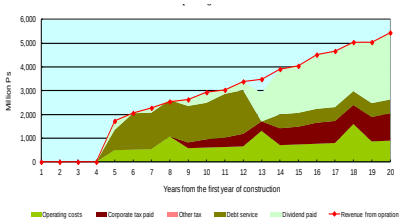
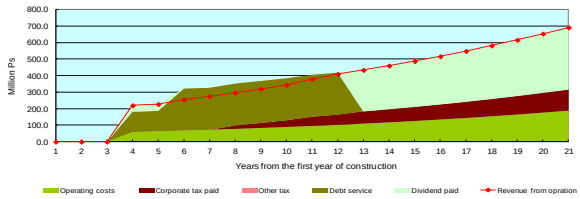
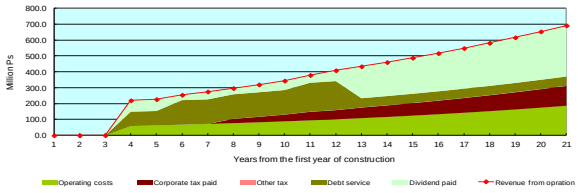
(7) Findings from the Case Study

We can summarize key points from this case study as follows.

The PPP-able projects case-studied (leaving Tacloban) are low profitable one with FIRRs ranging from 13.7% (Visayas) to 9.2% (SELEX), averaging at 10.9%. In order for such low profitable projects to pay back loans for as long as 30-year operation periods, it is obvious that long-term loan financing like PIPFF is required to avoid the liquidity problem.

The basis of this finding is illustrated below by comparing the cash flows for commercial loan only case (case 1) and those for hybrid loans (Case 2: 50% commercial and 50% PIPFF) for two typical projects: CAVITE Expressway and Visayas Airport.

The charts indicate the debt service shortfall for Case 1 (commercial loan only) is clearly disappeared by providing the PIPFF loan (Case 2) which enables to repay the debt and to provide equity with a reasonable return simultaneously. The finding helps in confirming the necessity of soft loans represented by PIPFF loans for coming pipeline projects most likely with low profitable projects taken up here. The case study also stresses the need for introducing the PIPFF mechanism in the medium and long-term perspectives.

CAVITE Expressway Case 1	CAVITE Expressway Case 2
	
Visayas Airport Case 1	**Visayas Airport Case 2**
	

Source: JICA Study Team

Figure A.4-1 Cash flow profiles of Case 1 (100% commercial loan) & Case 2 (use of PIPFF loan)

Annex 5. Interview Results to Investors and Lenders Regarding CL

The following shows the results of interview to investors and lenders regarding the effects of CL Fund.

A.5-1 Guarantee Fund to Cover Contingent Liabilities

To encourage greater private investments in PPP Projects, the feasibility of establishing a Guarantee Fund (GF) to cover Contingent Liabilities (CL) of the Government is being studied by the JICA Team. The GF is considered as a possible facility to mitigate the risks associated with the ability of the Government to fulfill its basic obligations under the Concession Agreement (CA).

For PPP Project, the GF Fund is envisioned to be used by the Government to promptly pay just compensation to the concerned Concessionaires to cover their financial losses arising from any of the following CL events attributed to the Government's fault:

- Delayed delivery by the Government of the Right-of-Way (ROW) for the Project beyond the deadline set in the CA.
- Delayed issuance by the Government of the Construction Permit (CP) despite the Concessionaire having completed the requirements for such Permit.
- Delayed issuance by IA of the Certificate of Completion of Construction (CCC) despite the Independent Consultant (IC) having certified that the Concessionaire has complied with all the requirements for such Certificate.
- Delayed approval by the Authority of Tariff Adjustments.

A.5-2 Private Sector's Comments on Guarantee Fund / Probability & Impact of CL

The JICA Team interviewed three concessionaires in toll road, airport and railway sector and two domestic banks and one foreign bank. Firstly, the JICA Team asked the effect of Guarantee Fund through the following questions:

> "Assuming that the Guarantee Fund can be legally set up and used by the Government to promptly and adequately pay just compensation to the Concessionaire for any or a combination of the above cases, we would like to know by how much you would be willing to reduce the following financial indicators:
> Equity Internal Rate of Return (Equity IRR)
> Borrowing Rate for Loan"

The responses to this questionnaire from Concessionaires are shown in Table A.5-1:

Table A.5-1 Concessionaires' Responses on the Effect of Guarantee Fund

	Proponents	Equity IRR	Borrowing Rate
Toll Road	A	Decrease by 2-3%	Decrease by 1-2%
	B	Decrease from 16% to 12%	No answer
	C	Decrease from 15% to 12%	Significant decrease for foreign loans
Airport	D	Decrease but % is unknown	No answer
Railway	D	Decrease but % is unknown	No answer
Banks	E	N/A	Will not decrease
	F	N/A	No clear answer
	G	N/A	Possibly decrease

Source: JICA Study Team

Aside from the specific replies summarized in Table above, the Respondent-Concessionaires made the following comments:

- Delayed ROW Delivery and Tariff Rate Adjustments are very real and big risks. It seems, however, that the objectives of this (Guarantee) fund are essentially the same as those of MIGA, with its political insurance…You don't really even need a fund, as long as you have an agency such as MIGA issuing the guarantee… MIGA very rarely has to pay out. They talk to the government and sort things out, long before a "default" occurs. On the other hand, the problem with MIGA is that they have so many conditions that their guarantee becomes tedious to obtain.

- Minimal risks on the part of investor would definitely translate to reduced markup. On an almost no risk investment, investors would be happy to a net of 6%. If the guaranty fund can be facilitated this would be a major departure from the current rules but will definitely attract investors.

- The Government Guarantee Fund (GGF) will induce significant improvements in borrowing terms mainly for foreign loans, stating that foreign banks may have a more positive view on the GGF as it may reduce the cost of political risk insurance (e.g., MIGA covers breach of contract). Consequently, the overall cost of foreign borrowings will go down while the tenor is expected to lengthen. Local banks, however, may already be comfortable with the Concessionaire's ability to manage Government risk and the robustness of the project's cashflows. The GGF may be viewed as nice to have but not an absolute necessity. It is possible that the local borrowing rate and tenor will not improve significantly but the lenders would be more willing to relax the covenants, such as the minimum DSCR requirement, if the GGF would be available.

- GF should have the concept of "Oil Price Stabilization Fund" which automatically allocates the fund based on the rule without political interventions. If GF will not be under the control of the government, we are not relay on GF and will not reduce the acceptable Equity IRR.

- For the bidder, there will be more benefit for them because the risks will be less. All delays will have impact on their income. But from bank's assumptions, if these are slight delays, they will still be able to cover their debt services and we will still be paid. Because we have no upside. We get re-paid anyway. As for ROW acquisition, we don't even lend if it is not 100% acquired. The one that really affects us from a financing perspective is the first one: toll rate adjustment. The logic is if the project has enough cash flow—let's say that the minimum debt service coverage of 1.2 times—as long as they have 1.2 or better and they continue to pay us, there is no problem. If there is delay in toll way increase, DSCR will not improve as planned and they cannot dividend out. That impacts equity return. That's why it gives them more comfort by having this GF. From our perspective, if the toll increase will keep the DSCR at 1.3, we don't care because we're still being paid.

- Price will be dependent on prevailing market conditions. I take this as more theoretical and scientific assessment on equity. Impact is really on the number crunching of the proponent. Banks will vet on their assumptions. If it is a simple guarantee, then that's the real benefit, not different from a bank stand-by LC. If it is hard to draw from the GF, it diminishes the benefits.

- In order to reduce interest rate with GF, you have to prove that GF is very much stable. For example, it has to be proved that GF will exist during a 20-year-project period, GF will have sufficient source even when the number of projects increases, and future government will not close down GF. Legal basis and additional fund sources have to be stated clearly to prove the stableness of the fund. If those conditions are met, we can expect that GF would bring down interest rate. Additionally, GF's effect on interest rate would differ depending on the GF structure – focused on CL in construction stage or CL in O&M period. If GF is designed focusing

on CL in construction stage, GF does not affect interest rate much because Financial Institutions have almost no risk from the beginning (when contractor is a super general contractor or other large companies, they absorb all these risks).

Secondly, the JICA Team asked probability and Impact of CL occurrence. Since the four CLs listed in A.1 can be categorized into two; 1) delay in commencement of operation; 2) delay in approval of tariff adjustment, the JICA Team asked the concessionaires for the probability and Impact of above-mentioned two CLs. Table below shows the result of concessionaires' response on this issue.

Table A.5-2 Concessionaires' Response for Probability and Impact of CL

	Proponent	Delay in Commencement of Operation		Delay in Approval of Tariff Adjustment	
		Probability	Length	Probability	Length
Toll Road	A	High	Depend on project	100%	6 months to 3 years
Airport	A	-ditto-	-ditto-		
Railway	A	-ditto-	-ditto-	100%	6 months to 3 years

Source: JICA Study Team

- When ROW delay, it's a double hit. If you're borrowing for your capital expenditure as a company, then you have to bear the cost of capital. Also, if you have invested it in another activity, you could have earned some income. This is opportunity cost….. Probability of delay in tariff adjustment approval 100%. There will always be delays. In fact, railway is never on time. All toll highways are currently pending. And they disrupt all our projections. Timeframe is from 6 months to 3 years.

A.5-3 Government Incentives to Decrease CL Probability

The following measures may be considered to reduce the probability of CL events as well as to avoid the associated moral hazards.

(1) Clear and Specific Provisions on Government Obligations in the Concession Agreement (CA)

The CA should define, in clear terms, the specific contractual obligations of the Government and other provisions related to CL events. These should include the following, among others:

- Key deliverables by the Government - e.g., those mentioned under the four items in **Section A** above – with their specific measurable performance indicators in terms of concrete outputs (scope, quality and quantity) and firm deadlines.
- Triggers for CL events in case the Government's obligations for these deliverables are delayed or breached.
- Alternative remedies to offset the Concessionaire's losses in case of CL events due to the Government's fault, including (i) liquidated damages/just compensation to be paid to the Concessionaire according to pre-set formulae, (ii) extension of the concession period, and (iii) adjustment of Tariff Rates.
- Provision for a standby GF to be used in compensating the Concessionaire for CL events, with firm and adequate sources of funds and appropriations cover.
- Mechanics for making prompt payments out of the GF.

(2) Advance Acquisition of ROW

Preferably, as a preventive measure to preclude delays in Project implementation due to delayed delivery of the ROW, the Government should acquire, pay for, and secure the required ROW before bidding out the Project.

At the time of bidding, the Government should see to it that the ROW is clear of any liens, claims, obstructions, and occupants, including informal settlers, utilities, and other structures, and suitable for Construction.

(3) Close Project Supervision and Monitoring thru Full Use of the IC

IA should undertake rigorous and sustained monitoring and supervision of the Project in all its stages to achieve efficient Project implementation according to the approved plan and schedule, and to decrease the likelihood of CL events.

During the Project implementation stage from ROW delivery to Construction, IA should make effective use of the IC, as its expert representative (as well as that of the Concessionaire), to perform the following activities in order to closely supervise and monitor the implementation of the Project in accordance with the Minimum Performance Standards and Specifications (MPSS) and schedules, and thus minimize the probability of CL events, aside from avoiding unnecessary time-consuming duplication by IA in-house staff of the review/supervision work:

a. ROW Delivery

- Monitor the progress of IA in acquiring the ROW and determine whether it will be delivered in accordance with the schedule.
- Verify and certify to both Parties that the ROW is clear of all liens, occupants including informal settlers, utilities and other structures, and ready for the Concessionaire to carry out the Construction.

b. Design Review and Certification

- Review the Detailed Engineering Design (DED) submitted by the Concessionaire and, within say, 15 days, issue a notice to IA and the Concessionaire which (a) certifies that the DED conforms with the MPSS through a Certification of DED Conformity, or (b) states that such DED does not conform with the MPSS and must be revised, through a Notice of DED Non-Conformity.
- In the case of (b), repeat the same process for the Concessionaire's revised DED, until the IC is satisfied that the revised DED conforms to the MPSS.
- Recommend to IA the approval of the IC-certified DED.

c. Construction Supervision

- Undertake periodic inspections to monitor compliance of the Construction of the Project with the MPSS, which includes the IA-approved DED.
- Attend all Tests required during Construction and certify and verify to IA that the Tests have been carried out according to the requirements.
- Advise on any matter or issue that a Party has requested the IC to consider, and to make recommendations in relation to a Variation, a Test or the mitigation of a delay.
- Notify IA if, in its view, the rate of progress of the Construction is significantly behind the Construction Schedule.
- Advise IA and the Concessionaire if the Construction does not conform to the MPSS and specify the defects and deficiencies that must be corrected by the Concessionaire.
- Verify and certify that the Construction of the Project has been completed in accordance with the

MPSS and issue to IA a report that advises that all defects and non-conformance with the MPSS have been duly corrected, that all required Tests have been properly carried out, that all requirements for the issuance of a Certificate of Completion of Construction have been met and that, therefore, IA may issue the said Certificate.

During the Operation stage, IA should likewise undertake close supervision and monitoring of the Project, using their in-house personnel, supplemented by Operation and Maintenance (O&M) consultants as needed. They must regularly check the actual performance by both Concessionaire and the Government of their respective contractual obligations as against the set performance standards and indicators, flag any imminent or actual deviations from the requirements, especially potential CL events – e.g., delays in approving periodic Tariff Rate Adjustments (TRAs) - and carry out immediate preventive and remedial measures.

(4) Streamlining of Process for Approval and Adjustment of Tariff Rates

Before bidding out the Project, IA should clear with the Tariff Approval Authority such as TRB, and get the latter to officially concur in, the provisions of the draft CA and other Bidding Documents which, among other things, call for the automatic adoption of the initial Tariff Rates based on the bids, as well as of the formulae for the periodic TRAs.

The Tariff Approval Authority should simplify the rules and procedures for evaluating and conducting hearings on applications for periodic TRAs based on the provisions in the approved CA, and decide on such applications within a fixed period of, say, 15 days, subject to appropriate remedies/compensation as mentioned above in case this period is breached under a CL event.

a. Sanctions and Incentives

The Government should set up an accountability system of sanctions (penalties) and incentives (rewards) that is linked to the quality of the performance of the Projects being handled and overseen by IA and its key personnel, including, among other things, the management of CL events. The objective is (a) to discourage IA and its officials/units from being negligent, lax, or incompetent in supervising the Projects, particularly in dealing with substandard performance by the Concessionaire and by the Government especially to avert CL events, and instead (b) to motivate these Agencies/officials/units to be duly diligent and efficient in Project supervision to ensure that both the Concessionaire and the Government properly discharge their contractual obligations.

- Sanctions shall be calibrated according to the nature, gravity, and frequency of the sub-par performance by those concerned, e.g., late ROW delivery, delayed issuance of CCC, and inaction on TRA applications by the government, which could lead to CL events. The sanctions shall be imposed, as applicable, on the underperforming and accountable Agency, officials and/or units after due process. They may range from reprimand of the erring officials, demerits in their promotion opportunities, and suspension from supervising projects, to monetary penalties and reduction of the budget of the Agency/units/officials to offset actual GF payments incurred, and dismissal of the concerned officials from the service.
- Incentives may include recognition, merit points for promotion opportunities, assignment to larger/more challenging projects, and monetary performance bonuses. These shall be extended to the good performing Agency/ personnel/units.