PHILIPPINES: PUBLIC-PRIVATE PARTNERSHIPS BY LOCAL GOVERNMENT UNITS

ASIAN DEVELOPMENT BANK

50 YEARS

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ASIAN DEVELOPMENT BANK

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This report reflects information as of end 2014.

Abbreviations

ADB	Asian Development Bank
APL	Adaptable Program Loan
BAP	Bankers Association of the Philippines
BESF	Budget of Expenditures and Sources of Financing
BLCI	Bohol Light Company
BLGF	Bureau of Local Government Finance
BLT	build–lease–transfer
BOT	build–operate–transfer
BPI	Bank of the Philippine Islands
BPLS	Business Permit and Licensing System
BWC	Bulacan Water Corporation
BWD	Baguio Water District
BWSA	Bulk Water Supply Agreement
BWSSSI	Bulacan Water Supply and Sewerage System
BWUI	Bohol Water Utilities
CCPAP	Coordinating Council of the Philippine Assistance Program
CCPSP	Coordinating Council on Private Sector Participation
CEPALCO	Cagayan Electric Power and Light Company
CMWD	Cebu Manila Water Development
COA	Commission on Audit
COWD	Cagayan de Oro Water District
CWC	Cebu Water Consortium
DBL	design–build–lease
DBM	Department of Budget and Management
DBP	Development Bank of the Philippines
DILG	Department of the Interior and Local Government
DOF	Department of Finance
DPWH	Department of Public Works and Highways
DTI	Department of Trade and Industry
ERC	Energy Regulatory Commission
eSRE	Electronic Statement of Receipts and Expenditures
EU	European Union
GFI	government financial institution
GIS	geographic information system
GOCC	government-owned or -controlled corporation
GPRA	Government Procurement Reform Act
ICC	Investment Coordination Committee
ICR	Implementation Completion Report

ICT	information and communication technology
IFC	International Finance Corporation
IRA	internal revenue allotment
IRRs	implementing rules and regulations
JHB	Johan Holdings
LBP	Land Bank of the Philippines
LCE	local chief executive
LGC	Local Government Code
LGU	local government unit
LGUGC	LGU Guarantee Corporation
LWUA	Local Water Utilities Administration
MCWD	Metro Cebu Water District
MDF	Municipal Development Fund
MDFO	Municipal Development Fund Office
MOA	memorandum of agreement
MRF	materials recovery facility
MSP-PPP	medium-size project on PPPs
MWC	Manila Water Consortium
MWSS	Metropolitan Waterworks and Sewerage System
NDF	Nordic Development Fund
NEDA	National Economic and Development Authority
NGA	national government agency
NGO	nongovernment organization
NPC	National Power Corporation
ODA	official development assistance
PATAS	Real Property Tax Administration System
PCF	Performance Challenge Fund
PCR	project completion report
PDF	Project Development Facility
PDMF	Project Development and Monitoring Facility
PDMIF	Project Development, Monitoring and Implementation Facility
PEMSEA	Partnerships in Environmental Management for the Seas of East Asia
PES	Provincial Electric System
PFI	private financial institution
PGC	Provincial Government of Cebu
PIPDF	Private Infrastructure Project Development Facility
PPP	public–private partnership
PSA	power supply agreement
PSP	private sector participation
PUD	Public Utilities Department
PWS	Provincial Waterworks System
RDC	Regional Development Council
ROOM	rehabilitate–own–operate–maintain

SANParks	South African National Parks
SARBAGITA	DenpaSAR City, BAdung, Glanyar and TAbanan
SPUG	Small Power Utilities Group
STP	sewage treatment plant
SWM	solid waste management
TA	technical assistance
TAA	Technical Assistance Agreement
TOR	terms of reference
TRO	Temporary Restraining Order
TWG	technical working group
USAID	United States Agency for International Development
VGF	Viability Gap Funding
WTP	willingness-to-pay

Currency Equivalents

(as of 31 December 2014)

Currency Unit – peso (P)

P1.00 = $0.022

$1.00 = P44.73

Weights and Measures

kWh	kilowatt-hour
mld	million liters per day
MW	megawatt
m^3/day	cubic meter per day

Executive Summary

BACKGROUND

As local government units (LGUs) have strived to carry out the responsibilities and activities devolved to them by the 1991 Local Government Code, they have explored and availed of various financing options including grants, loans, bonds, and public–private partnership (PPP) arrangements. The Local Government Code specifically authorized LGUs with financially viable infrastructure projects to enter into build–operate–transfer (BOT) agreements subject to the 1990 BOT Law and its Implementing Rules and Regulations (IRRs). The first PPP project of an LGU was the construction of a seven-story commercial building-cum-public market in Mandaluyong City in 1991. Other PPP projects that soon followed were some public markets, a slaughterhouse, a city hall, information and communication technology projects, and joint ventures for electric power distribution and water supply. Some other PPP projects were also contracted or attempted but were not started or completed for various reasons, including two public markets, an administrative and commercial center, regional government centers, several information and communication technology projects, transport terminals, and hospitals.

Two big PPP projects met many obstacles along the way but were implemented after more than 9 years. The transfer of the electric power distribution functions of Olongapo City's Public Utilities Department to a private entity was first studied in 2004. In May 2013, it was finally taken over by the Olongapo Electricity Distribution, an affiliate of the Cagayan Electric Power and Light Company which had been serving Cagayan de Oro City for more than 50 years. In May 2012, the Province of Cebu and the Manila Water Consortium formed a joint venture, the Cebu Manila Water Development, to provide bulk water to the Metro Cebu Water District. The district had previously considered two unsolicited bids for bulk water supply, one in 1996 and the other in 2002.

In the past decade, some specialized local entities formed by LGUs such as water districts and electric cooperatives entered into PPP arrangements for bulk water supply and electric power generation, respectively. Cagayan de Oro Water District, Tagaytay City Water District, and San Fernando City Water District have water purchase agreements with private companies. Power supply agreements were signed with private companies by the Marinduque Electric Cooperative, Romblon Electric Cooperative, Tablas Island Electric Cooperative, Masbate Electric Cooperative, and Basilan Electric Cooperative.

LGUs in other developing countries have successfully embarked on PPP projects. Septage treatment or sewerage projects and solid waste management (SWM) projects have been successfully implemented in Indonesia, Viet Nam, and the People's Republic of China under PPP arrangements, with the support of the Global Environment Facility and the United Nations Development Programme. With the support of the International Finance Corporation, PPP models were developed for hospitals and diagnostic services, tourism, and SWM projects in Brazil, Mexico, India, Moldova, Romania, South Africa, and the Maldives. The Philippines can learn from these international experiences.

Lack of technical and financial resources for project preparation, monitoring, and implementation has always been cited and continues to be a major impediment to LGUs undertaking PPP projects. These needs have to be addressed simultaneously and comprehensively by technical assistance (TA) and financing facilities.

A. On Opening the Project Development and Monitoring Facility to Local Government Units

1 **In the short- to medium-term, the existing Project Development and Monitoring Facility (PDMF) being administered by the PPP Center for national government agencies and corporations undertaking PPPs can be opened up to First-Tier LGUs that are considering big-ticket PPP projects.** First-Tier LGUs have been defined by Executive Order No. 809 to be provinces, cities, or municipalities whose 3-year average proportion of regular locally sourced income to total regular income is at least 60%, as per certification of the Department of Finance–Bureau of Local Government Finance (BLGF). The financial strength and stability of First-Tier LGUs make them ideal candidates for undertaking big-ticket PPP projects. Although the private proponent would be responsible for financing the initial investment costs, the LGU may need to make amortization payments over time or be ready to cover any unforeseen costs or revenue shortfalls. Also, in case the project is not successfully bidden out, the LGU will have to pay back half of the grant from the PDMF.

2 **Based on the PPPs already undertaken by LGUs in the Philippines as well as other emerging economies and projects being considered by LGUs as indicated to the PPP Center, the big-ticket PPP projects that First-Tier LGUs could undertake, depending on their requirements, would include the following:**

a. bulk water supply;
b. water supply distribution system;
c. sewerage system;
d. SWM facilities;
e. power generation limited to waste-to-energy, minihydropower;
f. power supply distribution system;
g. transportation terminals (cargo or passenger);
h. government-cum-commercial centers;
i. hospitals or diagnostic services; and
j. tourism facilities or attractions.

B. On Designing the Proposed Project Development, Monitoring, and Implementation Facility for Local Government Units

3 **To help LGUs whose PPP projects are not big or complicated enough to require the services of the international consultants prequalified in the PDMF, the PPP Center can set up a Project Development, Monitoring, and Implementation Facility (PDMIF) for LGUs to give them access to the financial and TA they need for preparing, monitoring, and implementing PPP projects.** It is proposed that the facility provide LGUs not only funds to hire consultants but also technical support to ensure the quality of the outputs of the consultants. It could also assist LGUs that need capacity building to carry out their responsibilities under their PPP contract, including regulation, monitoring, and evaluation. Under some PPP arrangements, the facility is immediately turned over to the LGU for maintenance and operation. The concerned LGU staff should be trained for these responsibilities at a very early stage and on a sustainable basis.

4 **The following LGU activities can be supported, covering all stages of the project cycle and including solicited and unsolicited proposals:**

a. preparation or review of business cases, prefeasibility, and feasibility studies;
b. preparation and evaluation of bidding documents;
c. preparation, finalization, monitoring, and enforcement of contracts;
d. technical and financial regulation;
e. maintenance and operation of turned-over facilities; and
f. project monitoring and evaluation.

5 **The proposed facility will be designed and implemented using a participatory and performance-based approach involving all stakeholders.** It is proposed to have the following features and activities:

a. Intensive consultations with local governments and communities and potential private investors and funders during the design and initial operations of the facility.
b. Applicant LGUs need to meet the criteria for Good Financial Housekeeping (formerly the Seal of Good Housekeeping) and Business-friendliness and Competitiveness defined in the Department of the Interior and Local Government's Seal of Good Local Governance program.
c. Performance of LGUs in preparing, bidding out, monitoring, and implementing projects will be closely monitored and regularly evaluated.
d. LGUs that perform well can get additional grants or other financial incentives.
e. LGUs that need to improve in certain areas will be provided TA.
f. LGUs will choose and work closely with their consultants whose compensation shall be based on preagreed performance indicators.
g. Performance of local, regional, and national bodies tasked to review and confirm PPP projects of LGUs will be duly noted and reported to higher authorities.
h. Performance of private sector partners will be closely monitored, evaluated, and included in the proposed database on potential private investors.
i. Performance of regulatory bodies, internal or external to LGUs, will be duly noted and reported to higher authorities.
j. Performance of the PPP Center in designing and implementing the facility will be continuously evaluated by itself, client LGUs, and other stakeholders.

6 **To the extent needed to improve their performance, capacity-building activities will be provided to all the stakeholders mentioned above, with preference given to their PPP units.** There will be strong and iterative links between performance evaluation and capacity building. Capacity-building activities will be provided free of charge, as much as possible, but with counterpart funding from the participating organizations.

7 **Funds for project development, monitoring, and implementation should be given in as concessional terms as possible.** Grants being the most concessional are most preferred but since grant funds are limited, they should be given on a competitive basis. Interested LGUs should demonstrate their need for the funds and the possible benefits of the proposed project. To the extent possible, the LGUs should be required to shoulder part of the cost, either with their own funds or through loans. The present system of the PDMF, which requires an implementing agency to pay back half of the grant if the project is not successfully bidden out, can be applied to LGUs as well. With these conditions on the grant, they should be considered as a contingent liability of the LGU.

To supplement the limited grant funds, concessional loans can be offered to the LGUs, with the lowest interest rate possible.

C. On Designing a Viability Gap Funding Facility for Local Government Units

8 Funds to help LGUs make their PPP projects attractive to the private sector can be made available by the national government through a Viability Gap Funding (VGF) Facility. The Facility can be a stand-alone facility or it can be linked to the proposed PDMIF for LGUs. Computation of the VGF can follow the financing gap method, with a cap on the percentage of the project cost that can be covered by the national government through the proposed VGF Facility. The LGU can also put in some of its own funds or grants that it gets from the national government outside the VGF Facility (e.g., Performance Challenge Fund).

9 Official development assistance (ODA) can support the setting up of the proposed VGF Facility with TA on how this can best be done as well as with grants and concessional loans to go into the Facility. With ODA going into the Facility, which is expected to draw more private sector interest and funds into PPP projects of LGUs, ODA funds will be leveraged and their development impact will be multiplied. Private investors will have the added comfort of the ODA provider doing the necessary due diligence on the project, and hopefully also helping to build up the capacity of the LGU, water district, or electric cooperative to properly monitor and implement the PPP project.

D. On Marketing Public–Private Partnership, the Project Development and Monitoring Facility, and the Proposed Project Development, Monitoring, and Implementation Facility

10 **PPPs, the PDMF, and the proposed PDMIF need to be proactively marketed to LGUs and the private sector.** More water districts, electric cooperatives, and other subnational entities may also be ready to consider going into PPP arrangements.

11 **The confirmation and approval process for PPP projects needs to be made predictable and time-bound.** This is essential if the interest of LGUs and potential private investors and funders is to be attracted and sustained. The new IRRs for the BOT law has time frames for most steps in the approval process as did the old IRRs, but the deadlines were generally not met. The cooperation of all concerned agencies will be needed to ensure that these timelines are followed.

12 **The pool of private sector companies, both local and foreign, that are interested in and capable of partnering with LGUs will have to be enlarged in a deliberate and proactive manner.** They will need to be made familiar with government processes and procedures, at both the national and local levels, through clear documentation and orientation seminars.

13 **A database of present and potential private sector partners for PPP projects at both the national and local levels should be constructed and maintained.** This can be a joint undertaking of the PPP Center and the Department of Trade and Industry which is in charge of promoting PPP projects to potential private investors. The results of the monitoring and evaluation of the private sector partners in ongoing or completed PPP projects

should be included in the database. These can be made available to LGUs that are exercising due diligence in the selection of their private sector partners for their planned PPP project.

14 **A geographic information system-based database of all LGUs could also be created and maintained by the PPP Center in partnership with an appropriate government or private sector entity.** This will help potential private investors to identify and assess LGUs with potential PPP projects. The database could put together publicly available data, such as income class as determined by BLGF, the initial credit screening by the LGU Guarantee Corporation, population data from the National Statistics Office, and land area from the National Mapping and Resource Information Authority, as well as provide links to the LGUs' Electronic Statement of Receipts and Expenditures in the BLGF website and the LGUs' own websites, where available. More importantly, the PPP projects initiated and completed by LGUs should be included in the database together with their monitoring and evaluation reports.

15 **Marketing of PPPs to LGUs and their potential private sector partners can also be facilitated by adding more content to the website of the PPP Center.** More videos, PowerPoint presentations, and papers on the PPP concept and modalities can be uploaded. Links to other websites with such materials as well as case studies on PPP projects of LGUs can also be added to the PPP Center website. Information on ongoing or operational PPP projects of LGUs will also be useful in showing what has been accomplished and how challenges have been met. The Monitoring Group of the PPP Center can upload the tables that they prepare for the Budget of Expenditures and Sources of Financing together with some basic information about the projects. In the future, a searchable database can be built and accessed through the website. It can contain both basic documents on PPP concepts and mechanics as well as case studies of PPP projects implemented or initiated by LGUs.

16 **Social marketing or information and education campaigns should be used by LGUs actively considering a PPP project.** The expected benefits of the proposed PPP arrangement can be explained to key stakeholders, including the targeted beneficiaries, affected employees, and the general public. Measures that will be taken to address their respective concerns can also be explained.

17 **LGUs should be encouraged to adopt their own PPP Code.** This will help to make more stable and transparent the rules of the game to be followed in bidding out and awarding contracts to private sector partners. Fiscal and other investment incentives can also be included in the Code.

E. On Screening Local Government Units for the Project Development and Monitoring Facility and the Proposed Project Development, Monitoring, and Implementation Facility

18 **In addition to the two requirements for applicant LGUs mentioned above, the Seal of Good Local Governance from the Department of the Interior and Local Governments and a credit rating from the LGU Guarantee Corporation, LGUs will need to demonstrate that they possess the following characteristics that are considered critical for the success of a PPP project at the local level:**

a. local leadership that is development-oriented and determined to succeed;
b. LGU officials from different departments working together and getting trained together on PPPs, ideally as a formal PPP unit;

c. willingness of the LGU to strictly follow the provisions of the BOT Law and its IRRs and other relevant laws, particularly with regard to the transparent bidding out of projects;
d. willingness of the LGU to conduct open and extensive consultations with their constituents;
e. willingness of the LGU to ensure that attractive options are provided to its employees adversely affected by the proposed PPP arrangement;
f. willingness of the LGU to impose or support higher tariffs for improved services;
g. existence of well-functioning regulatory regimes inside or outside the LGU;
h. a high priority project that is viable and attractive enough for the private sector;
i. willingness and capacity of the LGU to help make the proposed PPP project financially viable and seek VGF support, as needed; and
j. willingness and capacity of the local leaders to keep politics to a minimum, enough to allow for the public good to be served through successful implementation of the proposed PPP project.

With the implementation of the above recommendations and the full support of the national government agencies and LGUs concerned and potential private sector investors and funders, LGUs will be able to take advantage of the PPP option in delivering basic and infrastructure services to their constituents in a reliable and sustainable manner at the least possible cost.

INTRODUCTION

During the administration of President Corazon C. Aquino from 1986 to 1992, the major structural reforms introduced to improve the overall efficiency of the economy and the public sector as well as their responsiveness to the needs of the citizenry, especially the poor, included privatization and decentralization. After central government powers had been strengthened considerably during the previous martial law administration to the point of strangling private sector initiative and local government autonomy, the return of real democracy could be made possible only if the national government gave back to the private sector and local governments their due powers and functions.

Initially, privatization covered only the sale of government corporations that were performing functions that were deemed to be or used to be carried out by the private sector as well as nonperforming assets that had been taken over from government financial institutions which had to be rehabilitated. During the second half of the Aquino administration, privatization included private sector participation (PSP) in the provision of public infrastructure and services. The passage of the build–operate–transfer (BOT) Law in 1990 provided the legal basis for such PSP.

From the start of her administration, President Aquino sought to revitalize local governments through the appointment of officers-in-charge who would assume the place of the incumbent mayors and governors and through the formation of Regional Development Councils with cabinet members acting as Cabinet Officers for Regional Development and liaising with those councils. With the passage of the Local Government Code in 1991, central government powers and resources were more effectively devolved to the local government units (LGUs).

The 1991 Local Government Code allowed LGUs to enter into BOT and similar arrangements with the private sector. This paper will describe the LGUs' experiences with BOT projects and other forms of PSP in the provision of public infrastructure and services, identify the lessons that can be learned from these experiences, and recommend ways to make public–private partnerships (PPPs) more attractive to both LGUs and their potential partners in the private sector.

These will be especially relevant since the PPP program has been declared a cornerstone strategy of the administration of President Benigno S. Aquino III who assumed office on 30 June 2010. In his Social Contract with the Filipino People, he vowed to transform the government from one "that dampens private initiative and enterprise to a government that creates conditions conducive to the growth and competitiveness of private businesses—big, medium and small." In the Philippine Development Plan for 2011–2016, the PPP program was identified as the main mechanism through which infrastructure development can be accelerated and inclusive economic growth can be attained, all within a framework of transparent and accountable governance.

1 LEGAL, POLICY, AND INSTITUTIONAL FRAMEWORKS

A. LEGAL FRAMEWORK

The 1987 Constitution recognizes the important role of private sectors in fostering national growth and development and allows the provision of appropriate incentives to encourage them for such roles. The 1990 Build–Operate–Transfer (BOT) Law provided the legal basis and mechanisms for the private sector to undertake capital investment projects that had traditionally been implemented by government agencies or corporations or local government units (LGUs). The 1991 Local Government Code (LGC) not only institutionalized the process of decentralization from the national government to LGUs but also encourages "the participation of the private sector in local governance, particularly in the delivery of basic services," "to ensure the viability of local autonomy as an alternative strategy for sustainable development" (Section 3[l] of the LGC).

The Development Assistance Committee of the Organisation for Economic Co-operation and Development has declared that "Governance is not the sole domain of government but it transcends government to encompass the business sector and civil society." It is in this spirit of decentralization that the LGC has important provisions not only regarding LGU participation in national programs and extension of technical and financial assistance to LGUs by national government entities but also provisions to encourage LGUs to establish partnerships and even joint ventures with people's organizations, nongovernment organizations (NGOs), and the private business sector.

1. 1990 Build–Operate–Transfer Law

According to Sidney M. Levy (1996), author of the book *BOT: Paving the Way for Tomorrow's Infrastructure*, the Philippines was the first country in Asia to enact a law specifically for the BOT process. This was the "Build–Operate–Transfer" Law or Republic Act No. 6957 that was passed on 9 July 1990.

The BOT scheme was defined to be a contractual arrangement whereby a contractor undertakes the construction, including financing, of a given infrastructure facility as well as its operation and maintenance. The contractor operates the facility over a fixed term during which it is allowed to charge users the appropriate tolls, fees, and charges sufficient to enable it to recover its initial investment, operating and maintenance expenses, and a reasonable rate of return. The contractor transfers the facility to the national government agency (NGA) or the LGU concerned at the end of the fixed term, which shall not exceed 50 years.

In the build–transfer scheme, the facility is turned over to the government agency or the LGU concerned immediately after completion for security or strategic reasons. The contractor is paid for its total investment plus a reasonable rate of return through amortization payments.

The BOT and build–transfer schemes were the only two modalities mentioned in the BOT Law. According to Lauro Ortile (1999), who used to be a project manager in the BOT Center, only two projects were implemented under this law. The first was Line 3 of the Light Rail Transit, an overhead railroad along Epifanio de los Santos Avenue. The second was a public market-cum-commercial complex in Mandaluyong City, called the marketplace. After the public market was razed by a fire in 1990, the city government bid out and contracted Macro Funders and Developers to construct a seven-story commercial complex with a public market, banks, pawnshops, and service shops on the ground floor; eateries and dry goods stores on the second and third floors; parking slots on the fourth and fifth floors; and fast-food restaurants, four cinemas, other amusement facilities, and a multipurpose center on the sixth and seventh floors. Under the build–transfer scheme, the new public market was turned over the city's management and control for free immediately after construction. The rest of the complex, under the BOT scheme, was to be operated and managed by the private contractor for 40 years to recover its investment cost and realize a reasonable rate of return by leasing tenantable areas (Gavino 1998).

When the BOT Law, Republic Act No. 6957, was amended by Republic Act No. 7718 on 5 May 1994, seven more schemes were introduced. These were build–transfer–operate, build–own–operate, build–lease–transfer, contract–add–operate, develop–operate–transfer, rehabilitate–operate–transfer, and rehabilitate–own–operate. Only build–own–operate projects need to be approved by the President of the Philippines upon the recommendation of the Investment Coordination Committee (ICC) of the National Economic and Development Authority (NEDA) Board.

According to Republic Act No. 7718, other variations similar to the modalities enumerated in it may also be approved by the President of the Philippines. One such variant is the concession which is usually given for an existing facility in sectors that are natural monopolies such as water supply and distribution, power transmission and distribution, and roads and railways. Exclusive concessions or licenses are given to allow for cross-subsidies, attractive returns, and efficient operations. The concessionaire rehabilitates, expands, operates, and maintains

the facility that continues to be owned by the government entity. Services are rendered directly to consumers or facility users who pay tolls, fees, or tariffs, while the concessionaire pays a concession or franchise fee to the government owner of the facility.

Republic Act No. 7718 also introduced a new section on unsolicited proposals. Unsolicited proposals for projects may be accepted on a negotiated basis if all the following conditions are met: (a) the project involves a new concept or technology and/or is not part of the list of priority projects; (b) no direct government guarantee, subsidy, or equity is required; and (c) no other proposal was received for a period of 60 working days after invitation for comparative or competitive proposals was published for 3 consecutive weeks in a newspaper of general circulation. If another proponent submits a lower price proposal, the original proponent has the right to match that price within 30 working days.

Additional incentives were offered to private sector proponents. For projects that would have difficulty in sourcing funds, up to 50% of the project cost may be financed by direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions, with the balance to be provided by the project proponent. Project cost is defined in the Implementing Rules and Regulations (IRRs) of the BOT Law as the total cost expended by the proponent to plan, develop, and construct the project to completion stage including, but not limited to, such costs as feasibility study, detailed engineering and design, construction, equipment, land, and right of way. Projects costing more than P1 billion shall be entitled to the incentives provided by the Omnibus Investment Code, upon registration with the Board of Investments. In addition to these financial incentives, there is the creation of an investor-friendly business climate with minimum government regulations and procedures as well as specific government undertakings in support of the private sector.

While Republic Act No. 6957 referred only to infrastructure projects, Republic Act No. 7718 mentioned development projects as well. Infrastructure or development projects that are normally financed or operated by the public sector but which may now be wholly or partly implemented by the private sector were enumerated in Republic Act No. 7718. Those that may be spearheaded by LGUs because of devolution include public markets, slaughterhouses, warehouses, solid waste management (SWM), water supply, sewerage, drainage, dredging, information technology, education and health facilities, roads and bridges, fish ports, housing, government buildings, land reclamation projects, industrial estates or townships, transport systems, canals, dams, minihydroelectric projects for local purposes, and irrigation and tourism projects.

2. 1991 Local Government Code

With the passage of Republic Act No. 7160 or the LGC on 10 October 1991, responsibilities as well as resources were transferred from the national government to the LGUs which were vested with both local autonomy and accountability. In addition to basic services such as health care, social welfare, and agricultural extension, LGUs were also tasked to provide the revenue-generating infrastructure facilities mentioned in the previous section. For such facilities that are financially viable, LGUs were authorized by the LGC to enter into contracts with any duly prequalified individual contractor, for the financing, construction, operation, and maintenance of such facilities, under the BOT arrangement, subject to the applicable provisions of the BOT Law and the terms and conditions provided in Section 302 of the LGC.

The LGC further provided that projects that may be financed, constructed, operated, and maintained by the private sector should be included in the LGU's local development plans and public investment programs and be disclosed to the public and duly registered contractors. The projects also need to be confirmed by the local development councils based on the plans and specifications submitted. The contracts for approved projects shall be awarded to the lowest complying bidder in a public bidding.

To finance self-liquidating, income-producing development or livelihood projects, LGUs were also authorized by the LGC to issue bonds, debentures, securities, or other obligations, subject to the rules and regulations of the Central Bank and the Securities and Exchange Commission (SEC). To finance public and infrastructure facilities and other capital investment projects that may not be financially viable or self-liquidating, LGUs were authorized by the LGC to contract loans, credits, or other forms of indebtedness with government or domestic private banks.

To provide LGUs with the necessary resources to undertake their new responsibilities, the LGC gave LGUs the power and authority to create their own sources of revenue and to levy taxes, fees, and charges. Various mechanisms for LGUs to share in the revenues collected by the national government were also introduced. Through the Internal Revenue Allotment (IRA), LGUs automatically receive 40% of the internal revenue taxes collected by the national government during the third year preceding the current fiscal year. LGUs also get a share of the proceeds derived from the utilization and development of the national wealth within their respective jurisdictions. Any funds or resources available for the use of LGUs, including those from the national government, shall first be allocated for the provision of basic services or facilities enumerated in Section 17(b) of the LGC.

The LGC also allows LGUs to accept financial grants or donations in kind from local and foreign assistance agencies, without prior approval of the national government or any higher LGU. The concerned local chief executives (LCEs) are required to report the nature, amount, and terms of such assistance to both houses of Congress and the President, through the Department of the Interior and Local Government (DILG).

The LGC authorizes LGUs, through appropriate ordinances, to group themselves and coordinate their efforts, services, and resources for mutually beneficial common purposes. To support such undertakings, the concerned LGUs may contribute funds, real estate, equipment, and other kinds of property as well as appoint or assign personnel, upon approval of the local legislative councils concerned after a public hearing conducted for the purpose.

The LGC also authorizes LGUs to enter into joint ventures and such other cooperative arrangements with NGOs and people's organizations to engage in the delivery of basic services, capability building, and livelihood projects, and to develop local enterprises "designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people." Articles 62 and 66 of the IRRs for the LGC allow LGUs to form such joint ventures and other cooperative arrangements not only with people's organizations and NGOs but also with the private sector. To make them active partners in the pursuit of local autonomy and development, they may be involved in the following: local special bodies, delivery of basic services and facilities, joint venture and cooperative programs or undertakings, financial and other forms of assistance, and financing, construction, maintenance, operation, and management of infrastructure projects.

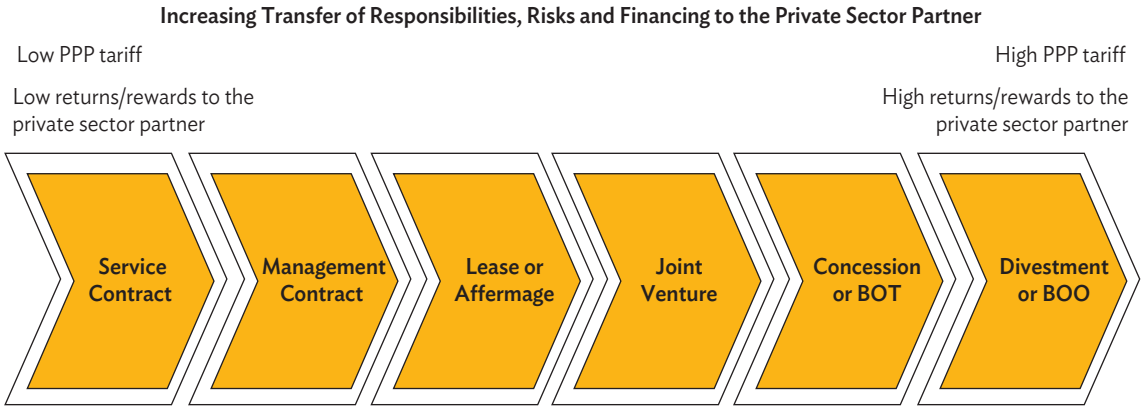
A joint venture is defined as "a contractual arrangement whereby two or more parties pool their assets in undertaking a particular activity and agree to share in profits and losses" (Agra 2012). In compliance with Executive Order No. 423 dated 30 April 2005, the NEDA issued in April 2008 "Guidelines and Procedures for Entering into JV Agreements between Government and Private Entities." Under the guidelines, formation of a joint venture company under the Corporation Code and its registration as a stock corporation with the SEC is the preferred mode of implementing a joint venture agreement. If a joint venture company is not formed, the contractual joint venture can be considered as a particular partnership that would be governed by the general law on partnerships under the Civil Code. The NEDA guidelines cover only government financial institutions (GFIs), other government-owned or controlled corporations (GOCCs), and other corporate entities of the national government. LGUs are not covered by the said guidelines. Guidelines for joint ventures of LGUs are presently being developed by the DILG in consultation with the PPP Center and leagues of local governments. Joint ventures have been included as a form of public–private partnership (PPP) in the draft PPP Act of 2014.

"To ensure the active participation of the private sector in local governance, LGUs may, by ordinance, sell, lease, encumber, or otherwise dispose of public economic enterprises owned by them in their proprietary capacity" (Section 17[j] of the LGC). The sale or divestment of the assets and property of NGAs, LGUs, and GOCCs and their subsidiaries is governed by Circular No. 89-296 issued by the Commission on Audit (COA) on 27 January 1989. It recognizes four modes of disposal or divestment: public auction, sale through negotiation, barter, and transfer to other government agencies without cost or at an appraised value. When a government entity leases out its property, the applicable rules to be followed are in Executive Order No. 301 issued in 1987. Heads of agencies have the authority to determine the reasonableness of the proposed terms of the lease and rental rates and to enter into such lease contracts without need of prior approval from higher authorities, subject to guidelines established by the Department of Public Works and Highways (DPWH) and to audit by the COA. There is no need to conduct an open public bidding although government entities may choose to follow the procedures outlined in the Government Procurement Reform Act and its Revised Rules. The Law on Leases of the Civil Code of the Philippines may also be referred to (Agra 2012).

3. 2003 Government Procurement Reform Act

Republic Act No. 9184 or the Government Procurement Reform Act (GPRA) was enacted in 2003 to overhaul the system for procuring infrastructure, goods, or consulting services for the government. The GPRA applies to projects funded by the government and, in some cases, its development partners. An Approved Budget for the Contract is set by the procuring government entity before the procurement process is initiated. Management and service contracts fall under consulting services and are to be bid out in compliance with the GPRA. Since management and service contracts do not entail project financing, they are not considered as PPPs in the strict or narrow sense. They can, however, be considered as a form of private sector participation (PSP) in the provision of public services and, thus, a PPP in a broad sense. Service contracts would be considered the lowest form of PPP and management contracts would be considered the second lowest in terms of risks and returns passed on to the private sector partner, as shown in Figure 1.

Figure 1: Public–Private Partnership Modes



BOO = build–own–operate, BOT = build–operate–transfer, PPP = public–private partnership.

Source: A. C. Agra. 2012. *Proposed PPP Code for Local Governments: Annotated.* Manila: Forensic Solutions.

B. POLICY FRAMEWORK

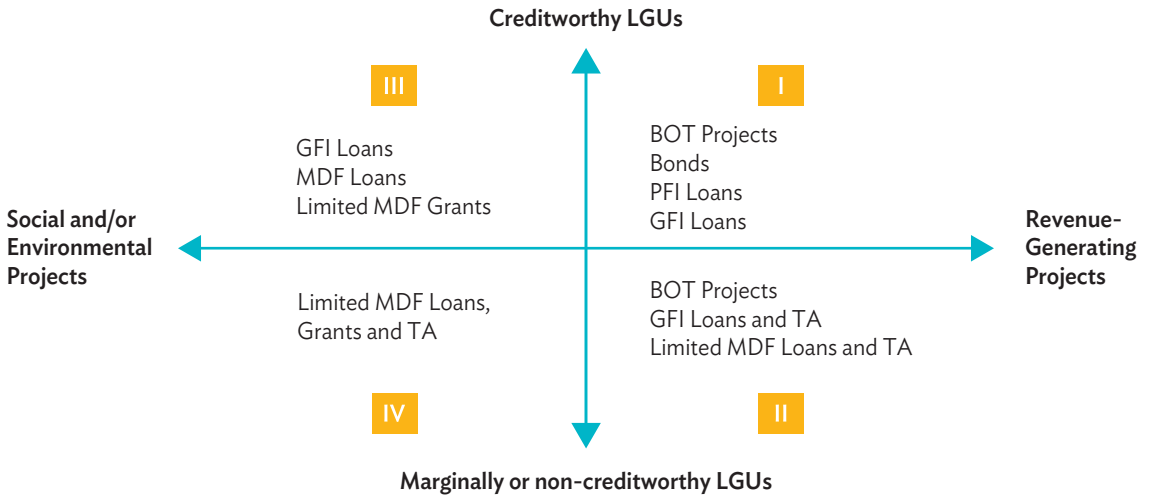
To facilitate the achievement of the vision and goals of the LGC with respect to the roles and responsibilities of LGUs in helping to achieve national objectives while serving their local constituents, a policy framework to rationalize the use of the available financial resources was thought to be needed and drawn up by the Department of Finance (DOF) and NEDA.

1. Local Government Unit Financing Policy Framework

In view of the many responsibilities devolved to LGUs by the LGC, their financing needs were observed to be huge and could not be met solely by funds provided by the national government or raised by the LGUs themselves, even if these were supplemented by ODA. The DOF, in consultation with key stakeholders, formulated the LGU Financing Policy Framework in 1996 to wean away the LGUs from dependence on the national government and promote their effective partnership with the private sector. The ultimate objective of the framework is to graduate the more creditworthy LGUs to private sources of capital, at least for their revenue-generating or self-liquidating projects.

In Figure 2, revenue-generating projects are presented on the right-hand side of the horizontal axis, with the self-liquidating ones in the right most edge. The more creditworthy LGUs (shown on the upper end of the vertical axis) can float their own bonds or get loans from private financial institutions (PFIs). They can also get loans from GFIs or can enter into BOT or similar arrangements with private investors. Even the less creditworthy LGUs (shown on the lower end of the vertical axis) with financially viable projects can do the last two. They can access GFI loans because they can use their IRA basically as collateral. They can also attract private sector proponents if the proposed project can generate enough revenues for a long enough period of time for the proponents to get back their investment with a reasonable rate of return.

Figure 2: Credit Policy Framework for Local Government Units



BOT = build–operate–transfer, GFI = government financial institution, LGU = local government unit, MDF = Municipal Development Fund, PFI = private financial institution, TA = technical assistance.

Source: Department of Finance of the Philippines. 1996. *LGU Financing of Basic Services and Infrastructure Projects: A New Vision and Policy Framework.* Manila.

The left-hand side of the horizontal axis indicates projects with social and/or environmental objectives. They can be social infrastructure (e.g., health clinics and school buildings) or projects to protect or rehabilitate the environment (e.g., reforestation, sewerage, and SWM systems). Some of these projects also generate revenues but they grow gradually over a long period of time while the initial investments can be quite substantial. For projects of this type, even creditworthy LGUs may need to access longer term lower cost loans from GFIs and the Municipal Development Fund (MDF) administered by the DOF and, in some cases, limited grants from the MDF. The less creditworthy LGUs can undertake these types of projects only with loans from the MDF, grants, and technical assistance (TA).

To optimize utilization of the various sources of financing identified in the LGC, a program of action was drawn up to achieve the following objectives:

a. increase LGU use of BOT and similar arrangements,
b. develop the LGU bond market,
c. promote LGU access to loans from PFIs,
d. optimize the involvement of GFIs in LGU financing,
e. restructure and reorient the MDF,
f. improve the capacity of LGUs to raise their own revenues, and
g. tap ODA TA and financing.

With respect to the first objective of widening the use of BOT and similar arrangements by LGUs, the following measures were recommended:

a. promotion and educational campaigns for BOT projects,
b. promotion of LGU/private sector partnership projects and "blended" project financing,

c. assistance in arranging financing for BOT projects,
d. development of market-oriented financing techniques to reduce BOT project risks, and
e. exploring new long-term financing instruments such as infrastructure funds and asset participation certificates.

With respect to the last objective of tapping ODA TA and financing to support the achievement of the first six objectives, the new directions for ODA support included the following:

a. participate in building up the LGUs' infrastructure pipeline by providing TA to finance project feasibility studies;
b. support an LGU capacity-building fund to promote LGU institutional development in the areas of revenue mobilization, budget administration, development planning, capital budgeting and investment programming, project preparation, contract management, and construction supervision;
c. participate in establishing market-based credit enhancement mechanisms for LGU BOT infrastructure projects; and
d. provide grants and long-term credits for poorer LGUs and for social and/or environmental projects through the MDF, GFIs, and other facilities, and promote innovative LGU-implemented projects and/or greater LGU participation in NGA-sponsored projects.

The LGU Financing Policy Framework was confirmed by DOF through a January 2007 memorandum to all NGAs, GOCCs, GFIs, and LGUs. It was also cited in the Presidential Executive Order No. 809 on 9 June 2009.

Under Executive Order No. 809 "Implementing the Financing Policy Framework for LGUs by Identifying New Sources of Funding for First Tier LGUs under Republic Act 7160" issued on 9 June 2009 by President Gloria Macapagal Arroyo, the DILG and DOF were directed to implement the Financing Policy Framework and ensure that First Tier LGUs are allowed and assisted to directly contract loans not only with GFIs and the Municipal Development Fund Office (MDFO) of the DOF but also with multilateral financial institutions (MFIs) created by treaties to which the Philippines is a signatory. In the IRRs issued by the DOF on 1 October 2009, these MFIs are limited to the Asian Development Bank (ADB), World Bank, and International Finance Corporation. First Tier LGUs are defined to be provinces, cities, or municipalities whose 3-year average proportion of regular locally sourced income to total regular income is at least 60% as per certification of the Bureau of Local Government Finance (BLGF) of the DOF. The project to be financed should be certified by the LGU's Planning and Development Office to be included in the Annual Investment Plan of the LGU.

Furthermore, the direct LGU loans from MFIs have to comply with the following requirements:

a. denominated in Philippine pesos;
b. market-based commercial terms;
c. non-use of IRA as security;
d. no direct or indirect guarantee from the national government;
e. loan proceeds accrue directly and exclusively to the LGU borrower; and
f. comply with the LGU Financing Policy Framework, Executive Order No. 809 and all applicable laws, rules, and regulations including those of the DOF and Bangko Sentral ng Pilipinas or the Central Bank.

The First Tier LGUs that access loans under Executive Order No. 809 are required to submit quarterly reports to the BLGF, which shall make periodic reports to the DOF Secretary. The BLGF shall monitor the amount of loans made under Executive Order No. 809.

2. National Government–Local Government Units Cost-Sharing Policy

In May 1996, the ICC of the NEDA Board approved a policy framework for financial assistance from the national government for LGU projects with social and/or environmental objectives. It aimed to define appropriate financing policies and assignment of roles among the different levels of government to facilitate the decentralization process envisioned by the 1991 LGC.

The policy framework allowed for the continued involvement of NGAs in devolved activities only if they had one or more of the following characteristics: (i) externalities (indirect effects on parties not directly involved in the investment undertaking), (ii) economies of scale (when the area coverage required by a particular service to be cost-effective is larger than an LGU's jurisdiction), or (iii) equity considerations. National government support would be in the form of matching grants that are for specific purposes, performance-based, limited in amount and duration, and in line with the following principles:

a. Cost recovery through user charges shall be maximized and PSP shall be elicited whenever possible.
b. Recurrent operation and maintenance expenditures shall not be included.
c. The amount of national government exposure in any devolved project/program shall be set at about 50% and allowed to vary depending on the type of project and the LGU income class.

The cost-sharing scheme between the national government and LGUs for projects with social and/or environmental objectives was approved by the ICC in December 1997. The guidelines specified the percentage of the project cost that could be given by the national government as capital grants and the types of projects and income classes of LGUs that would be eligible for the grants. The matching grants could cover as much as 70% of the cost of projects with environmental and social objectives of LGUs in the lower income classes. While this ratio might appear to be high, this was actually lower than the 100% grant that many LGUs had been accustomed to getting from the national government in the previous years.

In August 2002, the ICC Cabinet Committee delegated to the MDFO Policy Governing Board the review and revision of the loan–grant–equity mix for various projects. The list of devolved activities eligible for matching grants was expanded in the new set of guidelines adopted by the ICC during its 12 December 2002 meeting and by the NEDA Board chaired by the President of the Philippines in its 4 February 2003 meeting. Changes in the mix were also made to partially correct the distortion of the IRA formula which favors cities over municipalities and provinces. The matching grants were limited to only 50% of project cost even for LGUs in the lowest income classes.

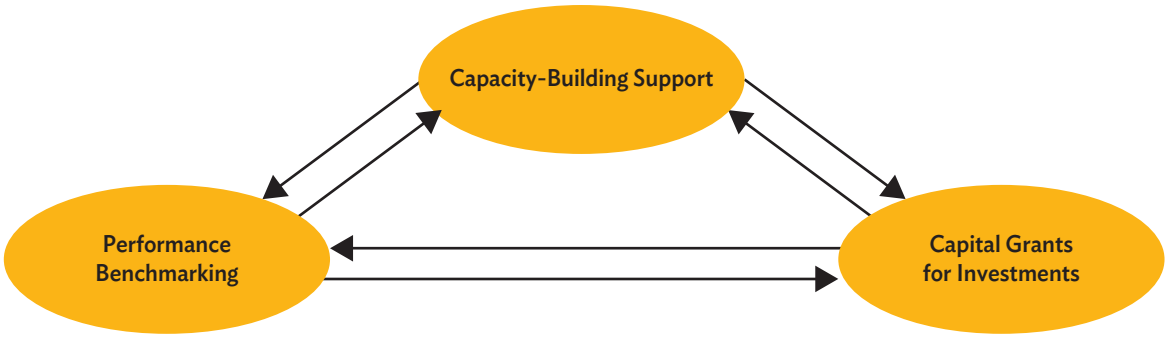
The national government–LGU cost-sharing policy was introduced to smoothen the transition from a centralized system when NGAs were delivering infrastructure and services (mostly through projects funded from ODA) that got devolved to LGUs by the LGC. This policy can, however, also be used to support LGU PPPs that meet certain criteria, such as externalities, economies of scale, and equity considerations. The national

government support would be in the form of Viability Gap Funding (VGF) for specific purposes, performance-based, limited in amount and duration, and in line with the principles of cost-recovery and PSP. If properly designed and implemented, VGF for LGU PPPs would be even more likely to meet the latter two objectives. As with the matching grants, the VGF would be capital grants up to a certain percentage of the cost of projects bid out competitively. The VGF could be computed using the Financing Gap Method to make the proposed project attractive to investors and lenders (Almagro 2005).

3. Performance-Based Incentive Policy for Local Government Units

The concept of performance-based grants was introduced to the Philippines Development Forum Sub-Working Group on Decentralization and Local Government in 2005. Several preparatory studies and concept papers were prepared, followed by the preliminary design of a performance-based grant system for the Philippines. The performance-based grant system would have three major components: performance monitoring, capacity-building grants, and capital investment grants, as shown in Figure 3 (Stefensen and Soriano 2005). Participating LGUs must comply with governance conditions (related to planning, budgeting, financial management, procurement, monitoring, and evaluation) and performance measures.

Figure 3: Components of a Performance-Based Grant System



Source: Stefensen and Soriano (2005).

On the basis of the above studies, a performance-based incentive policy (PBIP) was approved by the MDFO Policy Governing Board in October 2008 and by the Development Budget Coordination Committee of the NEDA Board in February 2009. The PBIP is an incentive framework to rationalize intergovernmental fiscal transfers from the national government to LGUs to improve overall LGU governance and delivery of basic services. The PBIP seeks improvements in LGU performance by linking incentives to the achievement of a set of performance targets. Financial incentives for good-performing LGUs are based on an established set of requirements and conditions.

In line with the PBIP, the Performance Challenge Fund (PCF) was launched by the DILG in October 2010 as a facility that would recognize and give financial incentives to LGUs that get the Seal of Good Housekeeping. Two governance conditions were required: (i) sound fiscal management as evidenced by the absence of adverse COA findings on the LGU's financial statements and (ii) transparent and accountable governance

as evidenced by compliance with the Full Disclosure Policy of the government. In December 2013, a third condition was added: excellent or good performance rating in frontline services as indicated in the Anti-Red Tape Act—Report Card Survey of the Civil Service Commission (DILG 2013).

In January 2014, the DILG launched the Seal of Good Local Governance to further challenge LGUs to continue good governance practices while providing better services to their constituents. In addition to keeping their Seal of Good Housekeeping (or Good Financial Housekeeping), LGUs also have to prepare well for disasters (disaster preparedness) and be sensitive to the needs of vulnerable and marginalized sectors of society (social protection). LGUs will also have to qualify in at least one of the essential assessment areas—business-friendliness and competitiveness, peace and order, or environmental management—to be conferred with the Seal of Good Local Governance and be eligible to apply for grants or subsidies under the PCF (DILG 2014).

The maximum subsidy for a municipality is P1 million; for a city, P3 million; and for a province, P7 million. LGUs will have to put up at least the same amount as their counterpart fund. The PCF subsidy together with the LGU counterpart may be used for any of the following purposes: (a) as subsidy for high-impact capital investment projects of the LGU, (b) as counterpart funds for foreign-assisted projects of the LGU, (c) as cofinancing for joint projects with other LGUs, and (d) as counterpart for projects of the LGU with the private sector in the context of PPPs in establishing more economic activities. The utilization of PCF is governed by the existing policies on the appropriations and utilization of 20% development component of the annual IRA of LGUs. Projects eligible for PCF subsidy are those geared to the achievement of national government priorities such as attainment of the Millennium Development Goals, adaptation to climate change, disaster preparedness, local economic development, and SWM (DILG 2010).

C. INSTITUTIONAL FRAMEWORK

While the legal and policy frameworks for promoting partnerships between LGUs and the private sector have been quite stable over the past two decades, the institutional framework has been less so. BOT and similar arrangements for LGUs have been promoted by three different government entities whose technical secretariats have been attached to three different NGAs, namely, DOF and Central Bank, NEDA, and the Department of Trade and Industry (DTI). At present, the PPP Center is attached to the NEDA.

1. Coordinating Council of the Philippine Assistance Program

The BOT Law, as amended, made the Coordinating Council of the Philippine Assistance Program (CCPAP) responsible for the coordination and monitoring of projects implemented under the law.

The CCPAP had been created in 1989 through Administrative Order No. 105 to oversee the formulation and implementation of the multidonor Philippine Assistance Program that supported the reform and stabilization efforts of the Aquino administration. The CCPAP had members from both the public and the private sectors—Cabinet members including the secretaries of DOF, DPWH, Department of Budget and Management (DBM), Department of Foreign Affairs, and Socio-Economic Planning (also the director general of the NEDA), as well as highly respected individuals from banking and industry who were chosen by the President.

While the overall coordination and liaison activities were undertaken by the Cabinet Secretariat of the Office of the President, Technical Secretariat support to the council and its technical committee was provided jointly by the DOF and the Central Bank. Full-time positions for executive director and other officials were eventually created and filled.

Although most of the funding for the Philippine Assistance Program was coming from ODA, the participation of the private sector was also envisioned, particularly in infrastructure development. Government corporations such as the National Power Corporation were encouraged to consider BOT and other similar schemes.

In 1993, the CCPAP chair was designated as the BOT Action Officer by Memorandum Order No. 166 issued by President Fidel V. Ramos. This was formalized by Republic Act No. 7718 which mandated the CCPAP to be responsible for the coordination and monitoring of all projects implemented under the BOT Law, as amended. Regional Development Councils (RDCs) and LGUs were required to periodically submit reports on the status of their BOT projects to CCPAP. At the end of the calendar year, the CCPAP was supposed to report to the President and the Congress on the progress of these projects.

To help the CCPAP carry out these functions, the BOT Center was created as part of the Technical Office of the CCPAP. The CCPAP Executive Director oversaw both the BOT Center and the ODA Unit which helped to mobilize funds from multilateral and bilateral financing institutions. The CCPAP Executive Director also sat as a member of the ICC of the NEDA Board which approved major infrastructure projects of the government, including those with BOT and similar arrangements. When Roberto F. de Ocampo became the secretary of finance in 1994, he also assumed the chairmanship of the CCPAP and became concurrently the BOT Action Officer. According to Secretary de Ocampo, the main goals of the BOT Center were to ensure "transparent bidding, clear negotiation process, attractive contractual incentives and investor friendly regulatory framework." The BOT Center was also tasked to guide national government entities and LGUs in the preparation and development of BOT projects.

The BOT Program of the CCPAP was supported by the United States Agency for International Development through three consecutive TA programs: BOT I for the period 1992–1996, BOT II for the period 1996–1998, and BOT III for the period 1998–2001. During the BOT III program, technical support was provided for the conversion of the CCPAP into the Coordinating Council on Private Sector Participation (CCPSP). The BOT TA programs supported the CCPAP and later the CCPSP in their five core functions: policy review and advocacy, project development, training and capability building, marketing and promotion, and project and contract monitoring.

2. Coordinating Council on Private Sector Participation

In May 1999, the CCPAP was converted into the CCPSP through Administrative Order No. 67. The CCPSP was tasked to coordinate and monitor the government's program on PSP in its infrastructure and other development projects. It would also facilitate and promote such projects and submit reports to the President and to Congress on the implementation of these projects.

The Secretary of Socio-Economic Planning/NEDA Director General was designated as the ex officio chair of the CCPSP to facilitate coordination between NEDA and CCPSP in the areas of policy advocacy and project development. The secretary of the council, to be appointed by the President of the Philippines with the rank of Undersecretary, would also be the executive director of the Technical Secretariat (formerly the Technical Office of the CCPAP).

To fill the funding gap for project preparation and to encourage the bidding out of priority projects, the Technical Secretariat was tasked by Administrative Order No. 67 to manage and administer a project development facility that would help bring projects with PSP to tendering stage. The Project Development Facility (PDF) was approved by the NEDA Board in November 1999 and a PDF Steering Committee created to provide interagency coordination and to set the policy and implementation guidelines for the operationalization of the PDF. The PDF would be a revolving fund consisting of several funds managed by fund administrators in accordance with the said guidelines. The Technical Secretariat would provide technical support to the PDF Steering Committee and fund administrators.

The first fund activated was the Private Infrastructure Project Development Facility (PIPDF) funded by ADB and implemented by the Land Bank of the Philippines (LBP) for LGUs. This will be discussed in section III. The second fund was provided by United States Agency for International Development and managed and administered by the CCPSP. The second fund included (i) $250,000 that supported studies for the General Santos City Integrated Bus Terminal and the Cebu Fast Ferry Terminal; and (ii) $750,000 given directly to CCPSP under a host nation contract that funded the study for the Access Road to the Ninoy Aquino International Airport. The US Trade and Development Agency also provided more than $1 million for three water projects in Puerto Princesa City, Metro Kidapawan, and Metro Cebu. The first two projects were under the auspices of the Local Water Utilities Administration, while the Mananga Dam project was for the Metro Cebu Water District. Memoranda of Agreement with Local Water Utilities Administration and Metro Cebu Water District were drafted to revolve these grant funds following the PDF guidelines.

3. Build–Operate–Transfer Center

On 2 November 2002, Executive Order No. 144 was issued to convert the CCPSP into the BOT Center and the Technical Secretariat of the CCPSP into the Project Monitoring Office. The Project Monitoring Office was transferred as an attached unit from the Office of the President to the Industry and Investments Group of the DTI. The BOT Center was to be headed by an executive director appointed by the President of the Philippines with the rank of Undersecretary and reporting to the secretary of trade and industry.

The main function of the BOT Center is to promote investments in BOT and similar projects with PSP. The BOT Center was given the following powers:

a. coordinate and monitor the BOT program of the government and submit annual reports to the President and to the Congress;
b. promote and market the BOT program through the formulation and implementation of promotions and marketing plans and acting as a “BOT Information Center” for potential investors as well as government agencies;

c. assist in the formulation of policies and implementation guidelines, in consultation with appropriate oversight committees, implementing agencies, LGUs, and the private sector, which will ensure transparent and expeditious implementation of BOT programs and projects of the government;
d. undertake activities related to the development of BOT programs and projects including projects with ODA financing under the amended BOT Law;
e. assist in BOT project development by providing TA to national implementing agencies and corporations and LGUs;
f. establish, manage, and administer a PDF as a revolving fund for the preparation of feasibility studies and bid documents;
g. provide training and capacity building on BOT project development;
h. conduct project facilitation and assist agencies and LGUs in addressing impediments to the implementation of BOT projects; and
i. perform business development and investment-related activities in support of the other functions and mandates of DTI.

The annual reports were included in the Budget of Expenditures and Sources of Financing that was compiled by the DBM and submitted to Congress as the basis for preparation of the General Appropriations Act. The tables on the status of the projects were also made available on the website of the BOT Center.

4. Public–Private Partnership Center

In September 2010, Executive Order No. 8 was issued to reorganize the BOT Center into the PPP Center. The PPP Center would cover all PPP programs and projects including all variants and arrangements under the BOT Law and Joint Venture agreements. The BOT Center's PDF was revitalized as the Project Development and Monitoring Facility. The PPP Center undertakes the following activities:

a. **Project Development:** It provides advisory and TA to implementing agencies and LGUs in the development and implementation of projects at both the national and local government levels.
b. **Project Development and Monitoring Facility:** It manages and administers a revolving fund for pre-investment activities including preparation of business cases, prefeasibility and feasibility studies, and tender documents to ensure that PPP projects are properly structured.
c. **Project Facilitation:** It assists implementing agencies, GOCCs, LGUs, and state universities and colleges in addressing impediments or bottlenecks in the implementation of PPP programs and projects; clarifies procedures and guidelines for development, appraisal, and evaluation of PPP projects and contracts; recommends improvements to timelines in processing PPP programs and project proposals, and monitors compliance of all agencies and LGUs.
d. **Project Monitoring:** It monitors and facilitates the implementation of the priority PPP programs and projects of implementing agencies/LGUs formulated by them in coordination with the NEDA Secretariat.
e. **Policy Advocacy:** It recommends plans, policies, and implementation guidelines related to PPPs in consultation with appropriate oversight committees, implementing agencies, LGUs, and the private sector, and participates in the formulation of PPP policy reforms.

f. **Information Management:** It provides information on PPP programs and projects based on a central database and monitoring system to keep track of the status of PPP projects and prepares reports on the implementation of all PPP programs and projects for submission to the President at the end of each year.
g. **Capacity Building:** It conducts intensive training, seminars, and workshops through its institution building program to improve the capabilities of implementing agencies and/or LGUs in all phases of the PPP project development life cycle.

The PPP Center and its resources were transferred to the NEDA from the DTI. The DTI would continue to undertake the promotion and marketing of BOT/PPP projects. The processing of all qualified solicited PPP proposals has to be completed within a period of 6 months, subject to existing laws, guidelines, and rules and regulations.

The PPP Center is headed by an executive director with the rank of Assistant Director-General or Assistant Secretary, appointed by the President of the Philippines upon the recommendation of the Secretary of Socioeconomic Planning/NEDA Director General. The PPP Center has six services under the Office of the Executive Director: Project Development and Monitoring Facility Service, Legal Service, Policy Formulation and Evaluation Service, Project Development Service, Capacity Building and Knowledge Management Service, and Administrative Service.

5. National Government Agencies

Other NGAs have been supporting the promotion and implementation of BOT/PPP projects over the years. They include the DILG, DOF, and NEDA.

(a) DILG

On 31 January 2011, the DILG issued Memorandum Circular No. 2011-16 to enjoin all LCEs to create a PPP Subcommittee in their respective Local Development Councils. In the case of provinces, the PPP Subcommittee would be headed by the Local Economic and Investment Promotion Officer designated earlier pursuant to DILG Memorandum Circular No. 2010-113. Memorandum Circular No. 2011-16 also directed all DILG regional directors to cause its widest dissemination in their respective coverage areas and to assist LGUs therein in the establishment of their PPP Subcommittees.

The DILG also entered into a Memorandum of Agreement with the PPP Center on 11 October 2011 to work together in organizing capacity building, training, and TA programs for LGUs and their key officials. DILG would help to identify invitees to the programs and enjoin local government leagues to consider organizing or attending these programs. DILG would also assist the PPP Center in gathering reports on PPP implementation by LGUs and in addressing impediments or bottlenecks in the implementation of PPP programs and projects of LGUs. DILG would also provide inputs to the PPP resource materials for LGUs and assist in disseminating these to LGUs.

As mentioned previously, the DILG is preparing guidelines for joint ventures of LGUs in consultation with the PPP Center and leagues of local governments.

(b) DOF

(i) DOF-BLGF

The BLGF of the DOF assisted the BOT Center in organizing the Regional LGU Financing Seminar series conducted in 1997 when DOF Secretary Roberto F. de Ocampo was concurrently CCPAP Chair and BOT Action Officer. The seminars were conducted in all the regions with the support of the GFIs. The seminars sought to familiarize the LGUs with all the financing options available to them including BOT and similar arrangements.

The BLGF supervises the revenue operations of LGUs with the objective of making them less dependent on the national government for funding. LGUs are required to submit quarterly reports on their fiscal and financial performance. In 2001, the Budget Operations Statement was replaced by the Statement of Income and Expenditure to capture more information needed by policy makers, researchers, and potential lenders. With funding support from the World Bank and ADB, these were consolidated and uploaded on the BLGF website. In 2008, the Statement of Income and Expenditure was replaced by the Statement of Receipts and Expenditures to further broaden its coverage and harmonize with the New Government Accounting System of the COA. The Electronic Statement of Receipts and Expenditures (eSREs) was introduced in 2010 and made the official reporting system for LGUs through Department Order No. 8-2011 dated 11 February 2011. The eSREs are validated by the regional and central offices of the BLGF and uploaded on the BLGF website. Through the eSRE system, LGUs can more easily comply with the LGC requirement for them to post and publish their monthly collections and disbursements. The eSRE also includes the financial performance indicators that serve as the basis for assessing the LGUs' fiscal and financial status. The eSRE system also facilitates the classification of LGUs based on their income which BLGF is mandated by the LGC to do every 3 years, the results of which are also posted on the BLGF website.

To facilitate LGU access to credit facilities and compliance with the debt servicing cap set in the LGC, the BLGF issues Certificates of Maximum Borrowing and Debt Service Capacities based on LGU compliance with the prescribed requirements. These were modified through Local Finance Circular No. 1-2012 dated 16 April 2012. These include the eSREs uploaded and approved by the BLGF Central Office, no adverse findings against the LGU in COA's Annual Audit Certificates for the past 3 years, proof of compliance with the Full Disclosure Policy as embodied in DILG Memorandum Circular No. 2010-83, and the DILG's Seal of Good Housekeeping.

(ii) DOF-MDFO

The MDFO of the DOF administers the MDF mentioned in the LGU Financing Framework. The MDF is a revolving fund which was created in March 1984 by Presidential Decree No. 1914. It was capitalized by foreign loans and grants that were made available as loans to LGUs for purposes and projects specified in the agreements with international financial institutions and foreign governments. The repayments from LGUs would form part of the MDF Second Generation Funds, which can be re-lent to finance other similar projects of LGUs.

Allocating P1 billion of the Second Generation Funds, the MDFO has recently approved a PPP Fund that LGUs already implementing or planning to implement a PPP project can access for their counterpart fund

requirements. Loan terms and conditions depend on the income class of the LGU and the type of project. Interest rates range from 5% to 5.75%. Repayment period is generally 15 years inclusive of 3 years grace period, except for water supply Level 3, sewerage, sanitation, and SWM projects for which it is 20 years. The MDFO is coordinating with the PPP Center in identifying LGUs that already have project proposals and feasibility studies and that may be interested in availing the PPP Fund.

The MDFO also has the Project Technical Assistance and Contingency Fund which LGUs can access to fund the feasibility study or detailed engineering design of projects that can be implemented under BOT or similar schemes or through bond flotations or loans from PFIs, GFIs, or the MDFO itself. Loanable amounts are 3% of the proposed project cost for feasibility study and 6% for detailed engineering design. Other eligible items are actual foreign exchange cost differential incurred during project implementation and other TA needs of the LGU for the completion of a project including capacity building, technical tests, revenue enhancement programs, and other related studies. Interest rates are 0% for fourth to sixth class municipalities, 0.5% for second and third class municipalities, 1% for first class municipalities, and 1.5% for provinces and cities except highly urbanized cities in the National Capital Region. Loan repayments should be made in full within the term of the LCE, with provision for IRA intercept in case of payment default.

(c) NEDA

The NEDA was created on 24 September 1972 by Presidential Decree No. 1 or the Integrated Reorganizational Plan of 1972. The 1987 Constitution provided that the NEDA shall function as the independent planning agency of the government, until Congress provides otherwise. The NEDA would recommend to Congress and implement continuing, integrated, and coordinated programs and policies for national development, after consultations with the appropriate public agencies, various private sectors, and LGUs. Executive Order No. 230 was issued on 22 July 1987 to reorganize the NEDA structurally and functionally. The powers and functions of the NEDA reside in the NEDA Board which is chaired by the President of the Philippines. The NEDA Secretariat provides research and technical support to the NEDA Board and is headed by the director general who acts as vice-chair of the NEDA Board.

One of the five interagency committees created under Executive Order No. 230 was the ICC. The ICC is composed of the NEDA Director General, the executive secretary, secretaries of DOF, DBM DTI, and Department of Agriculture, and the governor of the Central Bank. The ICC is chaired by the DOF Secretary while the Public Investment Staff of the NEDA Secretariat acts as ICC Secretariat. The ICC has the following functions: (a) evaluate the fiscal, monetary, and balance of payments implications of major national projects and recommend to the President the timetable of the implementation of these projects on a regular basis and (b) recommend to the President a domestic and foreign borrowing program updated each year, and subsequently submit to the President a status of the fiscal, monetary, and balance of payments implications of major national projects.

In Section 4 of Republic Act No. 7718 which amended the 1990 BOT Law, the ICC was given additional responsibilities. It was tasked to review national BOT projects submitted for its approval (costing up to P300 million) and NEDA Board approval (costing more than P300 million). LGUs' PPP projects costing more than P200 million were also to be submitted to the ICC for its confirmation.

6. Regional and Local Development Councils

For LGU PPP projects costing up to P200 million, confirmation will be sought from the RDC, Provincial Development Council, or City/Municipal Development Council. Approval of all PPP projects of all LGUs rests with their respective local legislative bodies or Sanggunian.

(a) Regional Development Councils

The RDC serves as the counterpart of the NEDA Board in each of the 14 administrative regions except the Cordillera Autonomous Region, National Capital Region, and Autonomous Region of Muslim Mindanao. Like the NEDA, the RDC was first established pursuant to the Integrated Reorganization Plan of 1972. The 1987 Constitution authorized the President of the Philippines to provide for RDCs or similar bodies composed of local government officials, regional heads of departments and other offices, and representatives from the private sector within the region. Their main purpose is administrative decentralization to strengthen the local autonomy and to accelerate the economic and social development in the regions. In line with this provision, President Corazon Aquino issued Executive Order No. 308 on 5 November 1987 to reorganize the RDC. This and other subsequent Executive Orders were repealed by Executive Order No. 325 issued by President Fidel Ramos on 12 April 1996.

Three major sectors are represented in the RDC: LGUs, NGAs, and the private sector. LGUs are represented by all the provincial governors, all city mayors, mayors of municipalities designated as provincial capitals, presidents of the provincial leagues of mayors of the region, and the mayor of the municipality designated as the regional center. NGAs represented in the NEDA Board (e.g., NEDA, Department of Agriculture, Department of Agrarian Reform, DBM, Department of Environment and Natural Resources, DILG, DOF, Department of Foreign Affairs, Department of Health, Department of Labor and Employment, Department of Science and Technology, Department of Transportation and Communication, DPWH, and DTI) plus Department of Education, Department of Social Welfare and Development, and Department of Tourism can be represented by one regional director each. The representatives of the private sector who shall comprise one-fourth of the council's membership can come from NGOs, business groups, or professional organizations. There shall be at least one representative from the labor sector as prescribed under Executive Order No. 384.

The officers of the RDC include the chair, the co-chair, the vice-chair, and the secretary. The chair and co-chair are appointed by the President and selected from at least two LCEs who are ex officio members and two private sector representatives. If the chair is chosen from the government sector, the co-chair shall be from the private sector. The NEDA Regional Director serves as the ex officio vice-chair and the NEDA Assistant Regional Director serves as the ex officio secretary of the council. The NEDA Regional Office serves as the principal technical Secretariat of the Council.

The RDC serves as a forum where development planners, government implementing agencies, and the private sector can identify the priority programs and projects that support the objectives and thrusts of the region. These are then packaged into investment programs for endorsement to implementing agencies and institutions as well as to the private sector. With their representation in the RDC, the private sector's interests and concerns can be articulated in the RDC and used as input in the formulations of the development and investment plan of the region. The RDC can also identify measures to attract private investment in the region.

As required by the ICC, the RDC also reviews and endorses, as appropriate, projects of NGAs that have impact on the region. Projects of LGUs in the region requiring national government financial exposure such as guarantees and subsidies are also reviewed by the RDC. For PPP projects of LGUs, those costing above P50 million up to P200 million need to be submitted to the RDC for confirmation and those costing above P200 million are reviewed by the RDC for the ICC whose confirmation will be needed.

(b) Provincial Legislative and Development Councils

Legislative power is exercised at the provincial level by the provincial legislative council (Sangguniang Panlalawigan) whose members are elected from the districts to ensure geographical representation. The presidents of the leagues of legislative council members of component cities and municipalities are ex officio members. In addition, there is one sectoral representative each for women, from workers and from a disadvantaged sector. The legislative council enacts ordinances, approves resolutions, and appropriates funds for the general welfare of the province and its inhabitants. According to Section 302(c) of the LGC, plans and specifications for PPP projects are to be submitted to the provincial legislative council for approval.

According to Section 106 of the LGC, the Provincial Development Council assists the legislative council in setting the direction of economic and social development and coordinating development efforts within its territorial jurisdiction. The council is headed by the governor and has the following members: all mayors of component cities and municipalities, chair of the Committee on Appropriations of the Sangguniang Panlalawigan, the Congressman or his representative, and representatives of NGOs operating in the province who are chosen from among themselves. The representatives of NGOs shall comprise no less than one-fourth of the members of the fully organized council.

The Provincial Development Council is tasked with the formulation of long-term, medium-term, and annual socioeconomic development plans and public investment programs; appraisal and prioritization of development projects; coordination, monitoring, and evaluation of the implementation of development projects; and formulation of local investment incentives to attract private investments.

For PPP projects of LGUs, those costing more than P20 million but less than P50 million are to be submitted to the Provincial Development Council for confirmation.

(c) City/Municipal Legislative and Development Councils

Legislative power is exercised at the city or municipality level by the city/municipal legislative council (Sangguniang Panlungsod or Sangguniang Bayan) whose members are elected by district. The presidents of the leagues of villages (*barangays*) are ex officio members. In addition, there is one sectoral representative each for women, from workers and from a disadvantaged sector. The legislative council enacts ordinances, approves resolutions, and appropriates funds for the general welfare of the province and its inhabitants. According to Section 302(c) of the LGC, plans and specifications for PPP projects are to be submitted to the city or municipal legislative council for approval.

According to Section 106 of the LGC, the City/Municipal Development Council assists the legislative council in setting the direction of economic and social development and coordinating development efforts within its territorial jurisdiction. The council is headed by the mayor and has the following members: all *barangay* or village captains, chair of the Committee on Appropriations of the Sanggunian concerned, the Congressman or his representative, and representatives of NGOs operating in the city or municipality who are chosen from among themselves. The representatives of NGOs shall comprise no less than one-fourth of the members of the fully organized council.

The City/Municipal Development Council is tasked with the formulation of long-term, medium-term, and annual socioeconomic development plans and public investment programs; appraisal and prioritization of development projects; coordination, monitoring, and evaluation of the implementation of development projects; and formulation of local investment incentives to attract private investments.

For PPP projects of LGUs, those costing up to P20 million need confirmation from the Municipal Development Council while those costing up to P50 million need confirmation from the City Development Council.

7. Public–Private Partnership Subcommittees in Local Government Units

As mentioned above, the local development councils assist the local legislative bodies in setting the direction of economic and social development and in coordinating development efforts within the territorial jurisdiction of the LGU. The PPP subcommittee created under DILG Memorandum Circular No. 2011-16 would assist the Local Development Council in the formulation of action plans and strategies related to the LGU's implementation of PPP programs and projects.

In the case of provinces and cities, the PPP subcommittee would be headed by the Local Economic and Investment Promotion Officer designated pursuant to DILG Memorandum Circular No. 2010-113. In the case of municipalities, the mayor would designate one of his staff members to head the PPP subcommittee.

The PPP subcommittee would include representatives of the following LGU offices, local organizations, and NGAs:

a. Local Planning and Development Office;
b. Local Engineering Office;
c. Local Tourism Office;
d. Public Employment Service Office;
e. Local Chamber of Commerce;
f. Local trade unions, organizations, or cooperatives;
g. Private organizations, foundations, or business clubs; and
h. NGAs such as DTI, DPWH, and DOF.

Representatives of other LGU offices and NGAs as well as other sectors, NGOs, and civil society organizations may also be included, as deemed necessary.

8. Government Financial Institutions

GFIs are government-owned and controlled corporations that have licenses to operate as banks. The two biggest GFIs are the Land Bank of the Philippines (LBP) and the Development Bank of the Philippines (DBP). In line with the LGU Financing Policy Framework, they have been playing major roles in the provision of credits to LGUs and in promoting their access to private capital through BOT and similar arrangements.

(a) LBP

The LBP was created in 1963 to provide financial support for the Agricultural Land Reform Program. After initially limiting its operations to financing the purchase of agricultural estates for subdivision and sale to tenant farmers, the LBP started to support agricultural, industrial, and other productive enterprises. It was granted universal or expanded commercial banking powers in 1973.

From just P1 billion in 1995, LBP loans to LGUs grew to P11.8 billion in 2000. By 2009, this had tripled to P36.9 billion and accounted for around 70% of outstanding GFI loans to LGUs. This increased further to P45.8 billion in 2011. Around 80% of these loans were sourced from LBP's internal funds, while around 20% were sourced from ODA (Pellegrini and Soriano 2010).

The first ODA-funded financing facility offered by LBP to LGUs was the Japan International Cooperation Agency-funded LGU Support Credit Program for social infrastructure and environmental projects for which it takes time to recover costs. These include low-cost housing projects, hospitals or health centers, water supply, wastewater treatment, SWM, flood control, community-based forestry management, and project preparation activities.

The World Bank-funded Water District Development Project was, as the name implies, originally intended for water districts to implement sewerage projects. When LGU commitments made prior to loan negotiations fell through after loan approval, the project was restructured in May 1999 to offer loans to LGUs for water supply, sanitation, sewerage, or drainage projects. Water user associations were formed and registered with the SEC to operate and maintain the water system with the fees collected from the water users.

The third ODA-funded facility offered by LBP to LGUs was the LGU Private Infrastructure Project Development Facility (PIPDF) supported by ADB. It sought to facilitate PSP in local infrastructure by providing loans for the conduct of feasibility studies. The PIPDF will be discussed in more detail in section III.

Taking off from the Water District Development Project, one of the latest ODA-funded facilities offered by LBP to LGUs and their private sector partners is the Strategic Support for Local Development and Investment Project funded by the World Bank. It offers a wide menu of infrastructure projects including water supply, drainage and flood control, SWM, and public markets.

(b) DBP

The DBP was established in 1958 to take over and expand the functions of the Rehabilitation Finance Corporation that had been created in 1947 to finance the reconstruction of properties damaged by World War II.

The DBP's mandate was later expanded to include financing of public utilities and to promote the establishment of private development banks. The Rehabilitation Finance Corporation/DBP was authorized to give loans to LGUs for the rehabilitation or construction of public markets, slaughterhouses, irrigation, waterworks, toll bridges and other income-producing services, or the purchase of machineries.

In the early 1980s, DBP experienced problems with some of the loans it gave to LGUs as well as other borrowers. The bank was recapitalized and reorganized. With enough provisions in the 1991 LGC to incentivize LGUs to service their debts faithfully, DBP resumed lending to LGUs, initially sourcing most of the funds from ODA. The first such project was the LGU Urban Water and Sanitation Project, which was funded by the World Bank, starting in December 1998. The experiences of the LGUs and DBP in this project will be described in section IV.

Also in 1998, the DBP issued omnibus lending guidelines for LGU projects that aim to facilitate delivery of basic services or enhance revenue generation. LGUs are eligible to borrow under the four major development programs of DBP: Environmental Protection and Natural Resources Development; Infrastructure and Logistics; Social Services; and Micro, Small, and Medium Enterprises. The DBP also assists LGUs in sourcing funds through nontraditional fund-raising activities such as the securitization of IRA receivables.

From about zero in 1997, the LGU portfolio of DBP increased to P1.7 billion by 2000, P3.9 billion by 2005, and close to P8 billion by 2008. This had increased to P8.9 billion by the first quarter of 2009, accounting for around 18.5% of GFI loans to LGUs. Like the LBP, around 80% of these loans were sourced from DBP's internal funds, while around 20% were sourced from ODA (Pellegrini and Soriano 2010).

9. Local Government Unit Guarantee Corporation

In addition to the abovementioned efforts to provide loans to LGUs, the DBP, under then Chairman Alfredo C. Antonio, initiated the formation of the LGU Guarantee Corporation (LGUGC) as a joint undertaking between the DBP and the Bankers Association of the Philippines (BAP). With the BAP having majority share of 51% and DBP the remaining 49%, the LGUGC was incorporated on 2 March 1998 and registered with the SEC as the first private corporation to go into the guarantee business in the Philippines. It was established to engage primarily in activities related to the guarantee of loans and other forms of credit accommodations granted to LGUs and other entities by financial institutions duly accredited with the LGUGC, as well as capital market instruments issued by LGUs and other entities.

In line with the LGU Financing Policy Framework, LGUGC's primary goal was to facilitate the access of creditworthy LGUs with financially viable infrastructure or development projects to the private capital market by providing guarantees for bank loans or bond flotations. It has since extended its guarantee services to other entities that provide products and services that promote countryside development and national economic growth, directly or indirectly. These include water districts, electric cooperatives, state universities and colleges, renewable energy technology providers, and medium and large enterprises that have infrastructure contracts with LGUs, GOCCs NGAs, and top 1,000 private corporations. In January 2005, ADB infused additional capital and assumed ownership of 25% of LGUGC. BAP's share was trimmed to 38% and DBP's share was trimmed to 37%.

II

PROJECTS IMPLEMENTED BY LOCAL GOVERNMENT UNITS USING BUILD–OPERATE–TRANSFER OR SIMILAR SCHEMES

In line with the provisions of the Build–Operate–Transfer (BOT) Law, as amended, the BOT/public–private partnership (PPP) Center submits annual reports to Congress on the progress of projects implemented under the law. These reports form part of the Budget of Expenditures and Sources of Financing (BESF) which is compiled by the Department of Budget and Management annually and submitted to Congress to provide the basis for the General Appropriations Act. When it was under the Department of Trade and Industry (DTI), the BOT Center also put on its website status reports on the implementation of projects funded under the BOT Law, as amended.

Annual performance, accomplishment, and year-end reports were also prepared by the BOT Center when it was part of the Coordinating Council of the Philippine Assistance Program and later the DTI as well as by the Coordinating Council on Private Sector Participation (CCPSP). The reports for the years 1994 to 2004 are currently available at the PPP Center. Based on these reports, a list of projects implemented or proposed by local government units (LGUs) was compiled and is shown in Table 1.

The Project Completion Report for the BOT III TA Program by Chemonics International (2001) also provides useful information on the LGU projects that were proposed for private sector participation and provided with technical assistance (TA) with funding support from the United States Agency for International Development (USAID). It gives profiles of the projects and indicates what stage of project development was reached.

Table 1: Status of Public–Private Partnership Projects of Local Government Units

LGU/Type of Project	Project Cost (Million $)	PPP Scheme	Private Proponent	Status
Public Markets				
1. Mandaluyong City	23.00	BT/BOT	Macro Funders and Development (Phil)	Awarded under solicited mode Operational
2. Dapitan, Quezon City	1.30	BOT	Ithiel (Phil)	Awarded under unsolicited mode Operational
3. Carmen, Cagayan de Oro City	2.36	BOT	UKC Builders (Phil)	Awarded under solicited mode Operational
4. Cogon, Cagayan de Oro City	4.00	BT/BOT	UKC Builders (Phil)	Awarded under solicited mode Operational
5. Bocaue, Bulacan	1.20 3.80	BT BOT	Meditech (Phil)	Awarded under solicited mode Operational Nonoperational
6. Tarlac City, Tarlac	3.88	BOT	Ithiel (Phil)	Awarded under unsolicited mode Contract revoked by the city council
7. Roxas, Isabela	1.00	BOT	George L. Chan Construction & Dev (Phil)	Awarded under unsolicited mode Contract declared null and void by the Court of Appeals
Slaughterhouse				
1. Cagayan de Oro City	3.00	BOT	Mega Integrated Agro-Livestock Farm (Phil)	Awarded under solicited mode Operational
City Hall				
1. Talisay City, Cebu	4.00	BT	Principal Mgt. Group/ Maybank/Silver Dragon Construction (UK)	Awarded under unsolicited mode Turned over
2. Antique Province/ Binirayan Administrative and Commercial Center	3.80	BOT	Prime-Tek Konstrukt (Phil)	Awarded under solicited mode Contract terminated by provincial government
Regional Government Centers				
1. Region 12 Regional Government Center in Pagadian City, Zamboanga del Norte	2.95	BT	TBD	In the pipeline (as of 2011), not yet started.
2. Region 9 Regional Government Center in Koronadal City, South Cotabato	4.97	BLT	TBD	In the pipeline (as of 2011), not yet started.
3. Region 4B Regional Government Center in Calapan City, Oriental Mindoro	TBD	BLT	TBD	In the pipeline (as of 2011), not yet started.
4. Region 4A Regional Government Center in Calamba City, Laguna	TBD	TBD	TBD	In the pipeline (as of 2011), not yet started.

continued on next page ➤

Table 1: *Continued*

LGU/Type of Project	Project Cost (Million $)	PPP Scheme	Private Proponent	Status
Bus Terminal				
1. Matnog, Sorsogon	4.40	BOT	Matnog Collaborative Ventures (Phil)	Awarded under solicited mode Contract rescinded by the new mayor
2. General Santos City	from 2.81 to 6.30	BOO	TBD	Bidding declared a failure
3. Catarman, Samar	from 1.0 to 3.39	BOT	TBD	Bidding not undertaken
4. Guiuan, Eastern Samar	0.5	BOT	TBD	Bidding not undertaken
5. Passi City, Ioilo	1.30	TBD	TBD	In the pipeline (as of 2011), not yet started
Cold Storage and Processing Plant				
1. Passi City, Iloilo	0.83	TBD	TBD	In the pipeline (as of 2011), not yet started
Hospital				
1. Albay Province	1.33	BOT	TBD	Projected to be awarded in 2011
Information and Communications Technology				
1. Malabon City	0.46	BTO	Geodata Systems Technologies (Phil)	Awarded under unsolicited mode Operational
2. Pampanga Province	0.96	BTO	Geodata Systems Technologies (Phil)	Awarded under unsolicited mode Operational
3. Koronadal City, South Cotabato	0.50	BOT	Geodata Systems Technologies (Phil)	Awarded under solicited mode Operational
4. Angeles City	1.00	BOT	PILGON	Bidding declared a failure because of noncompliance with financial proposal
5. Kidapawan City, Cotabato	0.50	BOT	Geodata Systems Technologies (Phil)	Bidding declared a failure because of noncompliance with financial proposal
6. Cavite City, Cavite	0.55	BOT	TBD	Bidding declared a failure
Power Sector				
1. Bohol Provincial Electric System	5.00	JV	Salcon Consortium (Phil)	Awarded under solicited mode Operational
2. Olongapo City Electric Power Distribution System	3.57	CAOT	TBD	Expected awarding in 2007 did not push through
Water Sector				
1. Bohol Provincial Waterworks System	14.40	JV	Salcon Consortium (Phil)	Awarded under solicited mode Operational
2. Puerto Galera, Oriental Mindoro/ Sewage Treatment Facility	2.22	BT	Puerto Galera Water Consortium (Phil)	Awarded under solicited mode in 2009 Notice to Proceed not yet given

BLT = build–lease–transfer, BOO = build–operate–own, BOT = build–operate–transfer, BT = build–transfer, BTO = build–transfer–operate, CAOT = contract–add–operate–transfer, JV = joint venture, LGU = local government unit, PPP = public–private partnership, TBD = to be decided.

Sources: Coordinating Council on Private Sector Participation; Philippines Public–Private Partnership Center; Department of Budget and Management's Reports on Budget of Expenditures and Sources of Financing, 2007–2012.

In the book *Local Government Fiscal and Financial Management: Best Practices* (Amatong 2005), the experience of San Jose de Buenavista, Antique in using the build–lease–transfer (BLT) scheme in rebuilding its public market after a fire in 1993 and building its development center is described in detail. The experiences of Bohol in setting up its joint ventures for the supply of water and power under the rehabilitate–own–operate–maintain (ROOM) arrangement are also described in the book and these provide good lessons for future LGU projects using BOT or similar schemes.

A. Completed

Based on the above sources, 13 projects have been implemented by LGUs using BOT and other similar schemes. They have either been turned over already to the concerned LGUs or are being operated by the private sector partner. The projects can be categorized under four sectors: property development, information technology, power, and water.

1. Property Development Sector

Eight of the projects implemented by LGUs under the BOT or similar arrangements are in property development. They include six public markets, a slaughterhouse, and a city hall. These types of projects have long been implemented by LGUs in all income classes, mostly with the use of funds borrowed through the Municipal Development Fund and, more recently, from government financial institutions using either official development assistance or their internal funds. Passage of the BOT Law in 1990 gave LGUs another set of options for financing and implementing their priority projects.

(a) Public Markets

Mandaluyong City

As mentioned earlier, a seven-story commercial building with the public market in the ground floor was built for Mandaluyong City after a fire destroyed its old public market. After a public bidding, the contract was awarded to Macro Funders and Development Corporation and was signed on 29 August 1991. Under the build–transfer arrangement, the new public market was turned over to the city government for its exclusive supervision and control in 1993. It constructed one-half of the stalls inside the market and leased them to market vendors while the remaining stalls were constructed by the stallholders themselves. The city government collects the stall fees and maintains the public market.

While ownership of the whole building was transferred to the city government upon completion, its operation and maintenance (except for the public market) is being managed by the private contractor for 40 years, from December 1994 to December 2034, under a BOT arrangement. Tenantable areas have been leased to banks, pawnshops, service shops, dry goods stores, restaurants, cinemas, amusement facilities, and other third parties. The rental and other revenues are expected to enable the private contractor to recover the cost of its investment (around $23 million) and realize a reasonable rate of return.

With the above arrangement, the city government was able to meet its constituents' urgent need for a public market without having to use its own limited funds. In addition, it has been earning revenues from the operation of the wet public market as well as the business taxes, licenses, and fees paid by the lessees of the commercial complex.

San Jose de Buenavista, Antique

In May 1993, the public market in San Jose de Buenavista, the capital town of the province of Antique, burned down. Around 200 market vendors and other local businessmen were displaced. A major income source of the municipality was disrupted, necessitating a quick replacement.

Initially, two financing options were considered—a bank loan with the internal revenue allotment (IRA) as collateral or a BOT arrangement—but found less than ideal. At that time, borrowing costs for LGUs ranged from 18% to 24% per annum. Furthermore, the municipality did not have sufficient real property assets which could be used as collateral for the loan. Using the municipality's IRA as security for the loan was considered but decided against because it comprised 60% of the LGU's income and assigning a portion of it as collateral would deprive the LGU of much needed funds for basic services and other programs.

A BOT arrangement in line with the provisions of the BOT Law was also explored and discussed with local stakeholders. The arrangement was attractive for the LGU since its funds would not be needed. However, the following concerns were noted: "(a) securing approval to adopt the scheme is a long and tedious process where several national government agencies are involved and the paper work is extensive; (b) a public bidding process required to identify and choose the BOT partner is likewise inordinately long and often complex; and (c) BOT, being a relatively new concept, there were concerns about how it will work, and how to go about its requirements."

Furthermore, LGU officials also thought that a competitive bidding would likely favor large-scale investors from its neighboring cities since local businessmen did not have the financial resources for a huge investment. "More importantly, the LGU was looking for a quicker, simpler, and possibly cheaper source of financing that would eventually redound to the benefit of the vendors/stallholders who were engaged mostly in small and medium scale businesses."

After consultations, the decision was made to adopt the BOT scheme with refinements which would not require public bidding and approvals from National Government agencies. Under a BLT scheme, the market vendors themselves would provide the funds for the construction of their own stalls following specifications established in the master plan of the new market building. The stallholders would be deemed owners of the stalls and pay the appropriate real property taxes during the contract period of 20 years. They would also pay a rental fee for the space they occupy in the building. The vendors who could not afford to build their own stalls can rent the stalls built by the municipal government using the P10 million it received from the Calamity Fund of the national government. The municipal government spent P2 million of its IRA for drainage and other utility support structures.

In line with the provisions of Section 302 of the Local Government Code, the BLT scheme was approved by the Sangguniang Bayan on 26 August 1993. The master plan for the public market building was designed by the Municipal Engineering Office in coordination with the Department of Public Works and Highways. The municipal government managed the construction of both government-built and self-built structures, also in coordination with the Department of Public Works and Highways (Amatong 2005).

Quezon City

On 8 November 1996, the Quezon City government entered into a negotiated BOT contract with Ithiel Corporation which had submitted an unsolicited bid to build the Dapitan public market. The estimated cost of the two-story building, which would house a wet market as well as a supermarket, was P37.2 million or around $1.30 million. Construction started in December 1997 and was completed by 1 September 1998. Commercial operations started on 1 October 1998.

Cagayan de Oro City

In the 2000 Local Development and Investment Plan and Comprehensive Land Use Plan of Cagayan de Oro City, the redevelopment of the public markets in Carmen and Cogon was identified as a priority. Prefeasibility studies were conducted in 2002. On 7 October 2002, the city council passed City Ordinance No. 8446-2002 approving the general renovation of the Carmen and Cogon public markets under a BOT arrangement and authorizing the City Mayor to negotiate with any reputable firm to implement the projects. The Notice of Invitation for Prequalification and to Bid was published in two newspapers of general circulation on 11, 15, and 24 December 2002. The Executive Committee of the City Development Council passed Resolution No. 001-2003 on 8 January 2003, endorsing the redevelopment of the Cogon public market through a BOT scheme. Through Resolution No. 002-2003 on 12 February 2003, the same was done for the Carmen public market. The technical proposals were publicly opened on 11 March 2003 and the financial proposals were opened on 14 April 2003. The projects were approved by the Region X Regional Development Council on 25 April 2003. The Notice of Award for the Carmen public market was issued on 18 June 2003 and a P118 million (approximately $2.36 million) contract was signed with UKC Builders on 15 August 2003. The Carmen public market was opened on 15 December 2004.

There was a failure of bidding for the Cogon public market, and City Ordinance No. 8931-2003 was passed on 6 October 2003 to authorize the City Mayor to negotiate and enter into a contract with any prequalified BOT proponent. The Notice of Invitation for Prequalification and to Bid was published in two newspapers of general circulation on 9, 14, and 20 October 2003. Technical proposals were opened on 1 December 2003 and financial proposals were opened on 9 December 2003. The Notice of Award was issued on 12 December 2003 to UKC Builders and a P250 million (approximately $4 million) contract was signed in early 2004. The Cogon market was opened in 2005.

Bocaue, Bulacan

The municipality of Bocaue, Bulacan bade out and then entered into a built–transfer contract with Meditech on 24 March 1998 to have its public market built at an estimated cost of $1.20 million. Construction started on

11 November 1998 and was completed on 9 July 1999. However, the local vendors refused to occupy the new market building because of the following reasons: (a) alleged unsafe condition of the structural components of the building, (b) high temperature and lack of ventilation inside the building, (c) small stall spaces especially in the wet market, and (d) alleged high rental fees. After long delays in the submission of approved plans and specifications and of as-built plans by Meditech, the Certificate of Acceptance was finally issued by the municipal government in May 2003.

The municipal government got assistance from consultants of the USAID-funded BOT III Project in the preparation of tender documents, actual conduct of the bidding, and finalization of the contract. There was supposed to be a $3.80 million commercial center component that would be undertaken through a BOT arrangement. Because of the many problems encountered in the public market component, both the LGU and Meditech lost interest in pursuing the construction of the commercial center. The BOT Center undertook a review of the BOT agreement in 2004 and recommended alternative courses of action.

(b) Slaughterhouse

Cagayan de Oro City

The 2000 Local Development and Investment Plan and Comprehensive Land Use Plan of Cagayan de Oro also identified the need for upgrading and modernizing the slaughterhouse serving the city. A prefeasibility study was conducted in early 2003 and the Notice of Invitation for Prequalification and to Bid was published in November 2003. The bids were opened on 27 July 2004 and the winning bidder was announced on 30 July 2004. The 25-year BOT contract with Mega Integrated Agro-Livestock Farm was signed in November 2004. The slaughterhouse was built at a cost of $3 million and is currently operational. The private proponent/operator pays the city a monthly facility usage fee out of the slaughter and delivery fees that it collects. The fees can be increased by not more than 10% and should be justified by increases in the actual cost of operations. The new fees may not be higher than the average charged by three comparable private slaughterhouses in Visayas and Mindanao. In line with the Cagayan de Oro Investment Incentive Ordinance of 2002, the private operator is eligible for exemptions from real property and business taxes, but not from regulatory fees.

(c) City Hall

Talisay City

Talisay City in the province of Cebu entered into a build–transfer agreement for the construction of a new city hall at an estimated cost of $4 million. On 12 January 2001, the contract was awarded to Principal Management Group, which had submitted an unsolicited proposal. Because of its failure to comply with the conditions for contract award, the contract was terminated by the Talisay City government on 5 June 2001. After the local legislative body approved the change of joint venture partner of the original proponent, mobilization was started in December 2001. The new city hall was turned over to the city government in November 2003.

2. Information Technology Sector

Three of the projects implemented by LGUs under the BOT Law, as amended, are in information and communications technology (ICT). The private sector proponent for all three projects was the same, Geodata Systems. Two of the three contracts were awarded under unsolicited mode. The third one was awarded through public bidding.

(a) Malabon Digital Infrastructure Project

Malabon City in Metro Manila entered into a build–transfer–operate contract with Geodata Systems Technologies after it submitted an unsolicited offer to implement the $0.46 million Digital Infrastructure Project. The project aims to enhance the regulatory, collection, and revenue-generating functions of the city and to streamline operations through a computerized system. The project is operational.

(b) Pampanga GIS Center

Geodata Systems Technologies also submitted an unsolicited offer to the Provincial Government of Pampanga to set up its geographic information system (GIS) center. The center was developed in 2 years to support GIS-related projects and activities of the province. The build–transfer–operate contract was worth $0.96 million.

(c) Koronadal City ICT Project

The Koronadal City government was one of the 13 LGUs that submitted to the CCPSP a letter of intent to implement the ICT Project for which the CCPSP developed a template and gave briefings and orientations to LGUs in 2001. The project aims to enhance the regulatory, collection, and revenue-generating functions of the city government and to streamline its operations. The project was implemented in two phases. Phase 1 was the development and installation of the GIS-based Revenue Generating Systems including the Real Property Tax Administration System (PATAS), Business Permit and Licensing System (BPLS), and the Treasury Operation and Collection System. Phase 2 was the development and installation of the Administrative and Office Automation Systems. Also the provision of network and digital infrastructure, upgrading and maintenance of the hardware and application systems, and training of LGU personnel were included in the project.

Koronadal City in South Cotabato was the only one among the 13 LGUs that was able to successfully bid out and complete the project. In 2002, the local legislative council approved the project for implementation with private sector participation (PSP). The prequalification process started in January 2003. A joint resolution of the local legislative council and the Local Development Council in 2003 prescribed a 16% after-tax internal rate of return. Contract negotiation started in late 2003. A $0.50 million BOT contract was signed with the winning bidder, Geodata Systems Technologies on 1 January 2006. The BOT Center assisted the city government during contract negotiations with the winning bidder. The BOT Center also coordinated with the Bids and Awards Committee (BAC) and technical working group (TWG) with regard to the revision of the technical and financial proposals by the winning bidder.

The PATAS and BPLS were launched on 9 October 2006. The Treasurer's Office was able to implement the BPLS immediately. Printing of other reports was temporarily stopped until the clerks assigned to check the records using the PATAS system had finished the verification process. The project that was supposed to take 5 years was launched in August 2012.

3. Power Sector

Although most electric power distribution systems are run by private companies or electric cooperatives, a few are run by LGUs. One of them, the Province of Bohol, went into a pioneering arrangement with a private sector consortium based on the authority given to them by the Local Government Code and in accordance with the provisions of the BOT Law, as amended.

(a) Bohol Provincial Electric System

Bohol's Provincial Electric System (PES) was established in 1930 during the American Regime. With a Certificate of Public Convenience and Necessity issued by the Public Service Commission in 1931, the PES operated an electric plant in the capital town of Tagbilaran and provided its residents with electric power. Its customers numbered 14,958 in December 2000.

Before 1995, systems loss was 33%. Although it declined from 20% in 1995 to 17% in 1999, this was still above the industry standard of 10%. Base load of 6.7 megawatt was much less than the peak demand of 9.6 megawatt. Although the provincial government purchased distribution transformers in 1996 and 1997 to ease the system overload and service additional customers, more transformers and substations were needed and rotten electric posts and aging distribution lines had to be replaced. With PES revenues not even enough to cover all operation and maintenance costs, the provincial government would have to shoulder the rehabilitation and upgrading costs, but these were greater than the province's net income.

Various options for generating the funds needed for PES to provide better services for more customers were considered with the help of the Associates in Rural Development consultants under the Governance on Local Democracy project funded by the USAID. A major consideration for the province was that it would retain its stake in the management and operation of the PES as well as share in its profits. The options considered were the following: (i) outright sale of the utility, (ii) bond flotation, (iii) establish an electric cooperative, (iv) enter into a rehabilitate–operate–transfer agreement, (v) create a stand-alone entity, (vi) establish a joint venture, and (vii) establish a joint venture with a ROOM arrangement. The last option was chosen because it met all of the above requirements and had the added advantage of being protected by law because the bidding process is required under the BOT Law, as amended. LGUs are allowed to enter into joint ventures under the implementing rules and regulations of the Local Government Code (Amatong 2005).

Despite having the above legal bases for the joint venture with ROOM agreement and the public consultations conducted by the provincial government, a case was still filed by a group of lawyers purportedly representing the residents of Tagbilaran City. A Temporary Restraining Order (TRO) was issued by the Regional Trial Court on 20 July 2000, a few days before the scheduled incorporation of the Bohol Light Company (BLCI). A second TRO for 60 days was granted by the Court of Appeals on 27 October 2000. After it expired, the assets of the

PES were transferred to the BLCI on 28 December 2000. The provincial government owns 30% of BLCI and has two seats in the board. The remainder is owned by the consortium of Salcon International, Salcon Power Corporation, and Pure and Pam, which had submitted the best bid.

The rehabilitation and upgrading of the entire power system and introduction of new technologies by BLCI have led to significant increases in average reliability to around 99.8% and decreases in system loss to around 7%, as shown in Annex A. The number of customers has increased and the customer service has improved. The perennial problem of delinquent payments disappeared and collection efficiency has improved from an average of 97% in 2003–2005 to 99.9% in 2011. In addition to these benefits to consumers, taxpayers and other residents also benefited through improved social services and provincial government operations since the provincial government's budget was no longer saddled with expenses for the operation and maintenance of the PES. Additional revenues were even generated for the provincial government through the dividends paid out by BLCI since 2008. Tourism and other industries are able to flourish in Bohol because of the reliable power supply.

4. Water Sector

The same LGU, the Province of Bohol, entered into a similar joint venture arrangement with a private sector consortium to improve water supply services to its constituents.

(a) Bohol Water Supply System

Bohol's Provincial Waterworks System (PWS) was established in 1924 and granted a franchise to operate by the Public Service Commission in 1932. The PWS served 90% of Tagbilaran City (7,605 households and establishments) and the municipality of Dauis. The Tagbilaran City Water System, owned and operated by the city government, covered the remaining 10% of the city.

According to the assessment made by the TWG formed by the Provincial Governor in 1995, systems loss was 66%, way above the industry standard of 20%. To improve the waterworks system, the province spent close to P72 million between 1995 and 1998, borrowed P35 million from Land Bank of the Philippines (LBP), and increased water rates by almost 80%. Since 1997, 90% of the franchise area had been enjoying 24 hours service. However, systems loss was still 49% due to a combination of factors including leakages from pipes, illegal connections, and delinquent payments. Response to system breakdowns even in emergency situations was slowed down by government bidding procedures, which also increased the frequency of the breakdowns because of the poor quality of spare parts obtained at the lowest bid price. Having the LGU provide the water supply service also made the problem of delinquent payments more difficult to solve since constituents have the mistaken notion that they should get the water for free or at very minimal cost from the LGU. Political considerations also come into play when disconnection decisions had to be made.

At this time, demand for potable water was increasing because of a growing population and emerging eco-cultural tourism industry and agro-industrialization program. PWS revenues were not even enough to cover all operation and maintenance costs and annual subsidies were actually increasing. The provincial government was in no position to make the needed capital investments estimated by the TWG to be close to P1 billion. The expansion of water supply services would require two new water treatment plants, laying of new main and transmission lines, and several new reservoirs.

The provincial government had the same considerations in mind as it had for the power supply system and considered similar options with the help of the same consultants. Instead of an electric cooperative, establishment of a water district was considered. The same option of a joint venture with a ROOM arrangement was selected for the same reasons. Unlike in power where there were five bidders, there was only one bidder for water but the bidding was considered valid because the lone bidder complied with the minimum bid conditions. Bohol Water Utilities (BWUI) was incorporated on 21 July 2000, with the provincial government owning 30% and holding two board seats. The remainder was owned by the consortium of Salcon International, Salcon Philippines, and Salcon Limited. The assets and franchise of the PWS were transferred to BWUI on 28 December 2000 after the same legal battle as BLCI (Amatong 2005).

The first phase of BWUI's rehabilitation and expansion works was undertaken from 2000 to 2005. BWUI has exceeded the projections stated in the Joint Venture Agreement with regard to system capacity and daily water production, as shown in Annex A. It did not submit a request for rate increase in December 2002 even if it was allowed to do so. The number of customers of BWUI has increased, including some former customers of the Tagbilaran City Water System. BWUI also provides bulk water supply to the municipalities of Dauis and Corella. Systems loss is currently around 20%. In addition to the improved water supply services for customers, there have also been improved social and other services for constituents since the provincial government's budget was freed from covering the operation and maintenance costs of the PWS. The growth of tourism and other industries has been made possible by the expansion and improvement of water supply services.

B. CONTRACTS TERMINATED

Some LGUs started implementing projects under the BOT Law but had the contracts terminated or declared null and void for various reasons, as explained below.

1. Property Development Sector

(a) Public Markets

Tarlac City

Two contracts for public markets underwent litigation. The first contract was a $3.88 million BOT contract between the Tarlac City government and Ithiel Corporation. The stallholders did not accept the recommendations of the feasibility study conducted by the private sector proponent and the city council revoked its contract with Ithiel Corporation. The contract revocation was brought to court for resolution. Advice to the City Mayor regarding the BOT procurement process had been provided by consultants funded by USAID under its BOT III program.

Roxas, Isabela

The second contract was a $1.00 million BOT contract between the municipal government of Roxas, Isabela and George L. Chan Construction and Development Corporation, a single proprietorship. A commercial

complex consisting of three separate buildings was to be built along Roxas Boulevard in Roxas, Isabela and operated by the private proponent for 25 years. However, a case was filed against the LGU by some concerned citizens. One of the questions raised was the procurement process undertaken by the LGU which had received three similar unsolicited proposals for the project. The LGU compared the three proposals as if they were solicited bids and chose the best offer. The CCPSP had noted that this is not consistent with the BOT Law. The BOT contract was also not in the typical format since it did not have provision for liquidated damages and termination. The contract was also not ratified by the Sangguniang Bayan or local legislative council, as required by law. The Regional Trial Court ruled in favor of the LGU, but the Court of Appeals decided in 2004 that the contract was null and void since the LGU's claim of ownership of the land had no legal basis. While the case was pending final resolution, the sole proprietor passed away and construction activities stopped. Completed stalls (around 30%) were being leased. The LGU was given 3 years to work on the formal turnover of the land through an Executive Order or an act of Congress. The BOT Center provided advice on how the LGU could secure an Executive Order and committed to provide TA to the LGU for the revival of the project once the Executive Order is obtained.

(b) Administrative and Commercial Center

Antique Province

The contract between the Antique Provincial Government and Prime-Tek Konstrukt (Phil) was for the construction of the Binirayan Administrative and Commercial Center under a BOT arrangement. The estimated cost was P143 million or approximately $3.80 million. After a public bidding, the contract was awarded to Prime-Tek Konstrukt Development (Phil) on 3 November 1997 and the Notice to Proceed was issued on 18 November 1997. The construction period was set to be 390 calendar days. However, the project was not able to take off because of technical and financial problems. The land area for the building was reduced in early 1999 because of road widening, requiring a new engineering design. In a meeting held in August 2000 and attended by the CCPSP, the private proponent informed the LGU that it had completed the revised engineering design and secured the needed financing but hinted of the need for a higher project cost. The CCPSP's offer of TA for amending the contract was not availed of by the provincial government. Instead, the contract was terminated by the LGU in early 2002 since construction had not yet started at that time. Termination of the contract by the province for any cause was considered as an event of default. The contract did not have a provision for liquidated damages in case of construction delay and no details on the performance bond.

(c) Bus Terminal

Matnog, Sorsogon

The BOT contract for an integrated bus terminal complex was awarded to Matnog Collaborative Ventures (Phil), the lone complying bidder, on 27 June 2000 by the municipal government of Matnog, Sorsogon under solicited mode. The estimated cost of the project was P175 million or $4.40 million. There would be spacious parking areas for buses, well-ventilated waiting areas and clean rest rooms for passengers, fast-food and entertainment centers, commercial spaces, and hotels. Technical assistance on contract negotiation and finalization was provided under the BOT III program funded by the USAID. The contract was signed on

12 July 2000 and the Notice to Proceed was issued on 3 October 2000 despite the noncompliance of the proponent with some of the conditions precedent indicated in the Notice of Award, particularly the financial closure and the Environmental Compliance Certificate. Due to complaints from local residents and a reprimand from the Provincial Environment and Natural Resources Officer, the mayor issued a Request for Work Stoppage and Hold Order on 16 November 2000 pending the issuance of the Environmental Compliance Certificate. This was finally secured on 7 May 2001, but site mobilization could not resume because of the May 2001 elections.

After the elections, LBP requested reconfirmation of the BOT contract because it was getting mixed signals from the new mayor and the governor. The mayor vetoed the reconfirmation but was eventually overruled by the Sangguniang Bayan. Site mobilization finally started on 15 August 2002, but the proponent was unable to secure the quarry permit needed for the filling operation at the site. On 9 October 2002, the Provincial Environment and Natural Resources Officer issued a work stoppage order and blottered all the heavy equipment with the Philippine National Police. On 30 October 2002, the mayor issued a notice of rescission citing the incomplete submission of the documents stipulated in the Notice of Award. The mayor also had doubts on the financial capability of the proponent to undertake the project. The proponent who had completely stopped its site mobilization on 9 October 2002 did not respond to the Mayor's Notice of Rescission.

Years later, Matnog decided to construct a simple bus terminal with another private sector group led by the former mayor. It was completed in December 2010.

C. NOT STARTED

Various LGU projects have been proposed for implementation under BOT and similar arrangements, but many of them were not implemented. These include projects reported by the BOT Center as projects in the pipeline in the 2007 and 2011 BESFs but which were not reported to have been undertaken or completed in subsequent BESFs.

The other projects were described in the Yearend and Accomplishment Reports prepared by the CCPSP and DTI-BOT Center for the years 2000–2004 as being in the process of preparation, bidding, or re-bidding but were never reported subsequently as completed or operational.

1. Property Development Sector

(a) Regional Government Centers

In the BOT report in the 2011 BESF, four regional government centers were included in the project pipeline. The Regional Government Center for Region 12 would be in Pagadian City, Zamboanga del Norte, cost around $2.95 million, and be bid out under the build–transfer scheme. The Regional Government Center for Region 9 would be located in Koronadal City, South Cotabato, cost around $4.97 million, and use the BLT scheme. The Regional Government Center for Region 4A would be in Calamba City, Laguna and for Region 4B would be in Calapan City, Oriental Mindoro; however, there were no estimated costs yet.

(b) Transport Terminals

General Santos City

As mentioned in the earlier section on CCPSP, the preparation of the feasibility study and tender documents for the General Santos City Integrated Transport Terminal and Commercial Complex was funded by the USAID through the Project Development Facility and prepared under the BOT III contract. The services of the project consultant were engaged in December 1999. According to the CCPSP Performance Report for 2000, the prefeasibility study and draft contract were completed in 2000. Approval of the local legislative council was also obtained in 2000 for the project estimated to cost $2.81 million. Aimed at decongesting the city's central business district and providing a clean venue for transport and goods exchange activities, the project would have the following components: site acquisition and development, supporting road access, a terminal for buses, jeepneys, taxis, and tricycles, market/commercial facilities, adequate parking, and support and other complementary facilities. The project was to be bid out under a build–own–operate scheme. The city would issue a franchise to the winning bidder to operate the only integrated transport terminal in the city. All bus companies and transport operators would have to use the terminal. The operator, in turn, would pay the city an annual franchise fee equivalent to 2% of the total gross receipts during the 25-year concession period.

First pass approval of the National Economic and Development Authority-Investment Coordination Committee was obtained in July 2001. According to the DTI-BOT Center Yearend Report for 2003, the Invitation to Pre-Qualify and to Bid was published in October and November 2003. Prequalification was expected to be concluded by February 2004. The estimated cost had increased to $6.30 million. A three-level bus and jeepney terminal and commercial center with modern state-of-the-art facilities were to be constructed on a three-hectare lot. It would accommodate the bus and taxi companies operating at that time and have sufficient additional capacity for future increases in traffic.

The abovementioned project was not implemented. Instead, on 16 April, 2010, the new General Santos City Terminal was inaugurated. It was located in a one-hectare property donated by a prominent family. A 3,000-square meter terminal building for vans and jeepneys was constructed by the city government at a cost of P7.5 million. Another terminal building was being used by bus companies. The terminals have toilets for men and women and some office space. A perimeter fence surrounding the terminal compound was yet to be completed. The entry and exit roads of the compound were yet to be cemented.

Catarman, Samar

An integrated bus terminal project costing around $1 million was in the bidding stage in 2000–2001 by the municipality of Catarman in the province of Samar. In 2002, the project was expanded into the Integrated Transport Terminal and Commercial Complex. The estimated cost of the project increased to $3.39 million. The draft BOT contract and draft Technical Assistance Agreement (TAA) between the LGU and BOT Center were forwarded to the LGU for review. The BOT Center also conducted an initial review of the project for possible study and packaging as a BOT/PSP project under the LGU-Private Infrastructure Project Development Facility with the LBP. The LGU did not implement the project.

Guiuan, Eastern Samar

An integrated bus terminal and commercial complex was also seriously considered by the municipality of Guiuan, Eastern Samar under a BOT arrangement. The estimated cost of the project to be bid out was P20 million or approximately $0.5 million. The municipal government requested the assistance of the BOT Center in reviewing the feasibility study for the proposed project. The BOT Center gave its initial findings and recommendations including the financial analysis of the proposed BOT scheme. A draft terms of reference (TOR) and BOT contract were also forwarded to the LGU for review. The proposed bidding of the project was not pursued by the new administration that took office after the 2004 elections.

Also mentioned in the BOT tables in the 2011 BESF was the bus terminal proposed by Passi City, Iloilo. The estimated cost was $1.30 million with the PPP scheme yet to be determined.

(c) Cold Storage and Processing Plant

Another project proposed by Passi City, Iloilo and listed in the BOT tables in the 2011 BESF was a cold storage and processing plant. The estimated cost was $0.83 million with the PPP scheme also yet to be determined.

(d) Hospitals

Another project that was expected to be awarded in 2011 was a hospital or Bicol Regional Training and Teaching Hospital-Oncology Center in Albay, Bicol. The proposed BOT project was estimated to cost around $1.33 million.

Hospital projects had also been considered by the Provincial Government of Cavite and the Cavite City government. For the provincial government, the project would have involved the rehabilitation, management, operation, and maintenance of eight existing hospitals under a rehabilitate–operate–transfer arrangement. For the city government, the BOT project would aim to provide comprehensive, high-quality care for its residents, including preventive, curative, and rehabilitation medical services.

2. Information Technology Sector

(a) Angeles City Government Operation and Information Management System Project

This project was supposed to involve the installation of a computer network system using local area network and wide area network technology to automate all transactions and communications of the Angeles City government. By streamlining transaction processing and giving decision-makers quick access to reliable information, the project aimed to improve management and decision-making in general and revenue-generation capability in particular. A $1 million amortization-based BOT contract was signed by the City Mayor on 8 May 2000 with an IT firm PILGON, the lone complying bidder.

Some issues raised by minority members of the local legislative council, PILGON requested an increase in the amortization payments to P1,728,731. The 14% increase was to compensate for the impacts of inflation and

higher interest rates on project cost, operating expenses, and financing plan. However, the signed contract, TOR, and Request for Proposals did not contain any provisions for adjusting the price or amortization payments. The CCPSP advised the mayor that if PILGON was unwilling to implement the project based on its original financial bid, a failure of bidding could be declared by the Prequalification, Bids and Awards Committee and a re-bidding would be conducted. On 6 November 2000, the mayor informed CCPSP of his intention to re-bid the project and that the project's TOR was being updated to make it more relevant to the current state of technology. Since the 2000 Yearend Report, the project has not been mentioned again in succeeding CCPSP reports.

(b) Kidapawan City ICT Project

Like the Koronadal ICT Project, the proposed project aimed to enhance the regulatory, collection, and revenue-generating functions of the Kidapawan City government and to streamline its operations. It would also be implemented in two phases: Phase 1 for developing and installing the GIS-based Revenue Generating Systems and Phase 2 for the Administrative and Office Automation Systems, under a BOT arrangement. The estimated cost was P27 million or $0.50 million. The proposed project was approved for PSP implementation by the local legislative council in 2002. Deadline for submission of the prequalification documents was in January 2003. Technical presentation and benchmarking was held in 11–12 November 2003 at the main office of Geodata Systems Technologies. The opening of the financial proposal was held in January 2004. The BOT Center assisted the city government in the evaluation of the technical and financial proposals of the lone qualified bidder. Unfortunately, the lone bidder did not comply with its commitments under its financial proposal, and the city government declared the bidding as failed.

(c) Cavite City ICT Project

A TAA was signed between Cavite City and CCPSP on 25 October 2001 to develop and implement an ICT project. An Information Systems Strategic Plan (ISSP) was jointly developed. The proposed project aimed to enhance the collections of regulatory fees and real property taxes and to streamline operations. The information system structure was defined in four levels: (i) GIS-based Revenue Generating Systems, (ii) Administrative and Office Automation Systems, (iii) Legislative and Law Enforcement Systems, and (iv) Planning and Decision-Support Systems. The estimated cost was P32 million or $0.55 million. Four prospective bidders were prequalified. Request for proposals was issued on 12 November 2002 and deadline for the submission of bid documents was set for 20 February 2003. However, there was a failure of bidding, and the local legislative council needed to approve a re-bidding.

(d) Roxas City and Other ICT Projects

As mentioned earlier, of the 13 LGUs that sent letters of intent to the CCPSP in 2001 to implement an ICT project, only Koronadal City was able to bid out and complete the project. One, Roxas City, was able to sign a TAA with the CCPSP, have an ISSP prepared, and an ICT project approved by its legislative council. However, internal political problems delayed the reconstitution of the Special Bids and Awards Committee for the proposed ICT project. TAAs were discussed with Butuan City and Bacolod City but not signed. An ISSP was prepared by the Calapan City government and presented to its legislative council for approval. None of these and the rest of the 12 LGUs were able to bid out ICT projects with the support of CCPSP.

(e) Calamba Digital Infrastructure Project

The proposed project aimed to enhance the regulatory, collection, and revenue-generating functions of the Calamba City government and to streamline its present operations. It was supposed to include the development and installation of the GIS-based Revenue Generating Systems and the Administrative and Office Automation Systems. The GIS-based Revenue Generating Systems include the PATAS and the Treasury Operation and Collection System. Negotiations between the LGU and the private sector proponent were ongoing in December 2006. The proponent, according the advice of the LGU, revised the proposal and excluded the hardware component since the city government had the network infrastructure and workstations installed already.

3. Power Sector

(a) Olongapo City Electric Power Distribution System

The proposed modernization of the Public Utilities Department of the Olongapo City government through a contract–add–operate–transfer was projected to be awarded in 2007. However, bidding was put on hold until the Public Utilities Department's proposed schedule of unbundled rates had been approved or modified by the Energy Regulatory Commission. The $3.57 million project would have resulted in the rehabilitation and upgrading of Olongapo City's electric power distributions system.

4. Environment Sector

(a) Puerto Galera Sewage Treatment Facility

The project was included in the BOT Center's list of projects expected to be awarded in 2009. The public bidding was conducted in October 2008 and the Notice of Award was given to the winning bidder in January 2009. The project has remained in the BOT Center's list of projects awarded/for construction/under construction from 2010 to 2014 because issuance of the Notice to Proceed has been delayed for many issues. These will be discussed in a later section on projects supported by the Partnerships in Environmental Management for the Seas of East Asia under its Medium-Sized Project on PPPs.

D. LESSONS LEARNED

From the above-cited projects of LGUs that were implemented with or considered for private sector involvement, many valuable lessons can be learned.

PPPs are attractive for LGUs. Many LGUs face an urgent or serious need (e.g., replacing a burned down public market, unreliable water and power services) and a severe budget constraints. The PPP arrangements enable the LGUs to leverage their limited funds to solve their infrastructure problems. In some cases, the LGU even earns revenues from the project. As shown by the experiences of Mandaluyong City and San Jose de Buenavista, Antique with their public markets and the Province of Bohol with regard to its water and power utilities, this combination of circumstances makes the case for a suitable PPP arrangement quite clear and compelling, leading to less public opposition and delays in project implementation.

Investor interest depends on LGU's capacity to enforce viable tariffs and fees. Potential private investors are willing to take the responsibilities of financing and implementing the proposed priority project but need to be assured of repayment from the revenues generated by the facility constructed or services rendered. This usually involves an increase in tariffs or rental and other fees. It is therefore essential that the concerned LGU has the political will to raise or support the raising of tariffs for the improved services. The capacity and willingness-to-pay of the targeted clientele and beneficiaries of the project are also important. They should accept that they cannot expect more or better services without giving just compensation to the service provider. The estimates and procedures for determining the appropriate tariffs should be clearly established during project preparation and contract drafting to avoid future problems, as was experienced by Angeles City and Puerto Galera.

Early on involvement of utility regulator in tariff discussions is important. In a few cases (e.g., power supply), the tariff increases need to be approved by an external regulator. Delays in such approvals also cause delays in the bidding out of projects since tariff increases are usually needed to make the project attractive to the private sector. This was experienced by Olongapo City. On a more positive note, although it has taken the Bohol Light Company (BLCI) around 2 years to get its tariff increases approved, these have been able to compensate for BLCI's capital expenditures. BLCI is therefore encouraged to undertake the necessary investments in a timely manner. The performance-based regulations of the Energy Regulatory Commission, such as the cap on systems loss beyond which the distribution utility will not be compensated, also incentivize BLCI to continually strive to improve the efficiency of its technical and financial operations.

Transparent procurement of PPP project is an important safeguard for LGU staff. Whenever possible, it is preferable to bid out proposed projects in a transparent manner. This can help the LGU get the best possible private sector partner. This can also help protect the LGU officials should they be confronted with politically motivated accusations of wrongdoing related to the project. The positive experiences of Mandaluyong City with its public market, Cagayan de Oro City with its public markets and slaughterhouse, the Province of Bohol with its water and power utilities, and Koronadal City with its ICT project illustrate this very well.

To avoid start-up delays and penalties, the LGU's share of PPP projects must be in place prior to bidding. However, before an LGU invites the private sector to bid on proposed projects, it should ensure that everything is in place for the project to proceed without any unnecessary delays. If land is needed for the proposed project, suitable land should already be available for the project. Any necessary environmental clearances should not be difficult or made difficult to secure. These will minimize the risk of delays and non-implementation of the projects, as what happened with the public market in Roxas, Isabela and the administrative and commercial center in Binirayan, Antique. Private investors should not be penalized for things that are beyond their control, including political rivalries which derailed the Matnog, Sorsogon and other bus terminals as well as the Angeles City and several other ICT projects.

Concessionaire performance needs to be contractually assured. At the same time, the private sector partner should carry out its contractual commitments including those related to improved service delivery, transparency, and financial sustainability. Failure to do so leads to delays in project implementation or even nonimplementation of the whole project or some components of the project as what happened in Talisay City, Kidapawan City, and Bocaue, Bulacan.

Sharing of information among LGUs will help improve concessionaire selection and performance. The performance of the private sector partners should be monitored closely and carefully by both the LGU and the PPP Center. The identities of those who perform well and those who do not should be made known to other LGUs, some of whom may be considering to implement similar projects. This information sharing will help improve the selection of the LGUs' private sector partners, which should be done as judiciously as possible.

If reviewed well and subjected to market contest, unsolicited proposals can deliver value for money. Although competitive bidding is the most preferred option for selection, unsolicited proposals may also be considered by LGUs. This is allowed by Republic Act No. 7718 for projects that are not in the list of priority projects, use new technology, and require no direct government guarantee, subsidy, or equity. However, the LGUs are mandated to solicit and evaluate comparative or competitive proposals. If a lower price proposal is received, the original proponent has the right to match that price. This system of competitive challenges to an unsolicited proposal can be considered as a form of competitive bidding. What is most important in evaluating both solicited and unsolicited proposals is that the LGU exercises due diligence in assessing the managerial, technical, and financial capability of the private sector proponent. The ICT projects of Malabon and Pampanga and the public market in Dapitan, Quezon City are good examples of unsolicited projects that were implemented well.

Standardized bidding documents and contracts as well as advisory assistance on contract management are important for LGU. For municipal infrastructure projects such as public markets, slaughterhouses, and city halls that LGUs are very familiar with, LGUs can enter into BOT or other similar arrangements with a minimum of TA from national government agencies, development partners, or the private sector. However, one very important area where such assistance is needed is the preparation, negotiation, and finalization of contracts. LGUs need to be guided so that their contracts with private sector partners will have all the necessary provisions to protect their interests as well as their constituents' while giving the partners an opportunity to earn reasonable returns on their investments. Based on the experiences of the LGUs mentioned above, these provisions include those related to price adjustments, performance bonds, liquidated damages, termination, and alternative dispute resolution mechanisms. Sharing standardized draft contracts with LGUs for different types of projects and PPP schemes is useful, but LGUs may need more detailed and personalized advice from the PPP Center to meet their particular needs and concerns. Training on monitoring and enforcement of contracts will also be very useful for the concerned LGU officials. These can help minimize misunderstandings that can lead to court cases and stoppages in project implementation.

PPP advice and capacity building of LGUs need to be sector-specific. In projects involving the provision of infrastructure services such as water and power supply, LGUs have not had a very good track record. Hence, in such areas private sector participation has large potential at LGU level. However, to realize this potential, the LGUs need comprehensive and intensive expert advice on technical and financing options, project packaging, preparation and evaluation of bidding documents, and project monitoring and evaluation. The experience of Bohol shows that detailed technical, financial, and legal studies are needed to choose the most appropriate objectives, design, and financing option for the proposed project.

LGUs need to contribute to project preparation, but also need peer-review advice on consultant outputs. For some of the above projects, the services of consultants were funded by grants from development partners,

as what happened in Bohol. However, grants are not always available. Full grants may also not be advisable. The commitment of the LGU to implement the project cannot be fully ascertained if it does not have to spend any of its own money. Without the guidance and active participation of the LGU in the design of the project, the scope and estimated cost of the project may go well beyond what is needed or appropriate considering the current and future levels of economic activities and disposable incomes in the locality. If a project is overdesigned by the consultants funded by grants, the LGU should simply decide not to move forward with it and go with simpler, less expensive options, putting the grant funds to waste. The LGUs, however, do not always have the technical or project finance capacity to argue with the consultants. Here the PPP Center may play a peer-review role and help LGUs ensure the consultants deliver optimal outputs tailored for the needs and capacity of the LGU.

III

LOCAL GOVERNMENT UNIT PRIVATE INFRASTRUCTURE PROJECT DEVELOPMENT FACILITY

The local government unit (LGU) Private Infrastructure Project Development Facility (PIPDF) was offered by the Land Bank of the Philippines (LBP) to LGUs to help finance the conduct of feasibility studies for projects that LGUs would like to implement with private sector participation (PSP). Funding for feasibility studies had been identified as a major constraint in the preparation and bidding out of commercially viable projects of LGUs. The facility was funded by the Asian Development Bank (ADB) through a yen-denominated loan equivalent to $3 million (at the time of appraisal). The loan became effective on 5 June 2000 and closed on 14 September 2004. Using actual exchange rates, only $0.328 million was disbursed and the balance of $2.016 million was cancelled.

The project had two components. Under Part A, the Project Development Facility (PDF) was established in LBP as a revolving credit facility from which LGUs can borrow to finance preparation of project feasibility studies (under Phase 1) and technical support for preparing and evaluating bidding documents and awarding and negotiating contracts with private sector participants (under Phase 2). The interest rate on the LGU loan was variable, depending on prevailing commercial rates. Repayment period was a maximum of 5 years, with a 1-year grace period.

Under Part B, ADB provided a technical assistance grant of $600,000 for strengthening LBP's in-house capabilities to finance LGU infrastructure projects with private sector involvement. The program included training of LBP personnel in private sector modalities to help them market the PDF to LGUs.

A. Feasibility Studies Done

Because of a number of factors that delayed implementation of the project, only two feasibility studies were conducted under Phase 1. The studies and the lessons that can be learned from them are presented below.

1. Olongapo City

The proposed modernization of Olongapo City's Public Utilities Department mentioned in an earlier section and by the build–operate–transfer (BOT) Center in its 2007 report was actually one of the projects for which a feasibility study was conducted with funding from the LBP's PIPDF. The proposed modernization involved the turnover of the electric power distribution system to the winning bidder who was expected to put an end to the power outages, variable current, and other technical problems that the residents of Olongapo City had long been enduring.

The recommendations of the consultants for the feasibility study under Phase 1 were accepted by the city government, including those regarding the transfer to other departments or the early retirement of employees who would not be employed by the winning bidder. Phase 2 could have followed immediately except that the ADB loan was not extended beyond its original closing date. Thus, LBP financed Phase 2 under a separate LBP loan. However, the bidding did not proceed as planned because the Energy Regulatory Commission had not approved the rate increase proposed by the city government. Thus, electricity users in Olongapo City had to continue suffering from the unreliable and unsatisfactory power supply services provided by the city.

Two lessons can be learned from the above experience:

a. It is easier to get consensus and convince some stakeholders to sacrifice if the situation is quite dire and clearly needs a structural solution such as public–private partnership (PPP). Affected government employees are usually some of the more vocal oppositors to any form of privatization; however, if they are offered attractive alternatives, they can be convinced to cooperate with the proposed PPP. The employees work and also probably live in the city and suffer from the unreliable and unstable power supply; therefore, they are more willing to do their part to help solve the long-standing problem.
b. The proposed project or business should also be attractive to the private sector. The key to this is the price which the private operator can charge. Thus, it was essential that the proposed higher, unbundled tariffs would already have been approved by the Energy Regulatory Commission before bidding could take place.

2. Davao del Norte

The project proposed by the Provincial Government of Davao del Norte was the Davao del Norte Integrated Water Resource Development Project. The proposed project involved six municipalities, each of whom had their own water district. The consultants for the feasibility study under Phase 1 recommended the amalgamation of the six water districts into a single provincial water district. However, officials of two of the six water districts rejected the consultants' recommendations and the agreement with the consultants was preterminated.

This experience gives the following two lessons for future projects:

a. Since the provision of potable water is the direct responsibility of the six water districts in the province, the consultants for the feasibility study must have this in mind while making their recommendations. Although the benefits of amalgamation were easy to prove, the likelihood of all six water districts agreeing to the proposal should have been considered to be almost nil and alternative arrangements should have been proposed. For instance, if bulk water supply is the main problem, then arrangements for the six water districts to get bulk water from the province-sponsored project could have been proposed. It is very difficult to expect the officials of the six water districts to voluntarily give up their jobs and perks. A win-win solution should have been proposed by the consultants. Another possible arrangement could have been the formation of a joint venture among the six municipalities, the province, and the private sector operator.
b. Alternatively, a prefeasibility study should have first been undertaken to determine if the proposed project had even a possibility of being implemented by the concerned stakeholders. This would have saved significant time and cost expended on the feasibility study.

B. General Lessons Learned

The Project Completion Report (PCR) mentions six main weaknesses in project design and formulation, which were identified during the project implementation. These were (a) limited facility coverage, (b) LGUs' nonfamiliarity with the BOT modality, (c) insufficient marketing efforts, (d) availability of other and cheaper financing assistance, (e) consultant selection process unacceptable to LGUs, and (f) high market risk for the LGUs. These observations have been incorporated into the following lessons learned, which could guide the development of similar funds in the future.

1. Terms and Conditions of the Project Development Facility

The PDF turned out not to be too attractive to the LGUs for which it was being made available. The loans being offered to the LGUs could be characterized as being too costly and risky for them, for the following reasons:

a. The cost of the consultants' services was raised by the requirement that an international consulting firm would be engaged to undertake the PDF-related activities, at least during the first year.
b. The LGUs did not have a say in the selection of consultants even though they would be the ones paying for the consultants' services. As the PCR noted, LGUs would have liked more participation in the selection of consultants and preferred local consultants with comparable qualifications.
c. The minimum amount for an LGU loan was $15,000 or P600,000, while the maximum amount was $600,000 or P24 million, using the prevailing exchange rate during the appraisal stage.
d. The interest rate charged for the loan from LBP was fixed for the term of the loan and set at the time of drawdown to be whichever is higher—the sum of the bank's prevailing interest rate, foreign exchange and interest rate risk premium, guarantee fee, gross receipts tax, and LBP's spread or the weighted-average interest rate for 91-day treasury bills. At the time of presentation to the ADB Board, the relevant interest rate was 11.1%. Although this was comparable to market rates of 10%–11% at that time and less than the 14% rate being charged by the Municipal Development Fund Office, the 14% rate was for the infrastructure project itself, not just for a feasibility study. According to the PCR, the interest rate for LGU loans from the LBP using its internal funds was even lower than the rate they were offering for the PDF.

e. As reported in the PCR, there were other cheaper sources of financing at that time, including grants from other ADB-supported projects such as the Mindanao Basic Urban Services Sector Project.
f. LGUs were also required to assume the full cost of the feasibility study in case there was no successful bidder for their project. If the project was successfully bid out, the LGU could pass on the cost to the winning bidder. As the PCR stated, "Few LGUs would take on an expensive feasibility study in which successful bidding process was not guaranteed." The LGU officials could have difficulty in justifying the loan to their constituents.

2. Other Local Government Unit Constraints and Private Infrastructure Project Development Facility Features

Although some of the constraints to PSP in LGU infrastructure investments were correctly identified during project design, some others became more apparent only during project implementation. The constraints mentioned in the Board document were the following: (a) lack of LGU capacity to prepare and tender projects for PSP, (b) LGU's lack of creditworthiness mainly because of poor public sector governance structures and limited financing sources, and (c) lack of LGU access to long-term funds because of shortcomings in the domestic capital market.

The other constraints at the LGU level that were observed during project implementation were the following:

(a) Lack of LGU familiarity with the BOT concept and mechanics

Since the BOT Law and concept were still relatively new at the time of the project and there were not many good examples at the national level and local level, most LGUs were not yet familiar with the BOT schemes and their advantages. The project hoped to finance feasibility studies for projects that could serve as demonstration projects but was not successful in doing so.

As noted in the previous section, the few LGU projects that were implemented at this time with PSP had either consultants whose services were funded by a grant from a development partner or had private sector investors who submitted unsolicited bids. This is because LGUs need a lot of hand-holding and coaching from the beginning to the end of the project cycle. Unfortunately, the marketing efforts by the LBP and Coordinating Council on Private Sector Participation were not enough to provide LGUs with the dedicated, one-on-one technical assistance and financial advisory services that are needed by LGUs.

(b) Lack of LGU capacity to identify and commit to priority projects including those that are appropriate for PSP

It has been observed that LGU development plans and investment priorities change whenever there is a new local chief executive (LCE). As the PCR noted, "newly elected mayors rarely follow their predecessors' development plans." For example, if the LCE is a medical doctor, he gives priority funding to projects in the health sector. On the other hand, the level of participation by constituents in drawing up the development plan, investment program, and LGU budget varies from one LGU to another, but is generally low. Even where there is a comprehensive development plan formulated through a participatory process, there is a gap between the

long wish list of projects generated and a short list of prioritized projects that are feasible considering the LGU's financial resources or the project's attractiveness to the private sector. Moreover, municipal development plans are usually not linked to or synchronized with the provincial, regional, and national development plans.

(c) LCEs have a limited time frame for undertaking new projects

The term of office of LCEs is only 3 years. Practically speaking, they can undertake new projects only after they have been in office for at least 6 months and about a year before the next elections. Financing facilities for new projects should be offered to them within this time frame.

In the case of the PIPDF, local elections were held in May 1998 and newly elected LCEs assumed office on 30 June 1998. The PIPDF was appraised on 11 December 1998 and loan negotiations took place almost 1 year later, on 12 November 1999. It took more than 6 months for the loan to become effective on 5 June 2000 and another 6 months for LBP to be advised to finalize the contract with the first-ranked international consulting firm on 11 December 2000, exactly 2 years after the loan was appraised and just 6 months before the next elections in May 2001. The timing made it more difficult to market the PDF to the incumbent LCEs.

(d) LGUs have limited financial and human resources

Although LGUs receive substantial financial resources from the national government through the internal revenue allotment and shares in national wealth and other taxes and their budget for personnel services generally exceed the limit set by the Local Government Code, LGUs still consider their financial and human resources quite limited compared to the responsibilities devolved to them under the Local Government Code and other laws passed since 1991, including the Clean Water Act, Clean Air Act, and Ecological Solid Waste Management Act. Therefore, LGUs have to allocate their limited financial and human resources among many priority sectors, activities, and projects.

Several lessons have been drawn in view of the above observations, which would have enhanced the facility's alignment with the objectives of ADB's country strategy and program at that time, namely: (i) broaden LGU institutional and financial capabilities to undertake development programs and projects, and encourage PSP; (ii) support human resource development and investment in basic needs; (iii) help improve the efficiency and performance of LGU infrastructure delivery; and (iv) improve self-reliance and lessen LGU financial dependence on the national government. If the PIPDF was to be undertaken again, the following measures would be recommended:

a. shorten processing time for the facility and synchronize its timing with the electoral cycle;
b. streamline and simplify the procedures for accessing the PDF;
c. lower the cost of borrowing from the facility;
d. screen LGUs for financial capacity to borrow from the facility;
e. give LGUs authority in selecting consultants including local consultants;
f. give LGUs the option of borrowing only for prefeasibility studies and preparation of bidding documents and let the private sector bidders prepare the feasibility study;
g. conduct interviews, focus group discussions, and surveys of private sector investors who are interested in the priority projects of LGUs;

h. conduct interviews, focus group discussions, and surveys of LGUs to determine their financing needs and constraints as well as project pipelines;
i. make available, on a competitive basis, a part of the TA grant to provide training and coaching of LGUs on participatory planning and budgeting, investment programming, and determining which projects are appropriate for PPPs;
j. facility managers need to monitor closely and ensure the good quality of the consultants' work, not just make sure that the funds are being disbursed; and
k. consider making payments to the consultants performance-based and full payment contingent on successful bidding out of the project.

The primary consideration in designing financing facilities and capacity-building programs for LGUs should be to make them responsive to LGU needs, priorities, and constraints. LCEs know what these are, and it is best to get their views, preferences, and suggestions during the design stage.

To the extent that grants are available, LGUs should be asked to compete for these limited funds and put up their counterpart funds to help ensure that the grants go to those LGUs that are serious about undertaking their proposed projects.

Since the proposed LGU projects are expected to be implemented by the private sector, the views and preferences of the potential private investors should also be solicited during the design phase. One of the issues that can be discussed with them is their preference on who will have the feasibility study done. The PCR noted that "prudent private investors would not just bid on an LGU project, putting full trust on a feasibility study done by a third party unknown to them." It may be more advisable for LGUs to have thorough prefeasibility studies, including willingness-to-pay surveys, done to help them determine the likelihood and the parameters under which a project could be successfully implemented as a PPP and to prepare the bidding documents. The interested or shortlisted bidders can be the ones to fund a feasibility study for the project.

In many ways, this project was pioneering in nature and also rather complicated since many stakeholders were involved. Although a number of project objectives were not achieved, many lessons were learned and reflected in the PCR, which can help design future projects with similar objectives.

IV

LOCAL GOVERNMENT UNIT URBAN WATER SUPPLY PROJECT

Since the passage of the Local Government Code in 1991, the first project implemented by the Development Bank of the Philippines (DBP) directly involving local government units (LGUs) was the LGU Urban Water and Sanitation Project. The project was approved by the World Bank on 15 December 1998, with funding to come through three Adaptable Program Loans (APLs). The project aimed to build LGU capacity in establishing water utilities that could operate under commercial principles and attract private sector participation (PSP). The project's development objective was to "provide practical demonstration, through a reasonably large sample of LGUs, that with appropriate technical and financial designs, pricing rules and institutional incentives, water supply systems, irrespective of size, could be made both viable and sustainable." (World Bank 2004)

A. Project Components

The project had six components, the first three of which were financed by the World Bank. The other three components were to be supported by parallel financing from the European Union (EU), Nordic Development Fund (NDF), and the Public–Private Infrastructure Advisory Facility (PPIAF).

1. Water Supply

The main component was to finance civil works, equipment, and supervision for improved water supply systems of small towns that had traditionally been viewed as having "nonviable" and poorly functioning water utilities, managed by the local governments themselves. The component could finance the construction of new systems or the rehabilitation and expansion of existing systems (World Bank 2004).

The project envisioned supporting 35 LGUs with $23.3 million under APL1. A trigger for moving to APL2 would be completion of 10 fully operational, project-funded systems under APL1. By the close of APL1, Level 3 water supply facilities were completed and made operational in nine LGUs. A tenth one was partially completed and transferred to APL2 (World Bank 2004).

Magdalena, a fifth income class municipality in the province of Laguna outside Metro Manila, was the first LGU to participate in the program. Its water supply project cost P24.22 million and it availed of $0.49 million of World Bank financing. Three separate contracts were bid out sequentially—for design, for construction, and for the lease for operation and maintenance of the water system. Construction was started in October 1999 and completed in June 2001. With the new system ready to supply water round the clock, customers were ordered by the mayor to switch to the new system where they would have to pay $0.39 per cubic meter. This was more than double the previous rate of $0.15 per cubic meter under the old system which, however, had strict rationing because of inadequate supply of water.

The bid parameter for the lease contract was the proportion of the new tariff of $0.39 per cubic meter. Financial projections were based on water consumption of 15 cubic meters per month per connection with no minimum consumption. The winning bidder, however, could not realize a profit because the actual rate of connection as well as consumption per connection was lower than expected. After 7 months of operating losses, the winning bidder terminated the lease contract with the consent of the municipal government which then took over the operations of the water supply system in July 2002. A bidding held in September 2003 failed to get new bids. The municipal government continued to operate the water supply system, with revenues able to cover most of the debt service but not operation and maintenance costs which are covered by the municipal treasury (Triche et al. 2006).

In the province of Isabela in the northern part of the island of Luzon, four fourth income class municipalities participated in the project—Aurora, Cabatuan, Mallig, and Quezon—together with the fifth class municipality of Luna and the second class municipality of San Mateo. The total cost of their projects was P119.47 million and $2.16 million of financing was availed from the World Bank. In the province of Bukidnon in the southern island of Mindanao, water supply projects were completed in the fourth class municipality of Kalilangan and the third class municipality of Lantapan, with a total cost of P47.73 million and $0.90 million financing from the World Bank. In the fourth class municipality of Cabanglasan, the project was only 10% completed before being transferred to APL2 because of the lower interest rate offered.

Of the nine water systems built, one actually went into commercial operations by a private sector operator. This was in Kalilangan, Bukidnon. Another one, in Lantapan, Bukidnon, was scheduled for takeover by the private sector as of June 2004 (World Bank 2004).

More than 100 LGUs had signed letters of intent during project preparation in the first half of 1998. After elections in May 1998, some of the LGUs dropped out. Around 95 still had their feasibility studies completed with grant funds under the project. However, many LGUs withdrew from the project after completion of their feasibility studies for a variety of reasons. Most notable were Iligan City in the province of Lanao del Norte and Malaybalay City in the province of Bukidnon who thought that they could "go it alone" with just the feasibility study. If their intended projects had been implemented, loan disbursements would have increased

by $10.4 million (World Bank 2004). Thirty-six LGUs implemented their projects using other financing facilities offered by the Land Bank of the Philippines, Municipal Development Fund Office, Congressional funds, LGU funds, or internal funds of the DBP (World Bank 2009).

In October 2001, a yen-denominated loan equivalent to $30.00 million was obtained by DBP from the World Bank for APL2. With $19.84 million, APL2 aimed to support the construction or rehabilitation of water supply systems in 40 LGUs. In February 2003, the loan agreement was amended to include water districts as eligible borrowers. After loan restructuring and decrease in loan amount in 2005, the target was reduced to 11 LGUs. Ten LGUs and one water district participated in APL2, but one LGU had to reduce its service area coverage and another LGU backed out due to water source problems. Of the nine systems completed and made operational, eight were new systems and one was an old system that was rehabilitated and expanded.

Two LGUs with completed projects entered into long-term management contracts. The seven other LGUs/water district entered into affermage or design–build–lease (DBL) contracts. However, two were terminated after the construction phase, resulting in LGU-operated systems. Five LGUs currently have signed DBL contracts (see Table 2).

Table 2: Partial List of Participating Water Utilities and Their Private Sector Participation Arrangement

Municipality (Income Class[a]) Water District	Province	Region	Number of Connections		Number of Years of Operation (as of mid-2008)	Private Sector Participation Arrangement
			Design	Mid-2008		
Tabuk (1st)	Kalinga	CAR	7,469	2,382	2.0	DBL
Cavinti (4th)	Laguna	4-A	2,000	2,000	0.5	None (LGU-run)
Castilla (4th)	Sorsogon	5	2,009	500	2.0	DBL
Sigma (4th)	Capiz	6	1,463	620	1.0	DBL
Calamba (5th)	Misamis Occidental	10	2,039	1,400	3.0	None (LGU-run)
Lopez Jaena (4th)	Misamis Occidental	10	2,303	643	2.0	None (LGU-run)
Sta. Cruz (1st)	Davao del Sur	11	3,208	2,085	1.0	DBL
Nasugbu Water District	Batangas	4-A	n.a.	300	n.a.	DBL

CAR = Cordillera Administrative Region, DBL = design–build–lease, LGU = local government unit, n.a. = not applicable.

[a] As of 2001 when APL2 started, based on DOF Order No. 32-01.

Source: World Bank. 2009. *Implementation Completion Report on a Loan to the Development Bank of the Philippines for an LGU Urban Water and Sanitation Project, APL 2.* Report No. ICR 0000154. Washington, DC.

Based on the findings reported in the Implementation Completion Reports (ICRs) for APL1 and APL2 (World Bank 2004, 2009), many valuable lessons can be learned from both the accomplishments and the shortcomings of the project. The lessons learned include the following:

a. APL1 was not too attractive to the LGUs because of the high interest rate charged by DBP. Initially, the rate was 15% at a time when the 91-day T-bill rate was less than 10%. DBP eventually lowered the rate to 11% in March 2002 and further to 9% in January 2003 but had already lost many prospective LGU borrowers by that time.

b. Part of the reason for the high interest rate was that the APL1 loan from the World Bank was denominated in US dollar. For APL2, DBP decided to make it denominated in yen since this had a much lower interest rate.
c. The other deterrent to LGUs from accessing the DBP facility was the requirement for PSP. Many of the LGUs were not yet convinced that their waterworks systems would be better operated by private companies. The difficulties being encountered with one of the two concessionaires of the Metropolitan Waterworks and Sewerage System in Metro Manila were not helping at all. On the part of the private sector, the risk of low revenues was real, especially considering that the project was targeting municipalities in the fourth to sixth income classes where economic activity was not so robust and household incomes were not so high.
d. Despite being informed that there were very few, if any, grants for Level 3 water supply projects, LGUs were still hoping that they would be able to get them, either from development partners or from the national government through congressmen and senators. There were also some lower-cost financing facilities available, which had no PSP requirement.
e. The cost of the water supply projects was also deemed to be higher than what it should have been because of overdesigning of the projects. This was a consequence of actual demand for completed systems being lower than the design standard for water demand projection included in the operations manual which was based on that of the Local Water Utilities Administration. This partly negated the objective of the project to build water systems based on what communities wanted and were willing to pay for, through mandatory consultations with local communities and willingness-to-connect surveys.
f. Delays in project implementation were encountered, especially in Bukidnon, because of the poor quality of the feasibility studies prepared for them. These delays prevented the project from having a good number of successful projects that can demonstrate the viability of the project's PSP approach.
g. Problems were also encountered in the bidding process since some local chief executives did not wish to award the contract to the lowest bidder, as required by local procurement laws. Prospective LGU borrowers waited to see how this problem would be resolved.
h. In those LGUs that entered into DBL arrangements with private operators, the need for "strong oversight and regulation by a sector agency or regulator on two fronts" was noted in the ICR for APL2.
"First is with respect to the LGUs which should involve hand-holding and close supervision to build capacity including enabling them to make appropriate decisions directed towards ensuring sustainability of the services. Second is with the operators to ensure that their obligations under the lease contract are truly enforced and that appropriate penalties are imposed for under- or non-performance. In the end, consumers bear the brunt of poor decisions by the LGU, and inefficiencies and illegal rent seeking by the operator, either through higher tariffs or poor services, or both." (World Bank 2009)

2. Sanitation Program

The second component ($1.6 million) was to finance physical improvements in household toilets, on-site sanitation facilities, or the disposal of wastewater flows arising from augmented water supplies. This component was not implemented because there was no LGU interest in it. As the ICR noted, more studies should have been undertaken to determine LGU demand for this component.

"The participating LGUs largely realized the importance of sanitation investments, but were unwilling at this juncture to engage directly in a credit operation for individual households. LGU planners are of the opinion that government involvement in providing for household sanitation was not a priority because households

themselves were investing in on-site facilities. LGUs in these urbanizing municipalities saw their role as one of using their regulatory powers to enforce local ordinances and building codes as a means of promoting household sanitation rather than providing resources directly. This view was shared by National Economic and Development Authority who was not seriously concerned by the lack of disbursements under this component." (World Bank 2004)

It may be noted that some households did invest private funds to improve their sanitation facilities upon completion of the water supply projects.

"This did not happen systematically, but rather on a piecemeal basis, as and when the household decided to improve indoor plumbing." (World Bank 2004)

3. Urban Drainage Program

The third component ($0.8 million) was to finance investments and consultant services in microdrainage infrastructure, if LGUs express demand for such. The Environmental Management Plans for the completed water supply projects did not call for drainage infrastructure. There were therefore no disbursements under this component (World Bank 2004).

4. Water Utilities Private Sector Participation Facility

The EU was to set up the Water Utilities Private Sector Participation Facility ($1.5 million) as a source of concessional technical assistance to help LGUs and water districts prepare information memoranda as a basis of bidding by private operators, to evaluate such proposals, and to identify the most appropriate form of more competitive private sector involvement. The EU funding was not utilized. Instead, a similar facility was included in the LGU Private Infrastructure Project Development Facility offered by the Land Bank of the Philippines with funding from the Asian Development Bank (World Bank 2004).

5. Support for Preparation of the Next Batch of Projects

Under this component ($2.5 million), 95 feasibility studies were completed out of a pipeline of 110 prospective LGUs. Learning from the negative experience with the first batch of feasibility studies prepared under the Policy and Human Resources Development grant, the feasibility studies and detailed engineering designs financed by this component were evaluated by the DBP's Construction Supervision Consultant before subproject approval and appraisal by DBP to ensure the good quality of data and analysis used to select appropriate options by LGUs. The feasibility studies were funded by an additional Policy and Human Resources Development grant administered by the World Bank. The NDF facility that was supposed to fund this component became operational only toward the end of APL1. Government authorities therefore decided to defer utilization of the NDF concessional loan (World Bank 2004).

6. Institutional Capacity-Building Program

Under this component ($2.0 million), the NDF and the PPIAF were to provide technical assistance to strengthen managerial and technical capacities of organizations and staff involved in (a) implementing the project, (b) regulating private operators, and (c) assisting LGUs in building institutional capacity and appropriate training programs. Because of the delay in the NDF, the project used funds from the PPIAF and the Bank-Netherlands Water Partnership Program instead. The PPIAF financed the following: (a) drafting the regulatory legislation for water utilities; (b) developing the implementing rules and regulations for the Contract Administration Unit in assisting LGUs to rebid lease contracts; and (c) testing out new approaches, such as output-based aid (World Bank 2004).

B. General Lessons Learned

1. Project Concept and Components

The objectives of the project were laudable and in line with the needs of the Philippine water sector, particularly the lower-income class municipalities. However, the high cost of the financing made available and, in some cases, of the projects themselves deterred many of the interested LGUs from pursuing their proposed water supply projects under the DBP facility. Some LGUs explored other lower-cost alternatives to implement their projects. If the facilities to be funded by the EU and the NDF had been set up in a timely manner, as originally envisioned, more concessional funds could have been made available to the LGUs that need it the most.

The requirement for PSP in the water supply projects of lower-income municipalities was also a deterrent as mentioned above. This should have been made just an option and not a requirement. The original procedure of having the design of the water supply system done by consultants hired under the project and not by the private sector proponent was also not welcomed by the private investors who would be operating it. Fortunately, adjustments were made and the DBL scheme was developed.

As mentioned above, the financing facilities for sanitation and drainage were not utilized. Deeper and more detailed demand studies for these components should have been undertaken. In the case of sanitation, public sanitation facilities such as rest rooms in public schools, parks and other public areas, or septage treatment plants near public markets and slaughterhouses could have been proposed instead of household sanitation facilities.

2. Institutional Arrangements and Capacity Building

As the first project directly involving LGUs was implemented by DBP since the passage of the Local Government Code, the project could not have been more complex and challenging. The target clientele were low-income municipalities with little or no experience in running water supply systems, interacting with the private sector, or even borrowing from a government bank. The project was initially spearheaded by the Department of the Interior and Local Government, but DBP was brought into the project to on-lend the funds from the World Bank to the LGUs. As noted in the ICR for APL1, “the DBP saw that promoting innovative water utility management

schemes was in line with its development banking role and could have strategic value in terms of expanding its LGU client base." However, many technical and political difficulties were encountered and DBP incurred net financial losses from the project.

Nevertheless, DBP persevered and learned lessons from its project experiences and set up a new Project Management Office (PMO) to work exclusively with LGU clients and help them with project packaging and financing as well as nonfinancial needs of waterworks systems development and operation. Although the reform came toward the end of the project, it has helped DBP compete more aggressively for LGU clients for the later phase of the project and other projects. Under the new setup, loan packaging and credit operations were integrated into the functions of the PMO, which would be taking the lead in project development and promotion among prospective LGU borrowers. Branch offices would be helping the PMO by targeting LGU clients with strong credit potential. Loan disbursements would be booked at the branch office instead of the head office.

Through the project, LGU willingness and capacity to borrow long-term capital for infrastructure projects was developed. Financial performance is reported regularly and financial targets are driving the market promotion and collection policies for the water supply operations. The enterprise-based financial management systems are maintained separately or ring-fenced from the general operating fund. LGUs were also trained in and started applying commercial principles in the operation of their water supply systems, including disconnecting delinquent customers. LGU officials were also educated about the advantages of having a private operator for their water systems. As reported in the ICR for APL1, the project also helped the government to design procurement rules and bid documents to select private sector partners competitively and transparently. More importantly, the experience with the six towns in Isabela in the second batch, which did not want to award the contract to the lowest qualified bidder and whose projects were therefore not implemented, showed that bidding rules do have to be followed.

If the government is serious about promoting PSP in the provision of water supply services, it should fast-track legislation to create an independent economic regulator. As the ICR for APL1 noted, when private companies venture into public infrastructure projects, they do so with apprehension about the viability of the project given the long-term nature of the investment and uncertainties arising from political developments.

"The project's design tried to address this by crafting PSP contracts that would effectively bind all stakeholders to long-term arrangements that would insulate the subproject from the noncommercial risks of doing business in municipal water and sanitation services. The project demonstrated that such contract-based regulations cannot fill the need for a well-established national regulatory system in the water sector. Until such a regulatory system is in place, PSP goals have to be very conservative and accompanied by adequate legal and administrative arrangements for conflict resolution." (World Bank 2004)

V

LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION

Since its incorporation in March 1998, the local government unit (LGU) Guarantee Corporation (LGUGC) has served as the primary private sector facilitator of public–private partnerships in financing local infrastructure projects. Starting out working only with LGUs, the LGUGC has since pioneered and succeeded in guaranteeing the indebtedness of specialized subnational entities, such as water districts and electric cooperatives, as well as private medium and large enterprises involved in renewable energy and other local infrastructure and development projects, such as tertiary hospitals, bulk water supply, and wastewater management. These are also the types of projects that LGUs are most interested in undertaking, possibly as public–private partnerships projects. Lessons can be learned from studying the manner in which LGUGC has done due diligence on the financial viability of the proposed projects as well as the financial capacity of the LGU, water district, or electric cooperative. Close monitoring of the implementation of the projects by the LGUGC that it has guaranteed and its early warning system for possible project implementation or financial problems are also of noteworthy.

A. Local Government Unit Projects

The LGUGC has facilitated the funding of more than 33 infrastructure and development projects of LGUs through 19 LGU bond flotations and 14 LGU loans from private financial institutions (PFIs), all of which were guaranteed by the LGUGC.

1. Local Government Unit Bonds

The LGUGC has guaranteed 19 LGU bonds totaling P3,196.50 million, as shown in Annex B. The first one was the Urdaneta City Municipal Bonds for upgrading the city's abattoir. The P25 million bond with 5 years maturity was issued on 28 May 1999. The second one was the Boracay-Aklan Provincial Bonds for constructing the Caticlan-Boracay Jetty Port and Terminal Building, gateway to the world famous beach resorts in Boracay. The P40 million bond with 7 years maturity was issued on 1 July 1999. The Puerto Princesa City Green Bonds for a socialized housing project were issued on 24 February 2000. The P320 million bond also had 7 years maturity.

Caloocan City issued three bonds simultaneously on 5 December 2000, all with 7 years maturity. There was P185 million for a modern public market, P225 million for a city hall park with commercial center and toll parking, and P210 million for rehabilitation and expansion of a general hospital. In 2001, Tagaytay City issued P220 million Tourism Bonds to finance the construction of its convention center with lodging facilities, while Iloilo City issued P130 million worth of bonds for a housing project for its employees. While the Tagaytay City bonds had 7 years maturity, the Iloilo City bonds had only 3 years maturity.

In 2002, two LGUs floated bonds for public markets—P75 million by Daraga, Albay and P42 million by Bayambang, Pangasinan. On 6 March 2003, the province of Leyte issued P205 million Liberation Bonds to build an academic center. On 30 July 2003, San Juan City issued P390 million bonds for a multipurpose gymnasium, commercial, and toll parking complex. In 2004, three bonds were issued: P150 million for a housing project in Carmona, Cavite, P500 million for the Pasay City Public Market and Commercial Center, and P47 million for the New Imus Slaughterhouse. On 19 June 2006, the P50 million Baliwag Star Bonds were issued for the Baliwag Integrated Solid Waste Management and Materials Recovery Facility. All these bonds had 7 years maturity and have been fully redeemed.

After almost 4 years, two bonds were issued in 2010 and one bond was issued in late 2011. The municipalities of Alfonso Lista in Ifugao and Infanta in Pangasinan issued water bonds for the construction of water supply and distribution systems. Both the P72.5 million and P50 million bonds have 10 years maturity. These are longer than previous maturity periods and can be taken as a sign of the increasing comfort that PFIs have in lending to LGUs. The P260 million bond issued by the Province of Aklan also has 10 years maturity. The bond proceeds were used for the renovation and rehabilitation of the Caticlan Passenger Terminal which had also been financed by a bond guaranteed by the LGUGC in 1999. The old bond had a Ba rating while the new bond has an A rating, showing a big improvement in the creditworthiness of the LGU. Improvements in the coastline and foreshore areas were also made using the bond proceeds.

Prior to issuance of the bonds and guarantee lines and even during project implementation, LGUGC exercises due diligence through the following activities:

(a) Local Government Unit Screening and Credit Rating

In the absence of a stand-alone credit rating institution capable of risk evaluation of LGUs, the LGUGC developed an internal LGU Credit Screening and Rating System to guide its marketing activities and guarantee

operations. The LGU Credit Screening and Rating System is based on internationally accepted standards that meet the due diligence requirements of both PFIs and private investors. The rating system has two phases:

(i) An initial screening process looks at a few summary variables and makes a cursory first-pass judgment on the likely credit quality of LGUs. The following risks are considered on the basis of data from secondary sources: political risk or tendency of the LGU leadership to unilaterally defer payment of maturing obligations, development risk related to the political and economic maturity of the LGU's voting population, and endowment risk related to the LGU's inherent capacities to generate future income. Screened LGUs are divided into four credit groups and the results are posted on the website of LGUGC. The classification is used primarily for identifying candidate LGUs that may wish to avail of LGUGC's guarantee services.
(ii) Upon LGU application for a guarantee or just for a credit rating, a more intensive examination is made of the operating performance, financial condition, and managerial competence of the LGU using primary data gathered from the LGU itself as well as other sources. A numeric score is made using a rating technique developed in line with international standards and reviewed by an independent rating committee. The guarantee fee will partly be based on the credit rating of the LGU. Ratings are reviewed annually.

(b) Review of Project Feasibility Studies

In addition to the credit rating of the LGU, the LGUGC performs thorough evaluation of the proposed project of the LGU. It looks carefully at project viability and cost estimates. The financial capacity of the LGU to pay at least the interest before the project begins to generate revenues is assessed carefully. Testing whether or not the proposed project can stand on its merits is made using different scenarios of no internal revenue allotment support or no increase in the internal revenue allotment.

(c) Project Monitoring Board

The LGUGC gives comfort to its partner PFIs not only through its guarantee of principal and interest payments but also by closely supervising and monitoring the implementation of the projects being financed. The Project Monitoring Board (PMB) is chaired by the LGUGC President and has representatives from the LGU borrower, the trustee bank, and the underwriter. The PMB monitors the LGU's compliance with the project plan and business plan, the collection of project revenues and their remittance to the Trust Fund, and the bond parties' adherence to their obligations under the Trust Indenture. The PMB holds regular meetings as well as project site visits in the LGUs that are implementing projects. Through the PMB, construction progress and contractor billings are validated by an independent works engineer.

(d) Portfolio Management and Project Monitoring System

The Portfolio Management and Project Monitoring System monitors the status of guaranteed LGU projects and LGU compliance with guarantee and bond terms and conditions. A management information system provides up-to-date information on portfolio quality and serves as an early warning tool for LGUGC management.

2. Local Government Unit Loans from Private Financial Institutions

Since 2008, LGUGC has guaranteed six LGU loans from PFIs amounting to P322 million, as shown in Annex C. The first loan was for a public market in Agoo, La Union. A P110 million loan was obtained from Allied Bank and Bank of the Philippine Islands (BPI) on 16 June 2008. The repayment period is 10 years. The second loan, obtained on 28 June 2008, was for a multipurpose cadastral survey. A P23 million loan was given by BPI to Imus, Cavite with a repayment period of 5 years. BPI gave another loan to Rosario, La Union for a public market and abattoir. A P70 million 10-year loan was first released on 17 November 2009. These three LGUs were all in the first income class.

Another first class municipality, Binalonan, Pangasinan, obtained two loans from BPI. The first loan, for P25 million on 2 December 2010, was used to refinance an outstanding loan from Land Bank of the Philippines (LBP). The second loan, for P45 million on 2 June 2011, financed the construction of the new building of the University of Eastern Pangasinan. On 17 October 2011, Agoo, La Union went back to BPI to get a P49 million loan for Phase III of their Hypermarket. These three loans have a 10-year repayment period.

Allied Bank and BPI are just two of the 10 accredited financial institutions that the LGUGC works with in its regular guarantee programs. In addition, LGUGC has given the Philippine Veterans Bank a P1 billion Automatic Guarantee Line for qualified LGU debt instruments. To date, P854.04 million has been utilized for eight LGUs, as shown in Annex D. Five of these LGUs are in the first income class: Angeles City in Pampanga, Caraga in Davao Oriental, San Pedro in Laguna, and Palawan Province and San Miguel in Bulacan. The Province of Zamboanga Sibugay is in the second income class; Toledo City, Cebu is in the third income class; and Trece Martires City, Cavite is in the fourth income class. The funds were used to finance municipal infrastructure projects such as public markets, slaughterhouses, municipal halls, hospitals, hotels, and even a sports coliseum, to purchase heavy equipment as well as to refinance an outstanding loan from LBP.

B. Other Subnational Entity

In addition to LGUs, the guarantee services of LGUGC have been extended to subnational entities with specialized functions. These include water districts, electric cooperatives, and state universities and colleges.

1. Water Districts

In October 2004, LGUGC redirected its co-guarantee agreement with the United States Agency for International Development (USAID) toward a pioneering effort to blend official development assistance with private bank financing to fund water supply and sanitation projects under the Clean Water for People Initiative of the governments of the Unite States and Japan. Funds provided earlier by the Japan Bank for International Cooperation (JBIC) to the Development Bank of the Philippines (DBP) were to be similarly redirected. Under the Municipal Water Loan Financing Initiative, the Metro Iloilo Water District was the pilot and only water utility that was able to avail of a P38.13 million loan from DBP as well as from the Philippine National Bank with LGUGC guarantee. While additional funds from JBIC were being awaited for the Philippine Water Revolving Fund in which LGUGC would play the same role, LGUGC was able to facilitate PFI loans to nine water districts.

The loans amounted to P1,129.49 million. Since 2009, another four loans amounting to P382 million were given by PFIs to water districts with LGUGC's guarantee. Two of the 13 loans were for bulk water supply projects, while the rest were for rehabilitation and expansion of the existing water supply systems, as shown in Annex E. Under the Philippine Water Revolving Fund, the LGUGC guaranteed the P120.66 million loan from BPI to the Puerto Princesa Water District for a new water source and rehabilitation and expansion of the existing water supply system. The balance of the P483 million loan was extended by DBP utilizing funds from the JBIC.

With technical assistance from USAID, the LGUGC has also adopted a credit rating system for water districts based on international best practices.

2. Electric Cooperatives

The LGUGC also offers program management services. Since 2004, it has been managing the guarantee fund for the Electric Cooperative System Loss Reduction Project of the World Bank—Global Environment Facility through the Department of Energy. The LGUGC guarantees up to 80% of principal and interest payments due to PFIs on loans they extend to electric cooperatives for projects that improve energy efficiency, provide reliable and least-cost power supply, and reduce carbon dioxide emissions and other pollutants. To date, 11 electric cooperatives have availed of the program, with projects amounting to P1,698.52 million. Individual amounts range from P85 million to P325 million, as shown in Annex F. Maturity period is 10 years for nine of the loans, while one loan has a 7-year and another loan has a 15-year maturity period. Participating PFIs include Allied Bank, BPI, DBP, Security Bank, and United Coconut Planters Bank.

3. State Universities and Colleges

In line with a memorandum issued by the Commission on Higher Education, the LGUGC has extended its guarantee services to state universities and colleges for the establishment of e-laboratories under build–lease–transfer arrangements.

C. Private Entities

1. Renewable Energy Technology Providers

Since 2006, LGUGC has also been the program manager for the Loan Guarantee Fund for Capacity Building to Remove Barriers to Renewable Energy Development, another Department of Energy project, with funding support from the United Nations Development Programme. At present, the only outstanding account is Gerphil Renewable Energy, whose P9.2 million 10-year loan from Allied Bank was used for the Panoon Falls Mini-Hydro (113 kilowatt) Power Plant in Impasugong, Bukidnon.

2. Medium and Large Entities

In 2010, the LGUGC extended its guarantee services to medium and large entities (MLEs) involved in local infrastructure and other developmental projects. Eligible projects include toll roads and bridges, tourism

promotion and development projects, water supply, sewage, and sanitation systems, solid waste management, and renewable energy technology projects. MLEs with contracts for infrastructure projects with the top 1,000 corporations as well as LGUs, government-owned or controlled corporations, and national government agencies including those under BOT or JV arrangements are also eligible to avail the LGUGC's guarantees. The MLE loan from a PFI may be short term for working capital or long term for permanent working capital or acquisition of fixed assets.

The first MLE loan guaranteed by the LGUGC was a P50 million loan of Worldchem Enviro Technologies to finance their construction of the Pinagsama Sewage Treatment Plant in Taguig City as part of the Manila Third Sewerage Project funded by the World Bank. This was followed by a P100 million loan of Healthserv Los Banos, for their construction of a four-story 80-bed capacity tertiary hospital. Amertech Industrial Ventures had two loans guaranteed, P70 million and P35 million, for steam boilers to serve the dry steam requirements of the Coca-Cola Bottlers Philippines. The four loans were all from BPI. LGUGC also guaranteed a P13.5 million loan obtained from Allied Bank by A.M. Gatbonton for its construction of bulk water supply facilities for the Tagaytay City Water District and City of San Fernando Water District. Details are provided in Annex G.

D. Lessons Learned

1. Project Monitoring

Although LGUGC has not experienced default on any of its accounts, difficulties have been encountered at various stages of the project cycle, oftentimes because of changes in political leadership at the local level. The following lessons have been learned with regard to project preparation and monitoring:

a. To the extent possible, bond issuances or loans should be approved early enough in the term of the incumbent so that the project gets off the ground while the incumbent is still in office.
b. Baseline data should be gathered and analyzed so that the need for the project can be clearly shown and the outcomes and impacts of the project can be more easily measured and evaluated.
c. Feasibility studies prepared by outside consultants should be reviewed carefully and validated since unrealistic assumptions can lead to nonviability of or delays in the project.
d. Continuous on-site monitoring is important for sending the message that the project being implemented is important and needs to follow all existing rules and procedures.

2. Institutional Arrangements

In many ways, the challenges faced by the LGUGC when it was established in 1998 were similar to those facing the DBP, LBP, and BOT Center. Decentralization and private sector participation were the key policy directions, and combining them at the local level without consistent policy guidance and support from the national government multiplied the risks and uncertainties facing projects like LBP's Private Infrastructure Project Development Facility and DBP's LGU Urban Water and Sanitation Project and institutions like the BOT Center and LGUGC. LGUGC has experienced many difficulties over the years, with policy reversals and stiff competition for LGU credits, to name a few. However, it has gradually built up a solid track record of projects that have been implemented at the local level and are presumably helping to improve the quality of life and economic activities in many parts of the country.

LGUGC has also been able to increase the level of comfort of PFIs in lending to subnational entities that practice good governance and have good projects. LGUGC management and staff clearly understand that as PFIs get to know the credit market for LGUs and other subnational entities, their need for LGUGC guarantees diminishes. Therefore, there is the constant need for LGUGC to develop new markets and new products so that it may continue to be viable and relevant.

LGUGC being a private corporation has certain advantages that may have contributed to its survival and success. They include the following:

a. Being a private financial services corporation and staffed with people belonging to the private financial sector, LGUGC knows how PFIs and private corporations think and act. LGUGC staff know what a private bank or company would look for in a project and anticipate questions and concerns from potential funders, investors, and the LGUGC Board of Directors, which is composed of the heads of DBP, Bankers Association of the Philippines, and some of the biggest private banks in the country.
b. LGUGC has a lean staff, many of whom are actually engaged or have participated in project packaging, debt design, and other similar project-related activities.
c. LGUGC has been a going entity since it was established in 1998. It has been able to learn from both its successes and failures and has the opportunity to apply its institutional memory in future endeavors.
d. Although there was a time when some of those entrusted with the life of LGUGC wanted to close it down instead, LGUGC has been led by professional and development-oriented management since its founding. Under their leadership, LGUGC has been able to develop new products when roadblocks are placed temporarily on one particular product (e.g., LGU bonds) or persevere until new markets open up (e.g., electric cooperatives).
e. Being registered with the Securities and Exchange Commission as a private guarantee corporation, LGUGC has the flexibility to explore and develop new products and markets within their general scope of activities and competencies. New guarantee services would just need to be presented to and approved by the LGUGC Board of Directors.

LGUGC itself gets credit ratings from the Philippine Rating Services Corporation (PhilRatings). It received an Aa plus rating in January 2012 after its credit review for the second year based on its strong capacity to meet its financial commitments relative to that of other Philippine corporations. PhilRatings has stated that LGUGC's rating reflects the strong institutional linkages of the company including those with the USAID and the Bangko Sentral ng Pilipinas. The experience and track record of its key board members and management have also been favorably noted. There has been no claim on its guarantee since it started operations in 1998 and its income from guarantee fees and program management fees is now able to cover all its operating expenses.

VI

MEDIUM-SIZE PROJECT ON PUBLIC–PRIVATE PARTNERSHIPS

The Medium-Size Project on the "Development and Implementation of Public–Private Partnerships in Environmental Investments" (MSP-PPP) was implemented from 2004 to 2009 to promote PPPs as a viable means of financing and sustaining environmental facilities for pollution control in the East Asian Seas region. The project was funded by the Global Environment Facility, implemented by the United Nations Development Programme (UNDP), and executed by the International Maritime Organization through the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA). To facilitate attainment of its objectives, the MSP-PPP was implemented within the larger framework for Integrated Coastal Management (ICM) being promoted by PEMSEA. ICM involves strengthening governance arrangements, building awareness, and encouraging the participation of all stakeholders in formulating and implementing coastal management strategies.

Some of the MSP-PPP projects prepared or implemented in the Philippines and other developing countries are presented below to illustrate the various steps taken to have the proposed PPP projects prepared and bid out competitively, in line with MSP-PPP policies. The following project descriptions are taken from the Terminal Evaluation Report prepared for the MSP-PPP (Soriano 2010). There are also many lessons to be learned, from both the projects that were successfully implemented and those that were not.

A. Medium-Size Project on Public–Private Partnership Projects in the Philippines

1. Bataan

As part of its ICM program and in line with the Philippines' Ecological Solid Waste Management Act of 2000, the Province of Bataan had identified solid waste management (SWM) as a priority area of concern and investment. With the support of PEMSEA, a prefeasibility study was conducted in 2002 to evaluate two options for providing SWM facilities for three clusters of municipalities. Option 1 was to have one materials recovery facility (MRF) per cluster and a large-scale centralized sanitary landfill. Option 2 was to have one MRF and a small landfill for each cluster. The study showed that although both options were economically and financially viable, Option 1 was more attractive.

A willingness-to-pay (WTP) survey was conducted in July–August 2002. In May 2003, a letter of intent (LOI) was signed by Bataan Governor Leonardo Roman, the vice-governor, and other stakeholders from the local and national governments and civil society.

An investment opportunity brief was prepared and presented at an Investors Roundtable hosted by the Development Bank of the Philippines on 6 May 2003. Five partnership proposals were received in October 2003. In February 2004, just about 3 months before the local elections scheduled for May 2004, the provincial council approved the proposed Integrated SWM Project for the Province of Bataan and authorized the governor and the vice-governor to enter into agreements for the financing and implementation of the project under a PPP arrangement. However, they were not able to do so before the elections.

In September 2004, three of the five original potential investors submitted updated proposals. However, the new governor raised concerns about the location of the proposed sanitary landfill and a private sector partner was never selected.

2. San Fernando, Pampanga

San Fernando's environmental problems were identified during the preparation of its Comprehensive Land Use Plan. The improper disposal of garbage through burning, burying in empty lots, dumping into streets or open pits, or throwing into waterways was cited as one of the biggest problems. These practices worsened the city's other problems of flooding and air and water pollution.

To assess community support for the proposed environmental investment activities, a WTP survey was conducted in San Fernando City in July–August 2002. A prefeasibility study was completed on 16 September 2002. It recommended the construction of a sanitary landfill and recycling facility to manage and dispose of the solid waste. However, due to the short duration of the prefeasibility study (i.e., 1 month), several key issues concerning the project were left unresolved, including the problem of a high groundwater table in the San Fernando area. Follow-up discussions with the Department of Environment and Natural Resources indicated a reluctance to issue an Environmental Compliance Certificate for the proposed landfill site. Other issues concerned the acceptability of the proposed tipping fees identified in the prefeasibility study, relative to the results of the WTP survey, which was being conducted simultaneously.

The opportunity brief prepared by PEMSEA in May 2003 took these various constraints into consideration. To provide the city with an estimate of the capital and operating costs of an integrated SWM system, PEMSEA specified the system to consist of an MRF within San Fernando and transportation of the residual waste (estimated to be 75% of the total volume generated) to an existing sanitary landfill in the Clark Special Economic Zone, some 30 kilometers from San Fernando. The estimated user fee per household for the proposed system was $0.78 per month, or about P44. The opportunity brief was agreed by the local government and was presented at an Investors Roundtable held on 6 May 2003.

On 30 May 2003, six investors submitted Expressions of Interest. All of them were asked to submit partnership proposals. Four investors submitted, of whom three were asked to make oral presentations. The winning bidder was notified and appointed on 27 October 2003. The winning bidder proposed an innovative solution for the city, which included the provision of an MRF, composting of the biodegradable fraction of the waste, marketing of valuable recyclables, above-ground storage of any residual wastes, and the remediation of the existing open dump. The estimated user fee for such a facility was stated as P30–P40 per household per month.

On 26 March 2004, the city council passed a resolution authorizing the mayor to enter into a memorandum of agreement (MOA) with the private partner. The MOA was signed on the same day, witnessed by the Department of Environment and Natural Resources Secretary, UNDP Resident Representative, and the German Ambassador. With the MOA signed, the private partner started work on a feasibility study.

Highlights of the draft feasibility study were presented to the new mayor on 25 October 2004. The feasibility study finalized in December 2004 verified the original offer indicated in the successful bid by the private sector. The feasibility study was presented to the city council in early December 2004 with follow-up workshop on 21 January 2005.

During the workshop, the council stated that its main concerns with the feasibility study were that the city may not be able to meet the daily minimum of 200 tons of waste nor collect the expected amount of user fees from the households. PEMSEA and the winning bidder requested the city council to set up a task team to address the legal, technical, and financial issues that were of concern to develop an improved understanding of the scope and content of the project, and to arrive at acceptable solutions. The city government did not respond to the recommendation, but instead proceeded unilaterally to enter into a service contract for transporting all the waste out of the city to the Clark landfill.

Subsequently, the city stopped transporting municipal waste to the Clark landfill and attempted to set up MRFs in each of the 34 barangays, along with disposal areas for residual wastes. This has proven to be highly unsatisfactory, with 34 open dumps now operating in the area.

3. Puerto Galera, Mindoro Oriental

In November 2004, the Municipality of Puerto Galera created a Coastal Resources Conservation and Management Board which spearheaded the formulation of the Puerto Galera Coastal Resources Management Plan 2006–2010, with support from the World Wildlife Fund-Philippines. The plan identified the urgent need for an integrated sewerage system and wastewater treatment facility to provide a lasting solution to the

uncontrolled sewage discharges to Puerto Galera Bay which had been the first in Asia to be chosen by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as one of the most beautiful bays in the world and which was in close proximity to Verde Island Passage, the world's center for marine biodiversity.

In late 2005, PEMSEA was invited by the mayor to send environmental and investment specialists to assist Puerto Galera in preparing the proposed sewerage development project and facilitating private sector participation through PEMSEA's PPP process. A tripartite MOA was signed on 31 March 2006 between the Municipality of Puerto Galera, PEMSEA, and SCOTIA (the United States Agency for International Development-funded project for Sustainable Coastal Tourism in Asia) to formalize their collaboration.

After a consensus building and action planning workshop in April 2006, PEMSEA, SCOTIA, World Wildlife Fund-Philippines, and the Municipal Government of Puerto Galera jointly undertook a WTP survey in July–August 2006. The prefeasibility study prepared by PEMSEA in partnership with Puerto Galera and SCOTIA was also completed in August 2006.

Elections were held in May 2007, and a medical doctor, formerly the municipal health officer, took over as mayor. Under his leadership, the municipal council passed a resolution in December 2007, prioritizing implementation of the sewage treatment plant (STP) in the municipality. The Provincial Development Council also passed a resolution in March 2008 endorsing the construction of the plant. After public consultations and dialogues in March and May, the municipal council passed another resolution in June 2008 approving the project and Request for Proposals and authorizing the mayor to proceed with the procurement and competitive bidding processes, agreeing with the BOT Law.

Supported by the MSP-PPP project, the various steps in the bidding process were undertaken from July 2008 until the Notice of Award was given to the winning proponent in January 2009 and the contract signed in April 2009. In August 2009, a resolution was passed by Barangay (village) Sabang approving the construction of a jetty pier and pedestrian boulevard in the foreshore area under which the sewerage interceptor pipes would be laid. After several public hearings and submission of documents, the Environmental Clearance Certificate was obtained in October 2009. Construction of the jetty pier and terminal was completed in April 2010, just before the May 2010 elections.

Issuance of Notice to Proceed with construction of the sewerage treatment plant has been held up by the following: (a) finalization of land transaction for location of the STP and right-of-way, (b) acquisition of foreshore lease and waiver from affected landowners for right-of-way for the pedestrian boulevard and sewerage system, and (c) financial closing of the proposed loan from the Development Bank of the Philippines. The land previously purchased by the municipality for the STP is perennially flooded and therefore not suitable. However, the area can be utilized as a polishing lagoon. Purchase of nearby land at a higher elevation has been proposed by the private sector partner. The municipality is in ongoing talks with the lot owners.

B. Medium-Size Project on Public–Private Partnership Projects in Other Asian Countries

1. Bali, Indonesia

The Bali Coastal Strategy was formulated to balance spiritual development, economic growth, and environmental protection in Denpasar City and four neighboring regencies. A technical working group with 46 individuals representing various stakeholders identified several projects in SWM and wastewater treatment and then selected three. PEMSEA funded prefeasibility studies for two of the three projects.

The first project was for an integrated SWM scheme in DenpaSAR BAdung, Glanyar, and TAbanan (SARBAGITA). A WTP survey was done in July–August 2002 and the prefeasibility study was completed in November 2002. A guaranteed revenue stream was identified to be one of the most important challenges facing the project. Since a broad-based user fee system would take time to be developed, an environmental management fee for tourists was proposed. Other revenue-generating schemes such as waste-to-energy technology, composting, and centralized recycling were also proposed. The economic cost of not doing the project was estimated to be $10 million arising from foregone tourism. The investment opportunity brief was prepared in March 2003. It was at this stage of the PPP process that the SARBAGITA decided to proceed with a "bid and tender" process of their own design.

In January 2004, BPK SARBAGITA invited potential investors through newspaper advertisements and letters to several embassies to submit proposals to treat about 500–600 tons of solid waste per day at the existing Suwung landfill with any environment-friendly technology and any type of PPP scheme as well as period of cooperation and profit-sharing scheme. A total of 13 investors submitted proposals, of which only six were considered appropriate. The six investors were asked to present their proposals to the selection committee and were evaluated in four areas: technical feasibility, financial feasibility, environmental feasibility, and cooperation feasibility. The selected investor was Navigat, which formed a joint venture called Navigat Organic Energy Indonesia with three other foreign companies. The build–operate–own contract was awarded by BPK SARBAGITA to Navigat Organic Energy Indonesia in May 2004.

In July 2004, the local governments started a 6-month socialization or public awareness program to ensure the success of the project. MSP-PPP assisted in the conduct of consultations with village leaders and other key stakeholders. PEMSEA provided comments on the environmental impact assessment started in August 2004. It also supported the private investor's application for a Clean Development Mechanism project under the United Nations Framework Convention on Climate Change. The Clean Development Mechanism project was approved on 20 May 2007. The integrated waste management facility has been constructed and operation has commenced.

The second project for which PEMSEA funded a prefeasibility study was the Denpasar Sewerage Development Project covering Denpasar City and the southern part of Badung Regency. The WTP survey was done in July–August 2002. A draft investment opportunity brief was prepared in September 2002. It showed that operating costs would be lower if a Japan Bank for International Cooperation loan with 2.6% interest rate per annum was availed of rather than a conventional loan with 7% interest. Thus, a conventional bid and tender process was agreed by the government.

The Denpasar Sewerage Development Project was undertaken with a Japan Bank for International Cooperation loan and cofinancing from the Government of Indonesia, Bali Province, Denpasar City and Badung Regency. The tendering process for construction was done in 2003 and construction of the sewer lines and wastewater treatment plant started in 2004 and was completed in 2008. The project is now fully operational.

2. Viet Nam

The People's Committee of Da Nang City adopted the Danang Coastal Strategy in 2001. The primary environmental concerns identified in the process were water pollution, SWM, and control of industrial and hazardous waste. A WTP survey was conducted in July–August 2002 with the support of PEMSEA. Prefeasibility studies were drafted in August 2002 to determine the technical and financial options for treating wastewater from the Hoa Khanh Industrial Park and for managing hazardous hospital waste in Da Nang City. For PEMSEA's Investors Roundtable held in Xiamen on 24 September 2002, investment opportunity briefs were prepared separately for the two projects. In the July 2003 investment opportunity brief, the two projects were proposed to be jointly established since the volume of hazardous waste being generated at that time was too low for a stand-alone facility. Representatives of eight private companies attended the Investors Roundtable held on 9 September 2003, but no proposals were submitted by the companies. A second roundtable and site visit was organized by PEMSEA on 10–11 May 2005, and attended by two potential investors. Once again, neither company submitted a partnership proposal.

As explained in the Opportunity Brief, one of the main constraints for the project was the uncertainty regarding the generation of sufficient quantities of wastewater and hazardous waste to make the investment economically viable. Another reported concern of the foreign companies was how to repatriate their earnings in hard currencies. Although the local People's Committee verbally confirmed their commitment to ensure payment for the required facilities and services, the issue was not addressed in the Decision of the People's Committee of Da Nang City issuing preferential policies to attract foreign direct investment to Da Nang City issued on 10 March 2004. As a consequence, the project was unable to attract a private sector partner.

However, the results and the impact of the PEMSEA work were not lost. The People's Committee decided to move forward with the project. The wastewater treatment facility in Hoa Khanh Industrial Park was built with state funds in 2006. It is currently being operated by a Hoa Khanh IP service enterprise, Danang Industrial Zones Infrastructure Development and Exploitation Company. The facility was designed for a capacity of 5,000 cubic meter per day (m^3/day). The current hydraulic loading is of the order of 1,000–1,200 m^3/day, with a number of enterprises reportedly not yet connected to the system.

Most of the hazardous waste that is not being incinerated is being collected and disposed at the new landfill in Kahn Son, which was built as part of the Danang Sanitation Project funded by a loan from the World Bank and grants from the governments of Australia and Viet Nam. The sanitary landfill was not designed or constructed as a hazardous waste disposal facility. Thus, there are still some human health and environmental issues associated with this operation.

The wastewater treatment facilities and sanitary landfill constructed under the Danang Sanitation Project are being managed and operated by another state-owned enterprise, the Danang Urban Environmental Company.

However, that too is about to change. Negotiations have started between the local government and a private company for takeover of the management and operation of the wastewater treatment facilities in Da Nang. Thus, the PPP initiative in Da Nang, while not resulting in a direct investment by the private sector, appeared to have impacts on the awareness and openness of the People's Committee toward PPPs.

3. People's Republic of China

To better position itself as a prime tourist destination and special economic zone, Haikou City in the island of Hainan in the People's Republic of China aims to carry out professional and efficient urban planning by implementing environment-related projects such as water supply, sewerage, SWM, and energy- and resource-saving technologies. The city secured the support of PEMSEA in conducting a preliminary analysis of two environmental investment projects: (a) construction and operation of a new 100,000 m^3/day STP and (b) upgrading and operation of the existing landfill/leachate treatment facility located in Cheng Mai County. After a site visit in August 2005 by technical officers, the capital and operating costs for the facilities were estimated and two possible PPP arrangements were proposed for consideration.

Another mission was conducted on 17–29 April 2006 by a PEMSEA Regional Task Force to gather data and documentation needed to formulate the legal, technical, and financial framework, which formed the basis for preparing the Request for Qualifications and later the Request for Proposals for the proposed process optimization and upgrading of the existing STP from 300,000 m^3/day to 600,000 m^3/day. A draft LOI between PEMSEA and Haikou City was discussed, together with the roles of the public and private sector partners in the PPP process. Efforts were made to make the city's decision makers fully aware of the benefits of the PPP approach to gain their full support. The LOI was signed on 15 July 2006. However, city officials later decided to choose their private sector partner through negotiation rather than through competitive bidding. The project has now been completed.

C. Lessons Learned

Although the political and economic circumstances in the countries mentioned above are different in many ways and similar in some respects, important lessons can be learned by comparing their experiences with PPPs in environmental infrastructure investments.

1. Project Preparation

In the MSP-PPP, feasibility studies were conducted by the private sector partners of the LGUs. Investment opportunity briefs and bidding documents were prepared on the basis of prefeasibility studies prepared for the LGUs by PEMSEA consultants. The following lessons were learned in relation to project preparation:

a. Prefeasibility studies cannot be hurriedly done if they are to be done well, as shown in the case of San Fernando, Pampanga. Selection of sites has to be done carefully and with proper consultation with affected residents, as was done in Bali, Indonesia. Nonsuitability of proposed sites for environmental or social reasons can lead to non-implementation of the proposed projects, particularly landfill projects as in Bataan and San Fernando.

b. Prefeasibility studies should be based on WTP surveys to ensure that proposed fees (e.g., tipping fees and environmental user fees) are affordable and acceptable to the target users or clients. Similarly, estimates of the volume of wastewater or solid waste to be treated by the proposed facilities should be realistic to avoid cost-recovery problems.

2. Project Awarding and Financing

In the MSP-PPP, private sector partners are to be chosen by the LGU through a transparent, competitive bidding process. PEMSEA's support is premised on LGU commitment to such a process.

The importance given to and compliance with transparent and competitive bidding processes varies from one country to another. The impact on project implementation can also vary. In San Fernando and Puerto Galera, PEMSEA's competitive bidding processes were followed and contracts were awarded, but the projects were not implemented for various reasons. In Bali, Indonesia, where they followed their own "bid and tender" process and in Haikou City, the People's Republic of China, where they selected their private sector partner through negotiated bid, the projects have been completed and are operational.

For some projects for which concessional official development assistance loans are available, costs may be lower with the official development assistance rather than a private sector partner accessing funds at commercial rates. This was true for the sewerage project in Bali. Alternative financing and management options should always be considered to ensure that the proposed facility is built, operated, and maintained at the lowest possible cost while delivering the expected services. In some cases, as with the Da Nang City wastewater treatment plant, it was constructed by a state-owned enterprise and turned over to a private company for management and operation.

VII

OTHER SUBNATIONAL PUBLIC–PRIVATE PARTNERSHIPS

As mentioned in the earlier section on Local Government Unit Guarantee Corporation, water districts are specialized government corporations created by LGUs to provide water supply and sanitation services in their localities. Board members of water districts are appointed by the mayor or the governor. Some of the earliest public–private partnership (PPP) project proposals were for bulk water supply to water districts, but they were not implemented. More recently, at least 10 PPP contracts have been entered into by LGUs, water districts, and electric cooperatives: one province, one water district, and one municipality for bulk water supply; one city for power supply distribution; and six electric cooperatives for power generation.

A. Bulk Water Supply

1. Bulacan

The unsolicited build–operate–transfer (BOT) proposal for the Bulacan Central Bulk Water Supply Project was submitted in 1997 by the Compagnie Generale des Eaux Consortium which would be known as the Bulacan Water Corporation (BWC). The project involved the financing, design, engineering, construction, testing, commissioning, operation and maintenance, and transfer of a 280,000 cubic meter per day (m^3/day) ground and surface water abstraction, treatment, storage, and transmission facility that would supply potable water to eight water districts and coastal towns in the province of Bulacan. The eight water districts formed an association called the Bulacan Water Supply and Sewerage System. (BWSSSI). The BWSSSI and the Local Water Utilities Administration (LWUA) were to be the co-implementing agencies of the project.

The project was submitted by LWUA to the Investment Coordination Committee (ICC) in January 1998 and received first-pass approval in February 1998. Contract negotiations were held in March and April 1998 and the project was resubmitted to the ICC for second-pass review in May 1998. A special committee chaired by the Coordinating Council on Private Sector Participation with representatives from LWUA, Department of Finance, National Economic and Development Authority (NEDA), and Bangko Sentral ng Pilipinas was formed to ensure that all government concerns are addressed in the draft contract. The committee was able to develop an acceptable version of the draft Bulk Water Supply Agreement (BWSA) that fairly distributed project risks between the private sector proponent and the government, based on ICC contract negotiation guidelines. The draft prepared by the special committee was given second-pass approval by the ICC on 12 August 1999.

To help prepare the documents for the "Swiss challenge" required for unsolicited bids, the services of a recognized water expert and technical and legal professionals were arranged for by the Coordinating Council on Private Sector Participation with funding support from United States Agency for International Development. The invitation for comparative proposals was published in December 1999 and the deadline was set for March 2000. The project was awarded to the original proponent, BWC, pursuant to LWUA Board Resolution No. 95, series 2000.

The NEDA-approved Bulacan Central Bulk Water Supply Project Agreement was signed by BWC, LWUA, and the eight BWSSSI water districts on 7 November 2000. Under Section 22 (Conditions Precedent) of the Agreement, all parties agreed to undertake to obtain and deliver certain documents and approvals as well as proof of certain events occurring within a period of 12 months from the signing of the Agreement. Upon mutual agreement of the parties to the Agreement, a 12-month extension for the complete delivery of the Conditions Precedent was approved through LWUA Board Resolution No. 233, series 2001. The delivery period was therefore extended from 7 November 2001 to 7 November 2002.

In a letter dated 8 November 2002, BWC advised LWUA that "in view of the non-satisfaction by November 7, 2002 of the conditions specified in Sections 22.1 and 22.2 (a) of the Agreement due to no fault of any party resulting to non-occurrence of the Commencement Date by November 7, 2002, the said Project Agreement is deemed automatically terminated as of November 8, 2002, in accordance with Section 22.4 of the same agreement."

LWUA requested BWC to consider the possibility of a second extension. However, BWC reiterated its earlier position and explained that such extension may only prove futile as the 1-year delay in the start of the project had already negatively affected its viability. Development cost had increased and revenue generation and investment recovery had been significantly deferred. Shareholders could no longer absorb the cost of further delays, especially since there were still a number of major hurdles in the project implementation that were outside the consortium's control. There was also no assurance that the conditions precedent would in fact be complied with, even with a new extension. The termination of the contract was approved by the LWUA Board on 18 February 2003.

One of the conditions precedent was the approval of the Office of the President. This had actually been obtained during the meeting of the NEDA Board on 3 September 2002. However, BWC was informed of this only in a 22 November 2002 letter from LWUA, which BWC received only on 5 December 2002, almost a month after the deadline (Soriano 2003).

The Bulacan Central Bulk Water Supply Project was the first and the largest BOT bulk water supply project approved for implementation in the Philippines. It was a test case for the application of the BOT Law to unsolicited BOT projects in the water sector. Its successful implementation could have shown the way for many other BOT projects in the pipeline. Unfortunately, the project never moved forward and simply ran out of time. The full process was envisioned to take only 1 year. In reality, the contract awarding process took more than 3 years, from the time an acceptable proposal was submitted in September 1997 until a contract was signed in November 2000. The delivery period for the Conditions Precedent was also supposed to be only 1 year, but after 2 years, many of the conditions had still not been met. Considering the date when LWUA and the eight Bulacan water districts entered into a memorandum of understanding with the project proponent in September 1995, more than 7 years elapsed with no additional supply of water secured for the residents and industries of Bulacan.

Such additional supply may be secured in the near future through the Bulacan Bulk Water Supply Project being prepared by the Metropolitan Waterworks and Sewerage System (MWSS) in line with its 1992 commitment to include Bulacan province in its service area for the purpose of supplying bulk water. The MWSS has been coordinating closely with other concerned government-owned or controlled corporations such as the LWUA and National Irrigation Authority, the concerned water districts in Bulacan, and with the Province of Bulacan. A Development Fund is currently being negotiated with the Province of Bulacan as compensation for the 1.9 m^3/second water rights that it is giving up for the project. Five consortia have been prequalified and bidding was expected to be completed by the second quarter of 2015.

2. Baguio City

To address its current and future requirements and reduce its dependence on deep wells, the Baguio Water District (BWD) bade out the development, management, operation, and maintenance of bulk water supply systems and facilities in Baguio City and neighboring municipalities in the province of Benguet. The winning bidder would form a joint venture company with the BWD and own 90% of the company, while BWD would own the remaining 10%.

Of the two responsive bids for the project, Biwater submitted the lower bid rate and was awarded the contract. However, soon after submission, it requested an adjustment in its bid price since it had been calculated on the basis of an exchange rate of P26 per US dollar and this had since deteriorated to P32 per US dollar. BWD did not agree and Biwater backed out in writing, forfeited its bid, and filed a case against BWD. The contract was then offered to and accepted by the other responsive bidder, Compagnie General des Eaux Philippines. BWD issued the Notice of Award in June 1998. The Joint Venture Agreement was signed in January 1999.

The Joint Venture Company and BWD signed the Baguio BWSA in May 1999. It provided for the purchase of a minimum daily contracted bulk water supply of 50,000 m^3/day at a fixed rate of P9.80 per m^3/day for the first 5 years beginning from the date of actual delivery.

The Agreement was submitted to the Office of the President for approval soon after it was signed. It was approved by the administration of former President Joseph Estrada just before it was replaced by the Arroyo administration—almost 2 years after submission. By this time, the peso had devalued considerably to P52

per US dollar. Compagnie General des Eaux Philippines requested BWD for permission to adjust its bid price which had been based on P26 per US dollar. BWD did not agree, partly because of the pending court case filed against it by Biwater that had earlier made a similar request. The joint venture and other agreements signed were thereafter terminated by mutual agreement (Soriano 2003).

As with the Bulacan Central Bulk Water Supply Project, long delays in the approval process led to the termination of signed contracts and the loss of benefits to the community that the BOT projects could have brought. The consequence is that the residents and industries in Baguio City and neighboring municipalities continue to suffer from water supply problems.

Improvements in the bidding process were adopted to avoid the problems arising from unexpected changes in economic and other variables. BWD started using assumption-based pricing to facilitate adjustments in prices arising out of unforeseen changes in circumstances. In 2007, Benguet Corporation won the bulk water supply contract, but this was subjected to renegotiation and eventually terminated after the BWD rejected Benguet Corporation's plan to convert its old open-pit mine in Itogon, Benguet into a reservoir. A case is still pending with the Baguio Regional Trial Court.

The head of another mining company, Philex Mining Corporation, has initiated discussions with the mayor of Baguio City and BWD regarding a study on alternative solutions to Baguio's perennial water problems (Caluza and Cabreza 2013). The chair of Philex is also the chair of the Metro Pacific Investments Corporation which, together with DMCI Holdings, holds controlling interest in Maynilad Water Services, the concessionaire that provides water supply and sewerage services in the west zone of the MWSS service area. BWD is also currently looking into possible sources of raw water before considering to restart the bidding process.

3. Cebu City–Managa Dam

The Managa Dam Project was part of the medium-term development plan of the Metro Cebu Water District (MCWD). Its objective was to augment the supply of treated water to Metro Cebu by 100,000 m^3/day. Designed as early as 1990, it was originally planned for official development assistance financing. However, due to lack of counterpart funds, the project was not implemented. When the BOT Law was amended in 1994, MCWD was encouraged to explore the possibility of private sector participation (PSP) in the project. Johan Holdings (JHB), a Malaysia-based group of contracting firms, submitted an unsolicited BOT project proposal.

The MCWD formally submitted the project proposal to the ICC in January 1997. NEDA evaluated the project and found it to be technically, financially, and economically feasible. NEDA also found JHB to be highly qualified to implement and operate the project. The ICC-Technical Board discussed the project in July 1997 but deferred taking action because it wanted additional information from MCWD and the project proponent.

Initially, the main problem was JHB's insistence on a performance undertaking from the national government. During the first meeting of ICC-Technical Board, the Technical Board reiterated the national government's policy that it will not provide a performance undertaking in the form of guarantees, subsidies, and equity to unsolicited BOT projects. Rule 10 of the BOT Law is also explicit with regard to this policy.

After the ICC-Technical Board meeting in December 1997, JHB and MCWD still had a series of meetings regarding the project. In addition to the performance undertaking, a new issue regarding pricing emerged, namely, the base year to adopt in setting the price of water. JHB insisted on a base year of 1997 while MCWD preferred 2001 (the year that the project was expected to be completed and start producing and selling water to MCWD). MCWD was concerned that if 1997 was used as the base year, the price of water delivered and sold in 2001 would be very expensive given the cumulative effect of inflation over the 4-year period between 1997 and 2001. At that time (1997), the average price of water was computed at P24.20 per cubic meter. Because MCWD and JHB could not agree on the pricing issues, MCWD finally decided to turn down the JHB proposal in late 1998 (Soriano 2003).

4. Cebu City–Luyang River

In 2002, the MCWD considered another unsolicited proposal for a bulk water supply project. The proposal came from the Ayala and Central Equity Ventures Consortium. The project involved the development, design, construction, commissioning, ownership, operation, and maintenance of infrastructure facilities required to abstract an average of 50,000 m^3/day of raw water from Luyang River in the Municipality of Carmen. The project was estimated to cost $34.00 million and proposed under the build–own–operate scheme.

The project proposal obtained ICC's first-pass approval in August 2005 and the second-pass approval in October 2006. The International Finance Corporation (IFC), the lead transaction advisor, presented the results of their due diligence and draft contract to the MCWD on 22–23 November 2005. The Water Purchase Agreement, which provides the detailed terms and conditions including the technical and commercial terms by which the MCWD and the private proponent shall enter into a partnership, was negotiated and agreed upon by both parties.

However, the project started to face some difficulties when the parties disagreed on certain provisions in the Terms of Reference (TOR) for the competitive challenge stage. The TOR defines the terms and conditions on which interested bidders shall base and prepare their price challenge bids for the project. The Consortium wanted to include two provisions in the TOR. The first provision is for bidders to assume a development cost that will include the transfer of water rights from the Consortium to the winning bidder. The Consortium holds the water rights to the proposed river source. The second provision was a take or pay provision in the agreement.

Negotiation on the valuation of the water rights transfer ensued between the MCWD and the Consortium bogged down when the Cebu City government intervened in the negotiation. No agreement was reached on the price of the water rights transfer. In August 2007, the MCWD formally rejected the Consortium's proposal and formally terminated the contract negotiation.

5. Cebu Province–Luyang River

In January 2009, the Provincial Government of Cebu (PGC) signed a memorandum of understanding with the Manila Water Consortium (MWC) for the design, development, construction, financing, management, and operation of a bulk water supply facility that will supply 35 million liters per day (mld) of potable bulk water to the northern and central portions of the province of Cebu, less than 50% of which are currently being served.

The water source in the Municipality of Carmen is the Luyang River to which the MWC has the water rights. The MWC was composed of the concessionaire for the east zone of the MWSS service area, Manila Water Company, Vicsal Development Corporation, and Stateland. The Stateland has since been replaced by Metro Pacific Water Investments Corporation, a sister company of Maynilad Water Services.

In August 2009, the MWC submitted its unsolicited proposal to PGC under a joint venture framework. The legal basis was a Provincial Board Ordinance defining the guidelines for entering into a joint investment partnership with the Province of Cebu. This is based on the provision in the implementing rules and regulations of the Local Government Code that allows LGUs to enter into joint venture arrangements with the private sector. The provincial government initially accepted the MWC's proposal subject to further negotiation of the terms and conditions with the Joint Investment Selection and Evaluation Committee.

The negotiation between the parties formally started in September 2009 and included the terms of the Joint Investment Agreement, equity sharing, and the financing terms. The negotiation took time because of the position of the PGC on the following: (a) financing terms where interest rates are lower and comparable to those LGUs get from government financing institutions and (b) not to incur debts.

In January 2010, the parties agreed on the terms of the Joint Investment Agreement. However, the PGC wanted more options on the project implementation, such as unbundling the project components into source development and treatment, and transmission or delivery of the bulk water to the distributors or LGUs to get a lower tariff. The Consortium disagreed with the proposed arrangement because of the risks involved in separating the two components.

The parties resumed negotiations in June 2010 after the May 2010 local elections. The MWC submitted its second revised proposal in September 2010 incorporating what was agreed during the negotiations. In October 2010, PGC wanted to include the distribution of the bulk water to the retail level. MWC conducted an evaluation of this option but found it not feasible as part of the initial phase of the project.

In March 2011, the MWC submitted its final proposal to be subjected to a Swiss challenge. Equity sharing would be 51:49 in favor of the consortium and the contract period would be for 30 years. In July 2011, the parties signed the Certificate of Successful Negotiation/Acceptance. The PGC also issued the Invitation to Prequalify and to Bid for a competitive challenge to the project proposal. After the issuance of the bid documents in August 2011, two prequalified bidders, Cebu Water Consortium (CWC) and Metro Maynilad Water Consortium, submitted their competitive bids in December 2011.

Also in December 2011, PGC announced that the CWC was the most responsive bidder in the competitive challenge considering the two parameters set by PGC for the evaluation. MWC, as the original proponent, was given 30 days to submit its price match to the bid offer of CWC. In January 2012, MWC submitted its offer to match the bid of CWC. In February 2012, PGC issued the Notice of Award to the MWC.

Cebu Manila Water Development (CMWD) was the joint venture formed by the MWC (51%) and PGC (49%) in May 2012. In December 2013, CMWD and MCWD entered into a 20-year water purchase agreement under which CMWD would supply 18 mld of water for the first year and 35 mld in the succeeding years. The project

was estimated to cost P1.1 billion and bring the first delivery of water before the second week of December 2014 (Feliciano 2014). As the first surface water source project in the province, it was expected to help improve the ground water condition which had deteriorated due to overextraction.

6. Cagayan de Oro City

The first bulk water supply project implemented by a water district was the Cagayan de Oro Water District (COWD) Bulk Water Supply Project. The project was bid out in 2004 and a BWSA was entered into by COWD and Rio Verde Water Consortium on 23 December 2004 (Commission on Audit [COA] 2009). A supplementary agreement dated 21 January 2005 stipulated that COWD would purchase at least 40,000 m^3/day of treated bulk water throughout the 25-year contract period starting on 1 January 2007. Construction was undertaken in 2005 and 2006 at a cost of about P1.73 billion. The project infrastructure is designed for 150,000 m^3/day, capable of serving 90,000 residential connections. To accommodate the entry of bulk water supply, the COWD undertook the Lateral Improvement Project which included the laying out of mainline pipes (COWD 2014).

However, in 2007, the COA noted deficiencies in the awarding of the contract since the award was made by the COWD Board of Directors to Rio Verde Water Consortium despite its being found ineligible by the Bids and Awards Committee for failing to comply with some requirements including submission of audited financial statements for the last 3 years. In 2009, a COA Fraud Audit Team declared that the BWSA was tainted with fraud and other anomalies and recommended that the contract be totally cancelled. The COA observed that the signed contract was substantially different from the model contract that was used in the bidding process, with the changes "apparently for the benefit and undue advantage of the contractor." To date, these issues have not yet been resolved (COA 2012).

7. Opol, Misamis Oriental

Despite the above efforts of COWD whose service area includes the second-class municipality of Opol, the residents of Opol have apparently not been satisfied with the water supply services provided by COWD. On 8 November 2014, the mayor of Opol signed a memorandum of understanding with A Brown Company for a possible Municipal Bulk Water Supply Project that would hopefully provide sufficient supply of water to Opol and the neighboring municipalities of Alubijid and Laguindingan where the new airport has been opened, as well as El Salvador City. After a 6-month detailed feasibility study, a 25-year joint venture between Opol and A Brown was to be formed. The project is estimated to cost P0.5 to 1 billion and will use membrane technology for water treatment (Imam 2014).

B. Power Supply

Six PPP arrangements for power supply have been entered into recently: one city for power supply distribution and five electric cooperatives for power generation. These PPP transactions were facilitated by advisory assistance from the IFC, the private sector arm of the World Bank Group. The IFC shares its experiences through "Success Stories: Public–Private Partnerships" which are available on its website.

1. Olongapo City

After the bidding based on the feasibility study funded by the Land Bank of the Philippines did not push through, the Public Utilities Department (PUD) of Olongapo City continued to experience technical and financial difficulties and the electric power supply service remained unreliable and unsatisfactory. The mayor initiated another attempt to secure PSP and obtained, in December 2007, the services of the IFC as the lead transaction advisor, with the support of Spanish Trust Funds (IFC 2011d).

The IFC team conducted extensive due diligence including a full diagnostic of the PUD to identify key operational, legal, technical, and financial issues that could affect the structuring of a bankable transaction. Two financial issues emerged as critical: the reconciliation of arrears of the PUD with the National Power Corporation (NPC) and the substantial increase of PUD debt as a result of delayed payments and overdue amounts. IFC recommended the engagement of an independent party to prepare a complete financial database that could be used to create a restructuring plan.

IFC prepared a Strategic Options Report which outlined the best options for PSP to improve the reliability and quality of power supply while settling PUD's past due accounts. This was followed by the Transaction Structure Report which included details on the recommended transaction and tender process. IFC marketed the transaction to potential investors at a prebid conference held in July 2009. IFC completed the Information Memorandum for the transaction and prepared the necessary bid, tender, and contractual documents.

In September 2009, Olongapo City issued an invitation to prequalify and bid for transaction, which included the sale of its electric distribution system and the obligation to invest in a predetermined emergency program in the first year of operation, as well as in other repairs and upgrades over time to meet the regulator's standards of service.

Two bidders were prequalified and submitted firm and binding offers. However, a failure of bidding was declared in June 2010 because neither bid met the reserve price of P610.5 million set by the city. Olongapo chose to initiate exclusive negotiations with the higher ranked bidder, the Cagayan Electric Power and Light Company (CEPALCO). CEPALCO has more than 50 years' experience as an electricity distribution utility in Cagayan de Oro City and three municipalities in the province of Misamis Oriental. It offered to purchase the distribution assets at the reserve price on the same terms and conditions stipulated in the tender documents. On 14 July 2010, Olongapo City signed the contract for the sale of its electricity distribution system to CEPALCO for about $13.3 million. CEPALCO paid 50% of the sale proceeds; the remaining 50% would be paid after CEPALCO acquires a franchise from the Philippine Congress, as required by law for all electricity distribution utilities.

On 1 March 2013, Republic Act 10373 granting a 25-year franchise to the Olongapo Electricity Distribution (OEDC), an affiliate of CEPALCO, was signed into law by President Aquino. OEDC's application for a Certificate of Public Convenience and Necessity was approved by the Energy Regulatory Commission (ERC) on 27 May 2013 (ERC 2013). The OEDC would initially charge its customers the unbundled rates approved in August 2005 by the ERC for the PUD but shall eventually be governed by the performance-based regulation for private distribution utilities.

2. Marinduque, Romblon, and Masbate

In line with the provisions of the Electric Power Industry Reform Act (EPIRA) of 2001, all the assets of the NPC were privatized except for the assets of its Small Power Utilities Group (SPUG). The SPUG carries out the missionary electrification function of NPC in areas that are not connected to the national grid or backbone system of interconnected transmission lines, substations, and related facilities. Many of the Philippines' over 7,100 islands are off-grid areas that are supposed to be served by SPUG.

Unfortunately, power supply service has generally been unreliable and expensive for those who have access, while hundreds of thousands have no access at all. The investments required to improve services and meet future needs do not appear to be available due to budget constraints. At the same time, large subsidies were already being given from collections of the universal charge from all electricity users in the Philippines.

To meet electricity demand in an efficient and sustainable way, the national government decided to seek PSP in power generation. The government appointed IFC as the lead transaction advisor to (a) prepare a regulatory framework for PSP in off-grid areas; (b) draft model contract agreements, such as the Power Supply and Subsidy Agreements; and (c) design, manage, and implement a competitive and transparent process to select private power providers. In 2004, IFC signed a comprehensive mandate with the Government of the Philippines to open 14 areas covered by the SPUG to PSP. These areas were selected because of their high subsidy requirements (approximately 80%).

DevCo, a multidonor program affiliated with the Private Infrastructure Development Group and supported by the Department for International Development of the United Kingdom, the Dutch Ministry of Foreign Affairs, the Swedish International Development Agency, and the Austrian Development Agency, funded the advisory work.

IFC developed the regulatory framework for power generation in the provinces of Marinduque (fourth income class), Romblon (third income class), and Masbate (first income class) and helped prepare a fair and transparent bidding process to attract potential investors. IFC helped the government develop and award two innovative concession agreements for the three provinces: one for Marinduque and Romblon and the other for Masbate. Two local companies won the bidding. They were to invest more than $55 million for new plants that would provide reliable, round-the-clock electricity to existing customers as well as more than 460,000 new customers. The government would save more than $1 million per year because of reduced need for subsidies (IFC 2009a).

iPowerGen, a consortium formed by Coastal Power Development Corporation and Applied Research Technologies, won the contract to supply power to the provinces of Marinduque and Romblon through power supply agreements (PSAs) with the Marinduque Electric Cooperative, Romblon Electric Cooperative, and Tablas Island Electric Cooperative. The company proposed a hybrid wind/diesel technology in line with the country's environmental standards. The consortium would provide 25 megawatt (MW) of combined electric capacity at a cost 40% lower than the current cost of P13.8 per kilowatt-hour (kWh). The agreements were signed in September 2005.

DMCI Power Corporation won the contract to generate power for the island province of Masbate through a PSA with the Masbate Electric Cooperative. The company would supply 13 MW of dependable, uninterrupted electricity at a cost of P7.07 per kWh, about 50% below the then prevailing generation cost. The agreement was signed in May 2007. The power plant has been operating since 2010.

According to the IFC which also brokered PSAs through which the two private companies would provide guaranteed capacity to the local electric cooperatives, regulated generation rates were based on affordability since consumers in off-grid areas usually cannot pay the true cost of generation. The new power providers were selected through a competitive process, with the winning bidders decided on the basis of the lowest price. The framework allowed for rate adjustments over time to reflect changes in fixed and variable costs of generation. Based on the general framework, electric cooperatives were allowed to charge the agreed rate for the generation component of the consumer's electricity charges. However, if the true cost of generation is higher, the new power providers will be reimbursed for the difference, on the basis of kilowatt-hours supplied, from a subsidy fund.

This innovative PPP arrangement tapped private sector capital and expertise to improve the affordability, reliability, and quantity of electric power available to support the overall development of these remote island provinces where the average per capita income is $2 a day.

3. Basilan

One of the 14 areas covered by the 2004 agreement between the IFC and the Philippine's Department of Energy, NPC, and the Power Sector Assets and Liabilities Management Corporation was the island province of Basilan in the southern part of the country. With per capita incomes in the remote areas of Mindanao averaging less than P100 a day, connection to the main power grid is usually unviable because of high generation costs.

In off-grid areas, costs are generally high and services are unreliable with frequent power outages. The cost of power generation in Basilan by SPUG was P11 per kWh compared to P5.12 for regulated generation rates as established by the ERC, based on affordability. The government had to partially subsidize the resulting revenue deficit. Investments required to provide quality service and meet future capacity needs were inadequate because of budget constraints. The government decided to introduce PSP in off-grid power generation to (a) lower costs, (b) reduce its subsidy burden, (c) improve reliability, and (d) meet projected demand. Basilan became IFC's third transaction in rural power generation in the Philippines, again with the support of DevCo.

After two tenders in which there was only one bidder, negotiations with the sole bidder were undertaken by the Bids and Awards Committee. A PSA with the Coastal Power Development Corporation was approved by the Board of Directors of the Basilan Electric Cooperative, the local distribution utility, and signed on 21 August 2008. Under the terms of the agreement, the corporation would supply 11.8 MW to Basilan at a cost of P11 per kWh beginning in 2010. A total of 185,000 people previously without electricity gained access to electricity for the first time. The reliability and quality of supply improved for 145,000 existing customers almost immediately after the start of commercial operations. The government saves more than P50 million per year. The reduction in subsidies allows redeployment of funds to other areas currently without services (IFC 2008a).

C. Projects in Other Countries

The IFC has acted as transaction advisor to several other PPP projects at both the local and national levels in other developing countries. IFC's experiences are summarized in the "Success Stories: Public–Private Partnerships" series available on its website. Many of these examples are relevant for LGUs in the Philippines that are contemplating various forms of PPP arrangements for their priority projects.

1. Health Care

Under the 1991 Local Government Code of the Philippines, LGUs are responsible for primary, secondary, and tertiary health services, as well as the purchase of medicines, medical supplies, and equipment needed to provide these services. PPPs can be established to have the private sector operate and maintain whole hospitals or just diagnostic or outpatient services.

(a) State Hospitals

Brazil

Since 1988, the Brazilian constitution has guaranteed access to medical care for all. However, access and quality of health care is inequitable with rich citizens having access to high-quality private health services and those with the lowest incomes relying on public hospitals that are generally poorly equipped and serviced as well as overwhelmed with demand. To help address this problem, the government of the state of Bahia in Brazil engaged IFC in April 2009 to design and implement a PPP arrangement for a hospital in the district of Periperi which ranked low in the Human Development Index. The Brazilian Private Sector Partnership Program, a partnership between IFC, the Brazilian Development Bank, and the Inter-American Development Bank, provided support for the advisory work.

The hospital was already under construction. A 10-year concession contract was bid out to transfer the hospital's operation and management including clinical and nonclinical services to the private partner. The concessionaire would also be responsible for equipping and maintaining the hospital and ensuring that technology standards meet those of the best private hospitals in the country. Payments to the private partner were linked to key performance indicators based on quantitative and qualitative targets. Thirty-one qualitative performance indicators were established, including the requirement to obtain accreditation for the hospital within 24 months from the start of operations. Regular auditing of all performance indicators as well as financial statements was required. A payment mechanism was established to mitigate the government's credit risk, thus increasing private sector interest and the possibilities of financing for the project. The innovative arrangement was expected to be replicated within the public health system of Brazil (IFC 2013).

Mexico

In Mexico, replacements for two outdated hospitals in Toluca and Tlalnepantla were expected to be completed by June 2012 under PPP contracts signed in October 2010 for the first one and November 2010 for the second one. The contracts were structured by IFC with donor support from the Catalonia IFC Trust Fund.

Adopting the concept of buying services instead of assets, the state would be responsible for the hospitals' doctors, nurses, and medical supplies, whereas the private service provider will oversee the construction. They will also provide facility and equipment management as well as most of the diagnostic and lab services. Payment will be based on a clear performance-based mechanism. This arrangement is expected to ensure that the hospitals remain in excellent physical condition and that diagnostic services are readily available and meet the needs of patients. Investments of $120 million are being brought in for the two new 120-bed hospitals that will serve a population of about 1 million people. The financial position for the state's Social Security Institute will also be improved by reducing overall costs by one-third.

The contracts were also structured to be environmentally sensitive, with energy costs targeted to be at least 20% lower than that of traditional hospitals in Mexico. The new hospitals are models of "green" social infrastructure. They are expected to contribute to emissions reductions by about 10 tons of CO_2 equivalent per year (IFC 2011c).

(b) Diagnostic Services

In India, Moldova, and Romania, the private sector partner would be providing only radiology and other diagnostic services or outpatient dialysis services.

India

To help the state government of Andhra Pradesh improve access to and availability of advanced diagnostics services, IFC assisted the government in structuring a novel PPP model for upgrading radiology services at four teaching hospitals attached to public medical colleges in Kakinada, Kurnool, Vishakhapatnam, and Warangal. The private partner would build and procure the necessary facilities, hire specialists to manage the equipment and administer complex scans, and provide services to all patients referred by doctors from the teaching hospitals. The hospitals would be obliged to refer all diagnostic testing exclusively to the PPP facility. If there is unutilized capacity, private patients may also be served and charged the same tariff as the publicly insured patients.

The public medical students would be given the opportunity to be trained using the state-of-the-art equipment in the PPP facility. The facility would be required throughout the contract to obtain and maintain the most recent quality accreditation in India, which few facilities in India are able to get. Key performance criteria would also be included in the contract.

Among five prequalified consortia, three submitted technically responsive competitive bids. The project was awarded to the consortium of Wipro GE Healthcare Limited, an international equipment manufacturer, and Medall Healthcare Private Limited, a chain of diagnostic services. The winning bidder proposed an average price per scan which was nearly 50% less than the prevailing market rate, enabling the government to provide services to a larger number of underserved patients within the allocated budget. Of the estimated 100,000 patients per year that would be served, about 85% live below the poverty line.

Quick implementation of the project in 8 months was made possible by the setting up of a government steering committee to facilitate key public decisions. About $6 million of investments will be generated under the 7-year concession agreement (IFC 2011a).

The advisory work was supported by the Dutch Technical Assistance Trust Fund.

Moldova

In Moldova, a health care services provider won the 12-year concession to renovate, construct, equip, and operate a new diagnostic imaging and radiology center at the state-owned Republican Hospital in Chisinau. This initiative was undertaken by the Moldovan Ministry of Health to address gaps in existing health care equipment and services for public patients. The effort complements a World Bank loan program to upgrade hospital infrastructure.

The IFC team built financial models to forecast operational and capital costs and to determine how much revenue would be required for the center to operate. The key issue that emerged was that the tariffs paid by the National Health Insurance Fund (NHIF) were too low to support the center. To address this issue, IFC worked with the government to increase tariffs to a level that would cover capital and operating costs.

Within yearly fixed volume contracts, the private operator would receive reimbursement from the NHIF and the hospital for each service rendered to public inpatients and outpatients. Services can also be provided to private patients at market rates.

Although nine private companies registered for the bidding, only one valid bid was received. The winning bidder offered 5% of revenues to be paid to the hospital as an annual lump sum. The agreement was signed in November 2011 and would mobilize $7 million in investments for the benefit of over 100,000 people annually (IFC 2012).

IFC's advisory work was supported by a grant from the Ministry of Foreign Affairs of the Netherlands.

Romania

In 2002, the Government of Romania had engaged IFC as its adviser to launch a series of PPPs in health care, including private provision of radiology and laboratory services and private management of public hospitals. One of the initiatives was the private provision of dialysis services on an outpatient basis. The objectives of the government were the following: (a) increase public access to dialysis, (b) improve the quality of all dialysis services, (c) streamline payments from the NHIF to dialysis providers, and (d) enhance the system's overall accountability.

To achieve the above objectives and maximize the amount of investments in the clinics, contracts were awarded on the basis of investment levels rather than price. Operators are paid a flat fee per hemodialysis treatment and an annual fee per peritoneal dialysis patient. The operators assumed full responsibility for renovating and/or equipping facilities; maintaining and operating equipment; procuring all medical supplies; recruiting, training, and managing all staff; and treating patients.

Bidders were restricted to winning no more than two dialysis centers to limit concentration. Four international companies and their local partners passed the prequalification criteria and submitted winning bids: two from Germany, one from Sweden, and one from the United States. The transaction closed in November 2004. The 4-year contracts were extendable to 7 years if the operators opted to build new facilities. The companies have invested more than €28.6 million to modernize the facilities and expand services. Between 2005 and 2008, the Government of Romania saved €2.9 million as a result of this outsourcing of public dialysis services to private providers. More than a quarter of Romania's dialysis patients have received better health care as a result of this PPP in health care (IFC 2008b).

The transaction was supported by trust funds from the Swiss Government.

2. Tourism

In the 1991 Local Government Code of the Philippines, tourism facilities and other tourist attractions including the regulation and supervision of business concessions have been devolved to LGUs. Given the relative potential of tourism to be financially viable and considering the growing position of the Philippines as a preferred tourism destination, PPPs present a very good way for LGUs to create jobs and improve local infrastructure with little, if any, local budget spending.

The IFC has assisted the South African National Parks (SANParks) in structuring and implementing PPPs for setting up nine ecotourism concessions (seven of which are in the world famous Kruger National Park) and awarding concessions to private operators for retail and restaurant facilities in several national parks.

The greenfield concessions were design, build, operate, and transfer projects, each with a 20-year term. In these concessions, the private operator was granted exclusive use of the land allocated to build high-value, exclusive lodges and provide ecotourism activities, while SANParks retained ownership of the land and all buildings on it. The ecotourism concession contracts had no right of renewal or first refusal on expiration. The concessionaires pay SANParks an annual fee calculated as a percentage of the turnover bid during the tender process. The transactions closed in 2000.

The restaurant and retail concessions were structured as rehabilitate, operate, and transfer projects with a 10-year term. SANParks also retained ownership of all buildings and assets. Employees at affected restaurants and shops were transferred to the private operators at the same pay and under the same conditions. Operators bear the capital costs of all rehabilitation and SANParks earns a fee that is higher either of fixed monthly rental or of the percentage of turnover. One year following the award of these concessions in 2001, retail turnover increased by 43% and restaurant turnover increased by 60%.

A key element of the concession structure was that the concessionaires had to adhere to SANParks' environmental requirements. These included stringent limits on the carrying capacity of each site. All construction plans and activities were subject to environmental impact assessments and SANParks had to approve all design and environmental plans. Agreements included meaningful financial penalties, backed by performance bonds, for noncompliance with environmental requirements.

Another key element of the concessions was a commitment to empowering disadvantaged South Africans. As a result, more than 30% of the concessionaires are companies controlled by black South Africans and all concessionaires have substantial black shareholdings. The concessionaires were also required to make minimum commitments to purchasing goods and services from community businesses surrounding the national parks. This was a pioneering success for Black Economic Empowerment in South Africa's tourism sector.

Moreover, the commercialization strategy has reduced unemployment in neighboring communities and created economic opportunities for previously disadvantaged ethnic groups. As a result, the government increasingly views national parks as a tool for economic development and has stepped up its annual financial commitment. With the increase in public funds and revenues from its partnerships, SANParks has been able to expand the land under its protection and fund its conservation and biodiversity operations.

SANParks has developed significant expertise to manage and implement PPPs. Since 2001, it has successfully contracted 14 more concessions and has a well-established contract management unit. The methodology developed by IFC was influential in the development of the Public–Private Partnership Toolkit for Tourism issued by the South African National Treasury's PPP Unit in 2005 (IFC 2009b).

3. Solid Waste Management

Under the 1991 Local Government Code, municipalities and cities are responsible for solid waste disposal systems, while provinces are responsible for the enforcement of pollution control laws.

In 2008, the Government of the Maldives launched a national solid waste management framework that introduced PPPs as a means of giving the private sector the opportunity to introduce best practices in solid waste management at a reasonable cost and in an environmentally sustainable way. This was in recognition of the fact that the government lacked both the funds and the technical expertise to provide a sustainable alternative to the open dumping and burning of garbage that were destroying the marine environment on which the archipelago's tourism industry depended. It was also in line with the government's ambitious plan to fight climate change by making the Maldives the world's first carbon-neutral country by 2020.

Between 60% and 70% of the waste in the Maldives was being generated by the capital island of Malé, three other islands, and the neighboring resorts. It was thus the municipal government of Malé that engaged the IFC as lead transaction advisor. The advisory work was supported by DevCo, the Public–Private Infrastructure Advisory Facility, and the South Asia Infrastructure Facility. As mentioned earlier, DevCo is a multidonor program affiliated with the Private Infrastructure Development Group and funded by the Department for International Development of the United Kingdom, the Dutch Ministry of Foreign Affairs, the Swedish International Development Agency, and the Austrian Development Agency. South Asia Infrastructure Facility is supported by the Netherlands-IFC Partnership Program.

As reported in its "Success Stories: Public–Private Partnerships," IFC helped the government develop an integrated waste management strategy and implementation plan for the entire country. To ensure a fair and transparent bidding process, IFC conducted a diagnostic review, identified strategic options, and conducted an environmental and social baseline study so that bidders would have the information necessary to design

effective solutions. IFC also ensured that the views of the citizens, local businesses, resorts, and other stakeholders are heard. Because bidders proposed widely different technologies, IFC required them to demonstrate extensive experience in waste management and disposal, as well as to commit to developing environmental management plans. Site visits of the final bidders were also required. The IFC also helped the government with its communications strategy so that the entire process would be transparent.

The transaction was structured as a 20-year concession to build, operate, and transfer an integrated waste management system for the Greater Malé region. Fifteen firms initially expressed interest in the project, but only three international firms submitted final bids. The award was based on both technical and financial considerations and took the environmental and social impact of the project into account. The winning consortium, the Maldives Government, and the Malé City Council signed the concession agreement in May 2009. The concessionaire will provide 100% of the required financing. At the end of the concession period, the government will either assume management of the waste management system or extend the operating period.

The total project cost was approximately $1 million, including donor contributions, which would generate private investments of $50 million. A landfill and a treatment plant would replace the open burning of waste at Thilafushi Island. One hundred twenty hectares of land on Thilafushi Island would be reclaimed and made available for other uses, such as an industrial park and possibly a port. A 2.7 MW waste-to-energy plant has also been proposed by the consortium to replace the diesel-based power generation on the island, saving nearly 12,000 tons of carbon emissions annually (IFC 2011b).

D. Lessons Learned

For the private sector and even for the targeted beneficiaries, time is of the essence and time is money. In countries like the Philippines where exchange rate movements can be big and unexpected, delays in project approval and implementation can be costly in real terms as construction and other costs go up. There are also real and opportunity costs for the project proponents if the project does not push through and they had already invested a significant amount of time, money, and human resources in it instead of on other possible projects. There are also opportunity costs for the targeted beneficiaries because the economic, health, environmental, and other benefits of the projects are delayed or do not come at all. These costs should be constantly kept in mind as the necessary due diligence is done by the concerned government agencies and corporations.

Tariff proposals should be based on assumption and not depend on projections of economic variables that are difficult to forecast, such as foreign exchange rates and interest rates. The tariff proposals should be based on formulas that have external variables as well as coefficients that indicate the level of internal efficiency that the proponent expects to attain. The bid evaluation should focus on the latter and other elements within the control of the bidder. The degree to which changes in external variables will be allowed to impact tariff levels should also be defined.

Contract negotiations usually start getting complicated when the private sector requests for a performance undertaking from the national government even for projects at the local level. Although there may be some

need for this in certain circumstances, it is usually felt to be needed when the regulatory framework is not clear, transparent, and predictable and regulatory risk is perceived to be too high. The best course of action for the national government is to ensure that there are credible and reliable regulatory institutions for the sectors that they want to encourage PPPs in. These regulators will ensure that the tariff guidelines are clear and easily understandable and implementable so that delays, misunderstandings, or even lawsuits are avoided. Timely and appropriate regulatory responses to tariff proposals can spell the difference between success and failure of the bidding and implementation of PPP projects. For the power supply and distribution sector, there is at least the ERC. In the water sector, there is no single, independent, full-time body that performs economic regulatory functions over all local water service providers including LGUs and water districts.

PPP projects are not implemented in a vacuum, especially at the local level. The political environment and political leaders can play a big role that is either positive or negative. In the last two examples where projects finally got off the ground after several failed attempts, the leadership and determination of the local chief executives were critical factors for success. They needed technical advice which was provided either by a development partner or by an unsolicited bidder, but they were the drivers of the project. Because of the nature of the PSP that they sought, there was no need for the approval of the national government.

Transaction advisors play a very important role in preparing PPP projects for bidding. They help the LGU prepare the necessary conditions for the entry of private sector investors. These can be related to the tariff which should be high enough to provide reasonable return on investments and proper structuring of the PPP arrangement to meet the requirements of the concerned government entity (e.g., share in future revenues and environmental requirements) as well as potential investors.

VIII

SUMMARY OF LESSONS LEARNED AND RECOMMENDATIONS

Based on the experiences of local government units (LGUs) and other subnational entities with build–operate–transfer (BOT) and other public–private partnership (PPP) arrangements, many valuable lessons have been drawn in this paper. The most important ones will be summarized below. Recommendations for future facilities and projects will also be given.

A. Lessons Learned

1. National Government Level

The necessary conditions at the national level for the success of PPPs at the subnational level include the following:

a. **The President sets the policy direction.** The general direction and policy set by the President of the Philippines regarding the role of the private sector in financing and implementing projects at the national level filters down to the local level. During the time of Presidents Corazon Aquino and Fidel Ramos, there were concerted and sustained efforts to give back to the private sectors their roles and responsibilities, which had been taken over by the national government during the Marcos regime. Overall, the private sector has again been given the opportunity to contribute to the national and local development under the flagship program for PPPs. This comes at an opportune time when many private companies including the larger conglomerates have set aside financial, human, and other resources to participate in PPPs.

b. **The cabinet members provide the resources.** The general pronouncements made by the President need to be operationalized by his cabinet members by making available the technical and financial resources needed at the national and local levels in a transparent and accessible way, with policies and procedures that can be easily understood and implemented and institutional arrangements that are responsive to the needs of all stakeholders including national government agencies (NGAs) and corporations, local government units, and the private sector.
c. **NGAs have specific roles.** NGAs should be involved even in projects involving LGUs to enforce existing laws and policies and provide the needed technical and financial assistance (according to the Local Government Code [LGC]); however, their roles and requirements in confirming LGU projects should be clarified to avoid unnecessary delays.
d. **NGAs can set good examples.** National government agencies and corporations have a responsibility to ensure that their own PPP projects are successful so that LGUs may be encouraged to follow their examples and learn from their experiences. If successful, they can provide a model that LGUs can follow.
e. **The role of the private sector needs to be well-defined.** Although the private sector can make many contributions to the success of a PPP project, their primary motive is profit and this has to be recognized and properly regulated. Where there are existing regulatory frameworks already working, they can be adopted or adapted by LGUs. Where there are none, the national government should take the lead in setting them up. One sector that has long been identified as needing a rationalized, comprehensive regulatory framework is the water sector.
f. **Growth makes PPP projects viable.** To facilitate the identification of viable projects that are appropriate for PPP arrangements, there is a need to strengthen the linkages among national, regional, and local development plans and their respective investment programs and budgets.

2. Local Level

The factors for success at the local level include the following:

a. local leadership that is development-oriented and determined to succeed, despite many odds and obstacles;
b. LGU officials from different departments working together and getting trained together on PPPs, particularly on contract monitoring and enforcement;
c. LGUs strictly following the provisions of the BOT Law and other relevant laws, particularly with regard to the transparent bidding out of projects;
d. open and extensive consultations with constituents for them to better understand the rationale for the proposed PPP project and to enhance their willingness to pay for improved services;
e. well-functioning regulatory regimes inside or outside the LGU;
f. projects that are viable and attractive enough for the private sector;
g. a reasonably large number of potential investors that have the managerial, technical, and financial capability to implement the project for the LGU;
h. viable financing options that the private sector can avail of;
i. attractive options provided for local government employees adversely affected by the PPP arrangement; and
j. politics kept to a minimum, allowing for the public good to be served through implementation of high-priority projects.

3. Technical Assistance

Many lessons have been learned from the Private Infrastructure Project Development Facility (PIPDF), LGU-Urban Water and Sanitation Project, and other early experiences with the BOT concept regarding the need of LGUs for technical assistance (TA) and project packaging advice. These have been reinforced by the positive experiences of the Province of Bohol, the LGU Guarantee Corporation (LGUGC), and the International Finance Corporation with LGUs in the Philippines and in other emerging economies.

Many LGUs need TA to identify viable PPP projects. Since some LGUs cannot even decide which priority project to undertake, TA grants could be made available, on a competitive basis, to LGUs for their training and coaching on participatory planning and budgeting, investment programming, and identification of projects that are appropriate for PPPs. Alternatively, since some development partners are already helping LGUs with the first two activities, the PPP Center can collaborate with them on the third activity. This will help to build up a robust pipeline of LGU projects that can be further supported to bring them to the tendering stage.

Most LGUs also need TA to help them prepare and bid out PPP projects successfully. Once they have decided on which priority project to undertake, most LGUs need consultants to prepare the prefeasibility or feasibility studies. LGUs also need transaction advisors to help them come up with the most appropriate PPP arrangement, prepare the bidding documents, and evaluate the bids. To the extent possible, government lawyers should also be made available to LGUs, water districts, and electric cooperatives that are pursuing PPP projects. This will give LGUs greater confidence that their interests are being protected in the contracts and other legal documents that they will be signing. These lawyers can be housed in the Department of the Interior and Local Government (DILG), Department of Finance–Bureau of Local Government Finance (DOF-BLGF), Office of the Solicitor General, Local Water Utilities Administration, and Office of the Government Corporate Counsel.

Most LGUs need financial assistance to prepare PPP projects. Whenever and wherever possible, grants from development partners are the most preferred sources of funding. However, full grants are not advisable. The LGU should be made to contribute counterpart funds or personnel as well as provide proactive guidance to the consultants to ensure the appropriateness and relevance of their recommendations. When and where grants are not available, financing facilities that offer quick processing, affordable cost, and repayment terms and flexibility in choosing their own consultants may be considered as a viable alternative by LGUs.

LGUs should be allowed to choose their consultants with some guidance from the PPP Center. If LGUs will have to finance or cofinance the services of transaction advisors, then they want to choose their own consultants. They do not want to be forced to get international consultants or even unnecessarily expensive local consultants. Since they are answerable to their constituents for the use of public funds, LGUs want to have value for the money that they will spend. At the same time, LGUs may not have enough experience to choose good consultants. It would be helpful if the PPP Center or other national body would have a system of accrediting qualified consulting companies or at least a system for blacklisting those that should no longer be allowed to do work for the government.

Competitive challenges to unsolicited proposals are a form of competitive bidding. If LGUs are not able to prepare projects for bidding out to the private sector or if a proposed project is not in the LGU's list of priority projects, the BOT Law allows unsolicited proposals but they are subject to Swiss challenge. If done properly, this form of competitive challenge can also bring about good results. Some of the successful PPP projects of LGUs were unsolicited. The new Implementing Rules and Regulations (IRRs) direct all implementing agencies and LGU to submit to the PPP Center a copy of all unsolicited proposals that they receive. The PPP Center has been mandated to guide the concerned LGU in the preparation and development of the project.

LGUs need TA in monitoring, implementing, and evaluating PPP projects. Even after a project is completed or made operational, the LGUs would still need TA in monitoring and evaluating the performance of the private sector operator. In some cases, it will be the LGU that will regulate the private operator. These are specialized tasks that the concerned LGU staff will need to be trained for. For LGUs with facilities that are turned over to them under a build–transfer or BOT agreement, capacity building to maintain and operate these facilities should be done at a very early stage and in a continuing manner. Not all of these capacity-building activities need to be provided by grants or concessional loans, but programs should be put in place for the continuing professional development of the LGU staff involved.

Water districts and electric cooperatives also need TA in considering and preparing PPP projects. TA programs for other subnational entities such as water districts and electric cooperatives may already be useful at this point. Some electric cooperatives have already partnered with private companies under the National Power Corporation's Small Power Utilities Group. A few water districts have studied or are considering bulk water supply projects under PPP arrangements. Many more water districts and electric cooperatives and their customers can benefit from various forms of private sector participation in their capital investment projects or operations, as shown by the recent success stories described in this paper. The officials and staff of water districts and electric cooperatives just need to be made more aware of what these benefits might be and how they can go about exploring various PPP options that can help them meet their objectives without threatening their very existence.

The PPP Center can forge partnerships with private organizations to provide the needed TA to subnational entities. In the spirit of PPPs, private institutions and individuals that have experience working with both subnational entities and the private sector may be asked to partner with the PPP Center in promoting and facilitating PPPs among LGUs and other subnational entities. One such organization is the LGUGC which has assisted LGUs in funding their priority projects through either bond flotations or loans from private banks. LGUGC has also facilitated the access of other subnational entities such as water districts and electric cooperatives to financing from the top private banks as well as development partners. LGUGC has also guaranteed the loans of private companies involved in renewable energy projects or with infrastructure contracts with the top 1,000 corporations or LGUs, government-owned or controlled corporations, or NGAs including those under BOT or joint venture arrangements. The officers and staff of LGUGC would just need some capacity building to deepen their working knowledge of the laws, government policies and guidelines on BOTs and joint ventures, and to tailor their existing guarantee facilities and service to meet the needs of LGUs, other subnational entities, their potential private sector partners, and their possible funders.

The PPP Center can also partner with leagues of LGUs and associations of water districts and electric cooperatives to promote PPPs. The PPP Center can also partner with the five major leagues of LGUs (e.g., League of Provinces, League of Cities, League of Municipalities, *Liga ng mga Barangay*, and Union of Local Authorities of the Philippines) in promoting programs and projects. For water districts, the Philippine Association of Water Districts and the Philippine Association of Water Districts Foundation are in a strategic position to promote the PPP concept and engender interest in them without raising the specter of outright privatization. The regional associations of electric cooperatives can similarly be tapped. All these potential partner institutions would need to be familiarized first with PPP concepts, modes, and requirements.

4. Financing Facilities

Many lessons can also be learned from financing facilities, such as the LGU-Urban Water and Sanitation Project and PIPDF, and financing institutions, such as the LGUGC. The experiences of the private sector partners of LGUs that undertook BOT or similar projects in the past can also be instructive with regard to the requirements for obtaining suitable bank or other financing for their projects.

LGUs will avail of financing only at attractive terms. Financing facilities need to be made attractive to LGUs by making interest rates as low or competitive as possible and repayment terms as long as possible or appropriate. For LGUs, fixed interest rates are definitely preferable to floating interest rates so that interest payments can be more easily included in the annual budget. The loans will definitely have to be in the local currency since LGUs are in no position to carry foreign exchange risks. Quick processing of loan applications also helps to make financing facilities more attractive to LGUs since the local chief executives (LCEs) have terms of only 3 years. The terms and conditions of other financing facilities for LGUs should also be considered.

Providers of financing should help LGUs optimize their utilization for the hiring of consultants. To the extent possible, as mentioned above, LGUs should be given the opportunity to choose the consultants whose services they will be paying for. Some LGUs may need technical advice and oversight support in guiding the work of their consultants and ensuring the quality and appropriateness of their outputs. The group managing the financing facility should ensure that such advice and support are available to the LGUs so that overdesigning of projects or unrealistic assumptions for determining project viability are avoided. Credible willingness-to-pay (WTP) or connect surveys should be made part of the project preparation process.

Regular monitoring is imperative. Regular monitoring of the preparation process for and implementation of the projects being financed helps ensure the success of the project. Emerging problems can be addressed right away. Positive feedback can also be given in a timely manner in order to reinforce good local governance practices and compliance with national laws and programs.

PPP projects need to be financially viable. Some of the private sector partners of the LGUs that implemented projects under the BOT or similar schemes experienced difficulties in getting financing for the projects. In some cases, this was because of weaknesses in the project feasibility study or design. In other cases, the private sector proponent did not have the credibility and creditworthiness to obtain financing for a financially viable project. LGUs need to exercise due diligence in preparing and bidding out projects that are economically and financially viable and in choosing financially capable private sector partners. Even if the private sector proponent has

the major responsibility for financing the project, LGUs also need to have some level of financial stability and capacity to provide any necessary counterpart, in cash or in kind (e.g., land for the project), and to be able to carry out any financial obligations down the road (e.g., amortization or availability payments). In some cases when the proposed project is not bankable or attractive enough to private investors and their financiers, capital grants or Viability Gap Funding may need to be provided by the national government to the concerned LGU.

B. Recommendations

The recommendations will be in the following areas: legal framework, institutional framework, regulatory framework, monitoring and evaluation framework, design and marketing of future facilities, and building up project pipelines and LGU capacities.

1. On the Legal Framework

No need for any immediate change in the BOT Law or the LGC for LGUs to be able to implement PPP projects. Although the relevant provisions of the 1991 LGC were based solely on the 1990 BOT Law and do not reflect the amendments made to the BOT Law in 1994, amendments to the IRRs of the LGC may be sufficient to reflect these changes.

The only requirements in the BOT Law are that LGUs shall include in their infrastructure programs priority projects that may be financed, constructed, operated, and maintained by the private sector under the provisions of the BOT Law and that local projects funded and implemented by LGUs shall be submitted to the local development councils for confirmation or approval.

The relevant provisions in the LGC are consistent with the above provisions of the BOT Law. Section 302(b) states that "LGUs shall include in their respective local development plans and public investment programs priority projects that may be financed, constructed, operated and maintained by the private sector under this Section. It shall be the duty of the LGU concerned to disclose to the public all projects eligible for financing under this Section..Local projects under the BOT agreement shall be confirmed by the local development councils." Section 302(c) provides various terms, conditions, and steps to be followed, including submission of the project plans and specifications to the local legislative body (Sanggunian) for approval.

In Republic Act No. 7718 which amended the BOT Law, build–own–operate arrangements were introduced as an option but, unlike other new alternative arrangements, need to be approved by the President of the Philippines upon the recommendation of the National Economic and Development Authority (NEDA). Another amendment was that the list of local projects costing up to P20 million had to be submitted for confirmation to the municipal development council, while those costing between P20 and P50 million had to be submitted to the provincial development council for confirmation. For city projects, the city development council could confirm projects only up to P50 million. All LGU projects costing between P50 and P200 million were to be submitted to regional development councils (RDCs) for confirmation and those above P200 million were to be submitted to the Investment Coordination Committee (ICC) of NEDA.

Clarify approval authority for LGU PPP projects costing above P200 million. In Annex B (ICC Guidelines) of the previous IRRs for the BOT Law as amended, it was stated that the ICC is mandated to approve LGU BOT projects costing above P200 million and that NEDA Board confirmation is required, just like national BOT projects costing above P300 million. This provision has been modified in the new IRRs that became effective on 22 October 2012. There is no more mention of confirmation by the NEDA Board, only by ICC, for LGU projects costing more than P200 million. Similarly, LGU projects are to be submitted only for confirmation, and not for approval, by the municipal, city, provincial, and RDCs, depending on project cost. It is explicitly recognized that final approval of projects costing up to P200 million is vested in the local legislative body (Sanggunian) by the LGC. However, the IRRs is silent on who shall give final approval for projects costing above P200 million. It should be explicitly stated in the new IRRs that this is also up to the local legislative body since there is no cap in the cost of projects to be submitted to it for approval, per Section 302(c) of the LGC, as mentioned above. Unnecessary delays in the confirmation of LGU BOT projects should be avoided, especially those that do not require any form of support from the national government or its corporations.

Establish deadline for the confirmation of LGU PPP projects. The new IRRs set the 30-day deadline for approval of LGU projects by the Local Sanggunians, upon satisfactory compliance of the LGU of with the requirements of the Local Sanggunian. It further states that failure of any of these bodies to act on the project proposal within 30 days will mean that the project is deemed approved and the proponent LGU may proceed with the solicitation of proposals. However, there is no deadline set for confirmation of LGU projects (prior to approval by the Local Sanggunian) by the municipal, provincial, city, or regional development councils. Having such deadline and lapsing arrangement on confirmation of local PPPs would improve predictability of local PPP preparation and procurement timelines.

Streamline ICC and RDC review processes, including ICC forms tailored for LGUs. Some of the examples cited above show that the 30 day time frame was not followed. Detailed questionnaires and templates with scoring systems can help LGUs make a preliminary assessment of whether their proposed projects can meet the criteria being used by the ICC. These can greatly improve common understanding of what benchmarks need to be met by proposed projects and facilitate LGU compliance with these requirements. A distinction may also need to be made in the ICC guidelines and requirements for projects that need ICC approval and those that need ICC confirmation only. For local PPP projects requiring ICC confirmation, requirements can also be differentiated between projects that require national government support and those that do not require such support. As shown in examples cited earlier, time is of the essence in BOT projects with delays in project approval and implementation having both real and opportunity costs for the parties concerned. The same recommendation would apply to the review process and procedures by the RDCs and local development councils.

LGUs need guidelines on doing local PPPs through joint ventures. The lack of guidelines for LGUs forming joint ventures with the private sector has been the source of uncertainties for LGUs interested in that particular form of PPP which does not fall under the ambit of the BOT Law as amended. However, it has not deterred some LGUs from pursuing that option since LGUs enjoy "full autonomy in the exercise of their proprietary functions and in the management of their economic enterprises" subject to the limitations provided in the LGC and other applicable laws, according to Section 22(d) of the LGC. As mentioned earlier, Section 66 of the IRR for the LGC explicitly allows LGUs to enter into joint ventures with people's organizations, nongovernment

organizations, or the private sector. In her 3 April 2012 letter to the Governor of Camarines Sur, Department of Justice Secretary Leila de Lima confirmed the authority of the Sangguniang Panlalawigan to pass the Joint Venture Ordinance in line with its legislative powers as long as no laws are violated.

LGUs can also be encouraged to enact their own PPP Code or omnibus ordinance covering all applicable PPP modalities. In the same letter mentioned above, Secretary de Lima confirmed the authority of the LGUs to do this. A former acting secretary of justice, Alberto Agrahas drafted a PPP Code that has been used by Camarines Sur and several other provinces to pass their own PPP Code. Other LGUs may wish to do the same to add order and transparency in their PPP activities. Fiscal and other investment incentives can also be included in the code. The PPP Center has developed its own draft PPP Code for the guidance of LGUs wanting to implement a PPP program.

Clarify audit scope of national and local PPP projects done through joint venture arrangement. One area not covered in the April 2008 NEDA guidelines for joint ventures of national government corporations with the private sector and the draft guidelines for LGUs is the scope of audits by the Commission on Audit (COA). This gap should be filled considering that some government funds or properties would have been used to form the joint venture. Section 29 of the Government Auditing Code (Presidential Decree No. 1445) as amended by the Administrative Code of 1987 (Executive Order No. 292) states that the COA "shall have visitorial authority over non-government entities subsidized by the Government, those required to pay levies or have government shares, those which have received counterpart funds from the Government or are partly funded by donations through the Government. This authority, however, shall pertain only to the audit of these funds or subsidies coming from or through the Government." In addition, upon direction of the President, the COA shall exercise visitorial authority over nongovernment entities whose loans are guaranteed by the government. Such authority shall pertain only to the audit of the government's contingent liability. Visitorial authority is distinguishable from the usual "residential" audit of COA over government agencies, which are generally conducted all year round. In the case of public utilities, Section 38 gives COA the authority to examine their books, records, and accounts in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise taxes.

The provisions of Section 12.19 in the new IRR for the BOT Law as amended provide additional guidance. It states that "all revenues, share and/or receipts pertaining to or accruing to the Agency/LGU derived from any project proposed under the Act and these Revised IRR, including expenditures or use of funds and property, owned or held in trust by, or pertaining to the Government, shall be subject to examination audit by the COA, including (i) ensuring that such revenues, share and/or receipts are fully and properly accounted for and remitted to the Agency/LGU, and (ii) determining if the mandated return on rate base is complied with, in the case of negotiated contracts and Public Utility Projects which are natural monopolies. All revenues and receipts pertaining to or accruing to the Project Proponent shall be treated as private funds including interest or yield thereon, which may be remitted directly to the Project Proponent, as may be stipulated in the contract."

It has been noted that in many of the PPP projects of LGUs, court cases and other legal challenges have arisen for reasons valid or invalid. LGU officials need to be advised to expect this and that the best way to protect themselves in the courts or in the court of public opinion is to follow all the prescribed rules and procedures in choosing their project and private sector partner. If everything is done transparently and in accordance with

the law, then they will survive these challenges at least legally if not politically. This was true in the case of the joint ventures formed by the Provincial Government of Bohol against whom several court cases were filed but which were eventually dismissed. It is widely believed that these cases were politically motivated.

2. On the Institutional Framework

The PPP Center can guide and assist LGUs in availing financial and other assistance from other government agencies, LGU leagues, development partners, and private institutions. Besides the technical and financial assistance that the PPP Center itself can provide to LGUs that wish to undertake their priority projects through PPPs, the PPP Center can also forge partnerships with these institutions to make their combined resources, services, and expertise available to these LGUs.

The PPP Center can link up with other government agencies and LGU leagues in carrying out its various functions. According to Executive Order No. 8, the powers and functions of the PPP Center in relation to LGUs include the following: (a) providing advisory services, TA, trainings, and capacity development to LGUs in project preparation and development; (b) providing project facilitation and assistance to LGUs in addressing impediments or bottlenecks in the implementation of PPP programs and projects; and (c) monitoring and facilitating the implementation of priority PPP programs and projects. The PPP Center, formerly the BOT Center, has had many years of experience in promoting BOT and other types of PPP arrangements among different government entities including LGUs. The PPP Center continues to conduct training sessions and workshops to familiarize LGUs with the PPP concept, framework, and modalities. In 2001, it signed a memorandum of agreement with the DILG to collaborate in organizing such training workshops. The PPP Center should also consider entering into a memorandum of agreement with the DOF-BLGF which has been accredited by the Professional Regulation Commission as an Institutional Continuing Professional Education Provider to LGUs and regional offices. Although the current course offerings are related to the collection of real property and business taxes, these can be expanded to include PPP projects and their appropriate local tax treatment. The PPP Center can also explore working with the various leagues of LGUs, such as the League of Provinces, League of Cities, and League of Municipalities, to disseminate information to more LGUs and generate their interest in PPPs.

To facilitate the process of identifying priority projects that are appropriate for PPPs, the PPP Center can strengthen its linkages with development partners that have already been working with LGUs in their development planning and investment programming activities. Many of these development partners are also supporting the PPP Center itself in its own capacity-building activities. These include the Asian Development Bank, the World Bank, and the Governments of Australia, Canada, and Japan. Through these linkages, the PPP Center can help LGUs come up with their list of candidate PPP projects and get these lists approved by the appropriate bodies at the local and national levels, depending on the cost of the project.

To help mainstream PPPs as a viable alternative financing option for LGUs, the PPP Center can make presentations to and conduct consultations with two well-established multi-stakeholder groups in which the LGU leagues, concerned national government agencies, and development partners are all represented. With the support of the Asian Development Bank, the Coordinating Committee on Decentralization (CCD) was formally launched on 6 November 2009 to better address the remaining problems in the implementation

of decentralization as envisioned by the 1991 LGC and Joint Memorandum Circular No. 1, Series of 2007, signed by the heads of DILG, NEDA, Department of Budget and Management, and DOF. The CCD has representatives from these four oversight agencies as well as the five major LGU leagues. Some development partners are invited to CCD meetings, as appropriate. Development partners are well represented in the Philippine Development Forum's Working Group on Decentralization. The four oversight agencies and five major LGU leagues are also members of the Working Group. It is co-chaired by DILG and the World Bank.

The PPP Center has also been coordinating with the Municipal Development Fund Office (MDFO) of the DOF with regard to how more LGUs can avail of two MDFO facilities which may be useful for LGUs that are considering PPPs for their priority projects. As mentioned in an earlier section, the Project Technical Assistance and Contingency Fund (PTACF) offers low-cost short-term loans for the preparation of project feasibility studies, detailed engineering designs, or capacity-building activities. The PTACF is operational and LGUs can apply for its support. Even after the Project Development and Monitoring Facility (PDMF) for LGUs has already been set up, LGUs can still avail of the PTACF for prefeasibility or feasibility studies if they are not yet sure whether one of the PPP variants will be the most appropriate for their proposed priority project. If this is shown by the prefeasibility study or feasibility study and the LGU is determined to push through with the project, it can apply for the PDMF for LGUs, particularly if the project is quite complicated or the first of its kind. It can also avail of the PTACF again, particularly if the project is similar to other projects that have been implemented successfully in the past by LGUs using any of the PPP variants. As shown in earlier sections of this paper, these projects include public markets and slaughterhouses, bus terminals, city/municipal halls, and information and communication technology projects.

The MDFO is also offering its PPP Fund to LGUs that need to provide counterpart funds for their PPP projects. The interest on the loan ranges between 5% and 5.75% and the repayment period varies between 15 and 20 years, depending on the project and income class of the LGU. As more LGUs come up with PPP projects, the PPP Center can continue its coordination with the MDFO and help these LGUs access low-cost, long-term funds that can help make their projects financially viable.

If potential private sector partners for proposed PPP projects of LGUs will require guarantees on LGU commitments, the PPP Center can also help LGUs avail of the guarantee facilities and other services of the LGUGC. To access these services, the LGU will first have to get a credit rating from LGUGC for a certain fee. Based on this credit rating and the feasibility study for the proposed project, LGUGC can confirm with the LGU whether the proposed PPP arrangement is appropriate for the proposed project and what forms of guarantee support LGUGC can provide to meet the requirements of potential investors and their financiers. It would be best if the inputs and advice of LGUGC can be sought during the preparation of bidding documents so that they can be properly considered at a very early stage.

In evaluating even preliminary applications of LGUs for assistance from the PPP Center or in choosing LGUs to market PPPs to, the credit screening and categorization of LGUs done by the LGUGC and posted on its website can be a useful guide. They can give potential investors and their financiers an idea of the economic development potential and tendency for efficient debt repayment of the potential LGU partner. Going through the credit rating process of the LGUGC will give the applicant LGU a taste of the due diligence that potential private investors will conduct and an opportunity to improve itself in the areas identified during the credit

rating process. If the PPP Center would eventually promote PPPs among other subnational entities such as water districts and electric cooperatives or with renewable energy service providers, it can also partner with the LGUGC which has successfully worked with such entities in the past.

At the local level, LGUs should be encouraged to create the PPP Subcommittee of their Local Development Council in line with DILG Memorandum Circular 2011-16. In addition to the LGU offices mentioned in the circular, it is recommended that the following key LGU officials be included in the PPP Subcommittee: treasurer, accountant, budget officer, environment and natural resources officer, and legal officer. Annex H shows the responsibilities of the key LGU officials already included in the PPP Subcommittee as well as those being recommended for inclusion. These responsibilities are based on the 1991 LGC, DILG Memorandum Circular No. 2011-16 and DILG Memorandum Circular No. 2010-113. Annex H also enumerates their major roles and responsibilities with regard to PPP projects.

Section 14.3 of the new IRR for the BOT Law as amended reiterates that each concerned agency or LGU may create a PPP Unit headed by a senior official who shall be designated as PPP Project Development Officer. He/she shall be responsible for the planning, overseeing, and monitoring of PPP projects. The PPP Unit may also include technical and legal personnel knowledgeable on the technical and legal aspects of PPP projects as members.

It is recommended that all relevant government agencies, bureaus, and offices create PPP units. In the new IRRs of the BOT Law, the agencies that may create PPP units are defined as any department, bureau, or corporation of the national government that is authorized to undertake infrastructure or development projects. It is advisable for the offices and staff of oversight agencies that review and evaluate PPP projects to have their own PPP units since PPP projects have their own unique characteristics that are different from projects funded by official development assistance or internal government funds. The DOF-MDFO is already creating such units. The DOF-BLGF may need to do the same because of the contingent liabilities that LGUs may need to assume in the process of entering into a PPP arrangement. The DILG is a partner of the PPP Center in promoting PPPs to LGUs. Creation of such units will help clarify the specific roles and responsibilities of the various officials involved in the review, endorsement, and approval of PPP projects and contracts as well as in monitoring and evaluating them.

Capacity-building and institutional development programs should be developed for the PPP units of local governments and national government agencies. Their members should be given priority in attending specialized training courses on various aspects of PPPs. These courses may be held abroad or in the Philippines in partnership with recognized PPP training institutes. The capacity-building opportunities being offered by development partners should be coordinated with the PPP Center to avoid duplication and facilitate leveling up of skills and competencies being developed in the appropriate government officials and institutions.

3. On the Regulatory Framework

Having a competent, independent, and transparent regulatory body in the sectors where PPPs are being welcomed is very important to protect the interests of all concerned—the customers, private investors, and government entities involved. This has been mentioned in many other previous studies, dialogues, and panel discussions and cannot be overemphasized.

In the power sector, the Energy Regulatory Commission (ERC) was created as an independent, quasi-judicial regulatory body by the Electric Power Industry Reform Act of 2001. The ERC was mandated to promulgate and enforce a National Grid Code and Distribution Code that would set, among others, performance standards and financial capability standards for all distribution utilities including those run by LGUs. The ERC was also tasked to "establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities." As seen in the case of Olongapo City under the PIPDF, not having the appropriate tariff approved by the ERC in a timely manner impaired the ability of the LGU to attract private investors. On the more positive side, although it has taken around 2 years for its tariff increases to be approved, the Bohol Light Company believes that its capital expenditures will eventually be recovered through the appropriate tariff to be approved by the ERC and it does not hesitate to undertake the necessary investments in a timely manner. The performance-based regulations of the ERC, such as the cap on systems loss beyond which the distribution utility will not be compensated, also incentivize the Bohol Light Company to continually strive to improve the efficiency of its technical and financial operations.

In the water sector, there is no comparable body in charge of economic regulation of all water utilities and this gap should be filled with great urgency. Water districts are regulated by the Local Water Utilities Administration, while the rates for most LGU-run utilities are set by the LGUs themselves, in line with the 1991 LGC. The National Water Resources Board regulates private operators in subdivisions and some small water service providers. The two concessionaires of the Metropolitan Waterworks and Sewerage System which serve Metro Manila and some neighboring provinces are regulated by contract. A Regulatory Office was created in line with the provisions of the concession agreements to make recommendations to the Metropolitan Waterworks and Sewerage System Board which makes the final decisions regarding tariffs and policies to be followed by the two concessionaires. Disputes that cannot be resolved by the concerned parties are submitted for arbitration.

For the past 15 years, various bills have been filed in Congress to create a water regulatory body. The present Congress is considering two alternative bills. The first bill proposes the creation of an independent, quasi-judicial regulatory body to be called the Water Regulatory Commission, similar to the ERC. The other bill seeks reforms not only in the regulation of water services but also in the structure and participants of the water industry itself. Industry participants are still quite divided over the relative merits of the two pending bills. More discussions and dialogues on these are needed to facilitate the passage of a law that is acceptable to most stakeholders. More stakeholders at the local level should be consulted. The need for the creation of an independent economic regulatory body for water supply and sanitation services cannot be overemphasized if PPP projects in the sector are to actually bring in their expected benefits to the consumers and the environment.

The Toll Regulatory Board (TRB) sets the rates of tolls that will be charged to direct users of national highways, roads, bridges, and public thoroughfares. This is in line with the provisions of Presidential Decree No. 1112 issued on 31 March 1977. The TRB was transferred to the Department of Public Works and Highways by the 1990 BOT Law. The Department of Public Works and Highways secretary was also made the chair of the TRB. According to the LGC, an LGU may fix the rates for toll fees or charges for the use of any public road, bridge, pier, waterway, ferry, or telecommunication system that it funded and constructed. The methodology and experiences of the TRB in approving changes in toll rates will be instructional for the LGUs that decide to put up toll roads and bridges.

More generally, the LGC provides that an LGU may impose and collect reasonable fees and charges for services rendered. LGUs may also fix the rates for the operation of public utilities owned, operated, and maintained by them within their jurisdiction. For BOT projects, contractors may charge and collect reasonable tolls, fees, rentals, and charges for the use of the project facility not exceeding those proposed in the bid and incorporated in the contract, for a fixed period not more than 50 years. These tolls, fees, rentals, and charges are to be approved by the LGUs concerned on the basis of reasonableness and equity. How these fees and charges will be adjusted over time, in response to macroeconomic variables and compliance with maintenance or service obligations, are major challenges that LGUs need to be prepared and capacitated for. LGUs should therefore create and capacitate their own regulatory units with the assistance of the concerned national government entities, particularly those with their own experiences in implementing PPP projects.

4. On the Monitoring and Evaluation Framework

As the successor of the Coordinating Council of the Philippine Assistance Program, the PPP Center is responsible for the coordination and monitoring of projects implemented under the BOT Law, as amended. RDCs and LGUs are expected to periodically submit information on the status of their projects. At the end of each year, the PPP Center reports to the President and Congress on the progress of all projects implemented under Republic Act No. 7718. It submits tables on pipeline, awarded, ongoing, and completed projects to the Department of Budget and Management for inclusion in the Budget of Expenditures and Sources of Financing.

In addition, under Executive Order No. 8 which reorganized the BOT Center into the PPP Center, the PPP Center is mandated to clarify the procedures and guidelines for the development, appraisal, and evaluation of PPP projects and contracts. Development of a comprehensive monitoring and evaluation system will help the PPP Center better carry out its other functions including providing advice to LGUs on planning and implementing PPP projects, administering the PDMF, advocating reforms in policies and procedures to facilitate PPP projects, creating and maintaining a database on all PPP projects, and conducting capacity-building activities. Toward this end, the following are recommended:

a. **Have clear objectives, baseline data, and measurable performance indicators at the beginning of the project.** This will make it easier for the results of the project to be measured and evaluated.
b. **Conduct regular monitoring activities including on-site visits whenever needed or possible.** Emerging problems can be resolved sooner rather than later. Compliance with existing rules and procedures can also be ensured.
c. **Develop monitoring templates and tables for the different types of projects (e.g., water, power, and public markets).** These can be shared with the LGUs that can use the same for their own monitoring activities. Comparable information from more LGUs can lead to benchmarking activities or peer reviews through which LGUs can measure themselves or their PPP projects against similar or comparable entities and thereby identify measures to further improve their performance.
d. **The monitoring framework should also lead to the early identification of fiscal risks and contingent liabilities for the LGU, concerned government-owned or controlled corporations or government financial institution (GFI), or the national government itself.**
e. **Methodologies for undertaking impact evaluation and evaluation of long-term costs and benefits of the PPP projects should be developed and shared with the LGUs.** A comprehensive evaluation would include the following: relevance, efficiency, and effectiveness of the PPP project in relation to the provisions of the

contract and other project documents as well as the development and governance objectives of the LGU, regulatory effectiveness, and social and environmental sustainability of the project or facility.

f. **The performance of the private sector partners should also be evaluated.** A comprehensive evaluation would take note of the following: the level of compliance with the provisions of the contract, other measures taken to attain the objectives of the project, cooperation with the LGU and external regulators, transparency with the public, and measures taken to protect the environment.

g. **To the extent possible and as appropriate, results of the monitoring and evaluation system and activities should be shared with the public and other LGUs that may be interested in undertaking similar projects.** This can be done through printed documents, audiovisual materials, presentations at conferences, and the PPP Center website.

LGUs should undertake their own monitoring and evaluation activities for their PPP projects. These can be spearheaded by the head of the LGU's PPP unit. As mentioned in an earlier section, the revised IRRs for the BOT Law states that the PPP Project Development Officer shall be responsible for the planning, overseeing, and monitoring of the LGU's PPP projects. This can be done using monitoring templates and tables being developed by the PPP Center for different types of projects. Their findings should be submitted to the PPP Center, which can organize peer reviews or other knowledge-sharing activities among LGUs implementing similar PPP projects.

5. On Assisting LGUs in the Preparation, Monitoring, and Implementation of PPP Projects

Lack of technical and financial resources for project preparation, monitoring, and implementation has always been cited and continues to be a major impediment to LGUs undertaking PPP projects. These needs have to be addressed simultaneously and comprehensively by TA and financing facilities.

In the short to medium term, the existing PDMF being administered by the PPP Center for national government agencies and corporations undertaking PPPs can be opened up to First Tier LGUs that are considering big-ticket PPP projects. As mentioned in an earlier section, First Tier LGUs have been defined to be provinces, cities, or municipalities whose 3-year average proportion of regular locally sourced income to total regular income is at least 60%, as per certification of the DOF-BLGF. The financial strength and stability of First Tier LGUs make them ideal candidates for undertaking big-ticket PPP projects. Although the private proponent would be responsible for financing the initial investment costs, the LGU may need to make amortization payments over time or be ready to cover any unforeseen costs or revenue shortfalls. Also, in case the project is not successfully bid out, the LGU will have to pay back half of the grant from the PDMF.

Based on the PPPs already undertaken by LGUs in the Philippines as well as other emerging economies and projects being considered by LGUs, the big-ticket PPP projects that First Tier LGUs could undertake, depending on their requirements, would include the following:

a. bulk water supply;
b. water supply distribution system;
c. sewerage system;
d. solid waste management facilities;

e. power generation limited to waste-to-energy, minihydropower;
f. power supply distribution system;
g. transportation terminals (cargo or passenger);
h. government cum commercial centers;
i. hospitals or diagnostic services; and
j. tourism facilities or attractions.

To help LGUs whose PPP projects are not big or complicated enough to require the services of the international consultants prequalified in the PDMF, the PPP Center can set up a Project Development, Monitoring, and Implementation Facility (PDMIF) for LGUs to give them access to the financial and TA needed for preparing, monitoring, and implementing PPP projects. It is proposed that the facility provide LGUs not only with funds to hire consultants but also technical support to ensure the quality of the outputs of the consultants. It could also assist LGUs that need capacity building to carry out their responsibilities under their PPP contract including regulation, monitoring, and evaluation. Under some PPP arrangements, the facility is immediately turned over to the LGU for maintenance and operation. The concerned LGU staff should be trained for these responsibilities at a very early stage and on a sustainable basis.

The proposed PDMIF can support the following LGU activities, covering all stages of the project cycle and including solicited and unsolicited proposals:

a. preparation or review of business cases, prefeasibility and feasibility studies;
b. preparation and evaluation of bidding documents;
c. preparation, finalization, monitoring, and enforcement of contracts;
d. technical and financial regulation;
e. maintenance and operation of turned-over facilities; and
f. project monitoring and evaluation.

To help ensure that the design, terms, and conditions of the proposed PDMIF respond to the needs of the two parties being brought together in partnership, the LGUs and potential private investors should be thoroughly consulted while the fund is being designed. Local communities and potential private funders should also be consulted. Too often, consultations are done mostly with officials of national government agencies and government financing institutions. Although they may have many useful insights and suggestions based on their experiences with LGUs and the private sector, it is the LGUs and their potential private sector partners who are most affected by the programs and who will ultimately determine their success. In individual LGUs, both the elective and appointive officials should be consulted through interviews and focus group discussions regarding their development objectives, priority projects, financing needs, capacity constraints, and prevailing political realities. Surveys and focus group discussions can also be arranged through various leagues of local governments to cover more LGUs. Among private investors and funders, those who have had positive, but not so positive, experiences with PPP projects of LGUs should be asked to share their concerns and suggestions. Other potential investors should also be consulted regarding LGU projects, in general or in particular sectors.

It is recommended that the proposed PDMIF be designed and implemented using a participatory and performance-based approach involving all stakeholders. It should incorporate the three major components of a Performance-Based Grant System (PBGS), namely, performance monitoring, capacity-building grants, and capital investment grants. In line with the principles of a PBGS, applicant LGUs will need to meet minimum or

governance conditions before it can gain access to the facility. It is recommended that LGUs be required to meet the criteria for Good Financial Housekeeping (formerly the Seal of Good Housekeeping) and Business-friendliness and Competitiveness defined in the DILG's Seal of Good Local Governance program.

Performance indicators will be developed and monitored for all participants. These include not only the LGUs and their key officials but also the local, regional, and national bodies tasked to review and confirm the PPP projects of LGUs, the concerned regulatory bodies, and the PPP Center itself. Their performance will be duly noted and reported to higher authorities. There will also be preagreed performance indicators for the consultants and transaction advisors who will be rendering services to the LGUs. Payments for the consultants and transaction advisors will be based on these indicators. If their services and outputs are deemed by the LGU client to be below expectations based on the contract and bid, they will not get their full compensation which will include a premium for timely, responsive, and good-quality outputs. The performance of LGUs in preparing, bidding out, monitoring, and implementing their PPP projects will be closely monitored and regularly updated. LGUs that perform well can get additional grants or other financial incentives.

To the extent needed to improve their performance, capacity-building activities will be provided to LGUs and other stakeholders with preference given to their PPP units, if any. There will be strong and iterative links between performance evaluation and capacity building. Capacity-building activities will be provided free of charge, as much as possible, but with counterpart funding from the participating organizations.

Since the success and sustainability of a project depends greatly on the quality of the prefeasibility and feasibility studies prepared by consultants who are currently paid upon completion of the study regardless of the outcome of the bidding or the project, the following are recommended:

a. LGUs should be allowed to participate actively in the selection of their consultants so that the consultants will be and feel accountable to the LGUs.
b. Consultants should be given enough time and guidance (particularly on desirable scope and acceptable cost of the proposed project) as well as access to information and key stakeholders to do a good study.
c. Consultants should be mandated to work closely with the PPP unit or concerned staff of the LGU and to capacitate them to do similar things in the future by themselves.
d. Consultants' proposed project designs and financing plan should be presented to and discussed thoroughly with key stakeholders including potential private sector partners and funders as well as targeted beneficiaries, and modifications should be made as early as possible.
e. Consultants' payments should be performance-based with full payment given only upon successful bidding out and initial implementation of the project.

The mechanics of TA and financing facilities for project monitoring will need to be developed since this may be the first of its kind, most other facilities supporting only project development. Once an LGU has given a private operator the responsibility to operate and maintain a facility, an important role of the LGU is to monitor how that private operator carries out its responsibility. If there is no external regulator for the facility, the LGU itself will have to regulate the PPP entity. It will not only have to ensure that service coverage and standards are met but also have to review and approve proposed tariff increases. As mentioned above, these are specialized skills which are not possessed by many LGU officials. There is therefore a need for programs and institutions that can provide the needed training in a sustainable manner.

The funds for project development, monitoring, and implementation should be given on concessional terms. Grants being the most concessional are most preferred; however, since grant funds are limited, they should be given on a competitive basis. Interested LGUs should demonstrate their need for the funds and the possible benefits of the proposed project. To the extent possible, the LGUs should be required to shoulder part of the cost, either with their own funds or through loans that they can access on favorable terms (e.g., loans from MDFO). This is to ensure that the LGU is truly committed to undertaking the project. If a grant is given and the LGU does not push through with the project within a reasonable time frame, it should be required to pay back the full amount of the grant. The present system of the PDMF which requires the implementing agency to pay back half of the grant if the project is not successfully bid out can also be applied to LGUs. With these conditions on the grant, they should be considered as a contingent liability of the LGU. The full amount of the grant may therefore need to be certified by the BLGF to be within the borrowing capacity of the LGU, following the procedures outlined in Local Finance Circular No. 1-2012 issued by DOF on 16 April 2012. To supplement the limited grant funds, concessional loans can be offered to the LGUs, with the interest rate as low as possible since it is hard for LGUs to justify to their constituents that they are taking out a loan for something that is not yet sure to bring concrete benefits. However, if the proposed project is expected to meet a real and urgent need of the locality, the loan can be easily justified since the opportunity cost of not doing anything may be greater than the cost of the loan.

Although the primary responsibility for coming up with the financing requirements of PPP projects of LGUs rests with the private sector partner, there are still a few expenditure items that LGUs may need to finance. These can include the right-of-way or land for the facility to be constructed on. As mentioned earlier, LGUs can borrow from the PPP Fund being offered by the DOF-MDFO at concessional rates and comfortable repayment periods. If amortization or availability payments are required from the LGU, the MDFO may also consider giving the LGU a loan or line of credit in case it does not have the funds for these payments.

If a guarantee on the amortization or availability payments is required or preferred by the private investor, the LGUGC may consider giving such a guarantee if the LGU passes its creditworthiness tests. The LGUGC can consider what political, regulatory, or other risks in PPPs of LGUs it can also cover. LGUGC guarantees of LGU commitments are assignable to the banks that would lend to the private investors. For PPPs of LGUs, the LGUGC can consider guaranteeing not only the loans but also any bond flotations of the LGUs' private sector partners if they are medium or large enterprises (not belonging to the top 1,000 corporations).

If the private sector is still unable to secure enough funds to make the project financially viable at commercial terms, the LGU can source additional funds from various sources. If it meets the requirements of Executive Order No. 809, it can borrow directly from official development assistance sources. It can also borrow from the GFIs or even private financial institutions. As mentioned in an earlier section, GFIs have financing facilities for LGUs as well as their private sector partners.

The capital grants mentioned above as part of the PBGS can be given as a form of Viability Gap Funding to make its proposed PPP project commercially viable. If the LGU obtains the Seal of Good Local Governance from the DILG, it can apply for a grant from the Performance Challenge Fund which it can then use as additional subsidy for its proposed PPP project.

6. On Marketing PPPs, the PDMF, and the Proposed PDMIF

PPPs, the PDMF, and the proposed PDMIF need to be proactively marketed to LGUs and the private sector. More water districts, electric cooperatives, and other subnational entities may also be ready to consider going into PPP arrangements.

The confirmation and approval process for PPP projects needs to be made predictable and time-bound. This is essential if the interest of LGUs and potential private investors and funders is to be attracted and sustained. The new IRRs for the BOT Law has time frames for most steps in the approval process as did the old IRRs, but the deadlines were generally not met. The cooperation of all concerned agencies will be needed to ensure that these timelines will be followed. For LCEs whose terms are only for 3 years, time is of the essence. They need to show concrete results to their constituents in time for the next election. If the LCEs cannot be assured that their projects will be confirmed expeditiously, they will look to other means of financing and implementing their priority projects. For the private sector, time is money. Time and efforts spent at looking into projects that do not push through could have been spent in a more productive and financially rewarding way. Projected expenses, revenues, and profit margins can also be significantly affected by unexpected changes in the values of external variables such as interest rates, exchange rates, and inflation rates. Pricing formulas to take these into account can and should be used to balance and protect the valid concerns of both producers and consumers of the goods and services being produced.

The pool of private sector companies, both foreign and domestic, that are interested in and capable of partnering with LGUs will have to be enlarged in a deliberate and proactive manner. These companies do not decide to bid for PPP projects overnight. They need to be made familiar with government processes and procedures, at both the national and local levels. Seminars and workshops can be conducted for these potential investors to help them comply with existing laws and bidding procedures.

A database of present and potential private sector partners for PPP projects at both the national and local levels should be constructed and maintained. This can be a joint undertaking of the PPP Center and the Department of Trade and Industry which is in charge of promoting PPP projects to potential private investors. Depending on the type and the size of the project, these potential investors may be quite different. Their specific concerns and capacities may also differ. The national government as well as the concerned LGUs should find out what these are and how the design and packaging of proposed projects can take these into account. The results of the monitoring and evaluation of the private sector partners in ongoing or completed PPP projects should be included in the database. These can be made available to LGUs which are exercising due diligence in the selection of their private sector partners for their planned PPP project.

A geographic information system-based database of all LGUs could be created and maintained by the PPP Center in partnership with an appropriate government or private sector entity. This will help private sector investors to identify and assess LGUs with potential PPP projects. The database could put together publicly available data such as income class as determined by DOF-BLGF, the initial credit screening by LGUGC, population data from the National Statistics Office, and land area from the National Mapping and Resource Information Authority, as well as could provide links to the LGUs' Electronic Statement of Receipts and Expenditures on the BLGF website and the LGUs' own websites, where available. More importantly, the

PPP projects initiated and completed by LGUs can be included in the database together with the results of the monitoring and evaluation of their projects.

Marketing of PPPs to LGUs and their potential private sector partners can also be facilitated by adding more content to the website of the PPP Center. Under "Resources," more videos, PowerPoint presentations, and papers on the PPP concept and modalities can be uploaded. Links to other websites with such materials as well as case studies on PPP projects of LGUs can also be added to the PPP Center website. Information on ongoing or operational PPP projects of LGUs will also be useful in showing what has been accomplished and how challenges were met. Case studies of projects that succeeded or failed will also be useful in distilling lessons learned. The Monitoring Group of the PPP Center can upload the tables that they prepare for the Budget of Expenditures and Sources of Financing together with some basic information about the projects. In the future, a searchable database can be built and accessed through the website. It can contain both basic documents on PPP concepts and mechanics as well as case studies of PPP projects implemented or initiated by LGUs in the past. The results of the monitoring and evaluation of PPP projects can be used as inputs into these case studies.

Social marketing or information and education campaigns should be used by LGUs actively considering a PPP project. The expected benefits of the proposed PPP arrangement can be explained to key stakeholders, including the targeted beneficiaries and the general public. Measures that will be taken to address their respective concerns can also be explained. Surveys should also be undertaken including willingness-to-pay (WTP) surveys. WTP surveys are useful for making good estimates of how much revenues can be derived from the improved services that will be delivered. They will lay the basis for determining the feasibility of the proposed project and for designing its scope and level of complexity or sophistication to be financially viable. The valid concerns of the affected LGU employees should also be openly addressed at the outset. This can be done through dialogue and by giving them several viable options that they can choose from.

With the implementation of the above recommendations and the full support of the national government agencies and LGUs concerned and potential private sector investors and funders, LGUs will be able to take advantage of the PPP option in delivering basic and infrastructure services to their constituents at the least possible cost.

ANNEX A

BOHOL JOINT VENTURES FOR POWER AND WATER SERVICES

According to "The Bohol Joint Venture Initiative: A Documentation of the Experience to Privatize the Province of Bohol's Water and Power Utility Departments," the Provincial Government of Bohol (PGB) held in 1996 extensive multisectoral consultations in municipal clusters to define its vision, mission, goals, as well as primary and secondary strategies for growth in the province.[1] The major strategy agreed upon was to "establish Bohol as a major destination for eco-cultural tourism with a strong agro-industrial support through effective government–private sector collaboration." It was clear to the PGB as well as the private business community that to achieve its goals, its water and power utilities had to be upgraded and expanded. The PGB was operating at that time both the Provincial Waterworks System (PWS) and Provincial Electric System (PES).[2]

In 1997, the PGB organized a technical working group (TWG) to study alternative ways of mobilizing resources for the rehabilitation and expansion of the Provincial Waterworks System (PWS) and PES. The TWG was composed of technical staff from the Office of the Governor and the Provincial Planning and Development Office. The PGB hired several technical staff to complement its personnel while the United States Agency for International Development-funded Governance on Local Democracy (GOLD) Project provided several consultants to guide the PGB in its groundbreaking endeavor. Teams of consultants were involved from 1997 to mid-2000 to provide advice to the PGB on how to solicit private sector participation in its water and power utilities. After several options were seriously considered, the establishment of a joint venture with a rehabilitate–own–operate–maintain arrangement was considered the most ideal. The TWG was assisted by the consultants in preparing financial models to compare projections for the utilities' operations as a joint venture with continuing to be operated by the PGB.

The PGB also consulted with the appropriate national government bodies. It confirmed with the Committee on Privatization chaired by the Department of Finance that privatization transactions of local government units (LGUs) do not require the approval of the Committee on Privatization or the President of the Philippines. The Coordinating Council for Private Sector Participation (CCPSP) headed by the National Economic and Development Authority provided guidance on the proper application of the IRRs of the BOT Law, as amended.

The PGB also involved the private sector at various stages of the bidding process. Three representatives of the private sector were invited to join the Prequalification, Bids, and Awards Committee organized for the project, together with four representatives of the PGB. Power and water experts from the private sector as well as the public sector were also tapped as members of the Prequalification, Bids and Awards Committee Technical Committee.

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1 J.Vistal and J.M. Ragragio. 2000. *The Bohol Privatization Initiative: A Documentation of the Experience To Privatize the Province of Bohol's Water and Power Utility Departments.* http://pdf.usaid.gov/pdf_docs/Pnacu530.pdf

2 It is noted in the report that the word "provincial" may be misleading because the coverage areas of both utilities were basically limited to the capital city of Tagbilaran.

Most importantly, the Bohol Social Marketing Team was mobilized to formulate and implement a strategy for winning public support for the project. The governor, vice-governor, and members of the province's legislative council (Sangguniang Panlalawigan) conducted consultations in all 15 villages (barangays) of Tagbilaran City to explain to them the benefits to be derived from the proposed public–private partnership (PPP) and to assure them that the PGB would continue to protect their rights as consumers and citizens. The PGB has remained true to its promise, despite changes in its leadership over the years. Even if it is a part owner (30%), the PGB always opposes petitions for tariff increases by Bohol Water and Bohol Light to make them defend their proposed price increases.

The PGB also tapped media practitioners by giving them a Question and Answer Guide which they followed in responding to questions from the public.

Through these concerted efforts, "public sentiment about the JV project changed from insistent questioning to informed, open-minded acceptance. An overwhelming majority (88%) of the 2,800 people attending these barangay assemblies said "Yes" to the project." In addition, 10 municipalities passed resolutions to support the project. Five resolutions of support were also received from political leagues and two from the business sector.[3]

Despite the general public acceptance of the proposed joint ventures, a group of lawyers purportedly representing the residents of Tagbilaran City filed a Petition for a Class Action for Prohibition with a Prayer for Preliminary Injunction and a Request for Issuance of a Temporary Restraining Order (TRO) on 19 July 2000, just days before the scheduled incorporation of Bohol Water Utilities (BWUI) and Bohol Light Company (BLCI). After summary hearings were held between 31 July and 4 August, the Regional Trial Court Branch 4 lifted the TRO issued on 20 July 2000 and denied the application for the Issuance of a Writ of Preliminary Injunction for lack of merit.

After transfer of the case to Regional Trial Court Branch 3 and conduct of a joint hearing by the new judge on 15 September, he dismissed the complainants' new motion for preliminary injunction as well as the previous case on 18 September. The case was brought to the Court of Appeals which issued a TRO on 27 October 2000, effective for 60 days unless earlier lifted. After the TRO expired, the assets and franchise of the PWS were transferred to BWUI and those of the PES were transferred to the BLCI.

The above developments show that the complainants had no basis for their complaint. They were saying that the PGB was "selling" the utilities when in fact the PGB retained 30% ownership of the joint venture. Complainants also said that the assets were undervalued. This should not matter since the amount the PGB had received for the assets of the PWS and PES was close to P50 million more than their total appraised value.

The cases filed appear to have been "politically motivated" and they may have helped to make the governor lose his reelection bid for a third term in 2001. In 2004, he ran and lost again, but he won the votes of the Tagbilaran City residents who had started to experience improved and expanded services at reasonable prices.

[3] Footnote 1.

When he ran for Congress for the first time in 2007, he lost, but when he ran again in 2010 he won. He is currently serving his first term as Congressman for the second district of Bohol.

In 1995 and 1996, the PGB appropriated an average of around P70 million for the PES and around P132 million between 1997 and 2000. The amounts were increasing over time and came from both the regular and supplemental budgets. Although these investments led to a decline in systems loss[4] from 33% before 1995 to 20% in 1995 and 17% in 1999, this was still way above the industry standard of 10%. With the capacity expansion of primary lines, continuous upgrading of secondary lines, rearrangement of transformers, and replacement of inaccurate meters, BLCI was able to bring down systems loss to 10.35% by August 2002, 9.46% in 2003, 9.66% in 2004 and 2005, 9.48% in 2006, 9.46% in 2007, 9.13% in 2008, 8.11% in 2009, 7.03% in 2010, and 6.88% in 2011. This is much lower than the 8%–10% level aimed for in the Joint Venture Agreement (JVA). These improvements have helped to improve the financial performance of BLCI since losses above the Energy Regulatory Commission (ERC) cap of 8% cannot be charged to customers.

Service reliability[5] has also improved. In 2002, this was 97.56% since there were many scheduled service interruptions during the massive rehabilitation activities being undertaken at that time. However, unscheduled interruptions were minimized because of continuous clearing of trees and other obstructions and rehabilitation of the system.[6] By 2006, this had improved to 99.5% through installation of additional transformers and switches, replacement of rotten electric poles, upgrading and extension of primary and secondary lines, and annual preventive maintenance of substations. The brownouts caused by lack of power supply from the National Power Corporation have become a thing of the past with the doubling of generation capacity in the Visayas and operationalization of the Wholesale Electricity Spot Market in the Visayas in 2011.

Coverage at barangay level is 100% since all 15 barangays of Tagbilaran City are being served. The number of customers increased steadily from 15,659 households in 2003 to 16,603 households in 2006 out of 17,583 potential house connections or 94.43%. This ratio increased to 96% in 2007, 99.75% in 2008, and 100% in 2011.

No change in the basic rate was allowed in the first 5 years unless mandated by the Energy Regulatory Board[7] for all electric utilities. Rates were unbundled in 2005 in line with ERC guidelines and the first price increase was approved by the ERC in 2007. A second price increase was applied for in 2010 and approved in 2012 after public hearings and consultations. The rates are still lower than the prices of the electric cooperatives serving neighboring municipalities, according to BLCI.

Through on-time and accurate meter reading and billing and an effective disconnection policy, the perennial problem of delinquent payments disappeared and collection efficiency improved from an average of 97% in 2003–2005 to 98.16% in 2006 and 99.90% in 2011.

The BLCI started giving out dividends to its shareholders including the Provincial Government of Bohol in 2008.

4 Systems loss is computed as the ratio of energy purchased minus energy sold and energy used in distribution to energy purchased.
5 Reliability is defined as the percentage of the time that electric power is available.
6 Bohol Provincial Annual Report. 2002.
7 Replaced by the Energy Regulatory Commission by the Electric Power Industry Reform Act (EPIRA) of 2001.

The ERC exercises performance-based regulation over the BLCI. With the knowledge that capital outlays can be recovered through tariff adjustments, BLCI is able to undertake the necessary capital expenditures. Operating expenditures are also scrutinized by the ERC and compared with other distribution utilities of comparable size.

The major problem being encountered by BLCI is the lack of cooperation from the Tagbilaran City government which has not issued a business permit to BLCI since 2008 or accepted its payments of business taxes because of a dispute regarding the computation of the amounts payable.

With regard to the PWS, service before 1993 was only for 4–6 hours, with 46% systems loss. In 1995, the PWS was separated from the Provincial Public Utilities Department and started to operate independently. It started to develop bigger pumping stations in the neighboring municipality of Corella. With investments made by PGB amounting to P20 million in 1995–1997, service increased to 24 hours for 90% of the service area and systems loss declined to 29% in 1997. With additional investments of P26 million in 1998 and 1999, systems loss declined further to 25%. However, the industry standard is 20%. Water quality also needed to be improved. Most importantly, the amount of water available to meet the growing demand needed to be increased dramatically. The water supply system would need to be expanded through source development, establishment of two water treatment plants, construction of reservoirs, and laying of transmission and distribution pipelines. The total cost was estimated to be P967 million. Together with the P212 million estimated cost of expansion for PES, the PGB would need to raise close to P1.2 billion. As mentioned above, establishment of a joint venture under a rehabilitate–own–operate–maintain arrangement was considered the most ideal option.

A Development Master Plan was incorporated into the JVA. The Master Plan was designed to meet the present and projected water demand for the year 2020. Phase 1 from 2001 to 2005 was for the rehabilitation and upgrading of system components. Phase 2A from 2006 to 2010 was for the development and rehabilitation of wells to provide 2,120 cubic meters per day (m^3/day), a new reservoir for 500 m^3, and laying of 29,000 m of pipelines. Phase 2B from 2011 to 2015 was for the development of a new well for 1,200 m^3/day, a new reservoir for 500 m^3, and 16,000 m of pipelines. Phase 2C from 2016 to 2020 was for the development of a new well for 2,700 m^3/day, a new reservoir for 500 m^3, and 49,000 m of pipelines.

By 2020, the total system output capacity was expected to reach 17,986 m^3/day to meet the water demand estimated at 13,068 m^3/day. By 2012, actual water demand was 16,605 m^3/day. Fortunately, system capacity was already at 23,455 m^3/day. This was achieved through completion of all the projects included in Phase 1 as well as some projects not included in Phase 1 of the Master Plan. These were undertaken because they were deemed necessary for the achievement of the JVA objectives. The most important of these was the division of the service area into four clusters based on elevation and location. The system was also reconfigured. Earlier, PWS served its customers directly from the pumping units and reservoirs with only chlorination to improve water quality and safety. Today, BWUI serves its customers from the reservoirs with water treatment facilities. Nonrevenue water has also been brought down to the industry standard of around 20%.

According to the JVA, the implementation schedule was planned so that the total system output capacity would be always greater than the demand requirement. Notwithstanding the scope of works in the Master Development Plan, capital expenditures shall be made depending on the actual demand for water. If actual

demand exceeds projected production, the capital expenditures shall be advanced. If actual demand falls below projected production, capital outlays shall be deferred accordingly. The schedule would be reviewed to allow for changes in the demand growth rate. A Steering Committee was created to meet and discuss safety, technical, and administrative matters. Two members are appointed by the Consortium and one by the provincial government. Proposed revisions to the Master Plan will be brought to the BWUI Board. Two of the seven Board members are nominated by the provincial government.

As required in the JVA, BWUI conducted a feasibility study to evaluate the viability of supplying wholesale water to 10 municipalities in the province. Of the 10 municipalities, Dauis and Corella have executed their memorandum of agreement with BWUI. A transmission pipeline leading to Dauis has already been constructed together with boosting facilities.

At present, BWUI sources water from wells in Tagbilaran City and the Municipality of Corella. It is also planning to develop the Uhan Spring. However, to meet the province's medium- and long-term development objectives, surface water sources need to be tapped. An Integrated Water Supply System Master Plan was prepared for Bohol by consultants funded by the Government of Australia. Water demand projections were prepared for the whole province and seven projects were conceptualized for clusters of municipalities that can source their water from rivers. Project costs range from around P780 million to P2,752 million. The possibility of undertaking these projects under any of the PPP variants was discussed with the officials from the Provincial Planning and Development Office. Orientation workshops on PPP for the planning officers of municipalities were proposed.

LESSONS LEARNED[8]

Establish the Context of Privatization

The decision to privatize came out of a long process of public consultation. It was a derivative of the decision to turn the province into both an agro-industrial center and a major tourist destination. **The multisectoral consultations identified the improvement of power and water services as essential for the realization of the growth strategy they agreed to.**

It was just as clear to them that the provincial government was in no position to provide either the capital or engineering and management technology to bring the utilities to par. The clarity with which the provincial government set the context of privatization made it easier for its political leaders to initiate the process.

Careful Financial and Legal Study

Detailed studies of the two utility facilities were conducted to evaluate the financial viability of their operations and thereby prepare a plan for rehabilitation and/or expansion. The Rehabilitation and Expansion Plans formed the basis for determining the financial requirements of improving water and power services

[8] Footnote 1. (Bold letters are used for emphasis.)

delivery. The plans, in turn, became the basis for deciding on the appropriate financing option. Without those studies, the provincial government would not have been in a position to know the technical and management conditionalities of the joint venture. Transactions of such scale need careful study.

It is best that such studies be done with the involvement of professional legal and financial advice. Bohol was fortunate to have the GOLD project to support the initiative although the provincial government invested substantially as its share to retain the consultants fielded under the GOLD project. Both financial and legal advice came in handy during consultations with the public when expert advice was frequently called for.

Decisive Political Leadership

At no point in the process did the provincial government's political leadership waver in its resolve to bring in the needed capital and technology to improve its water and power delivery system. In the same breadth, the political leadership maintained prudence in the exercise of its authority. Every right was respected, despite negative financial repercussions on the provincial government.

Public Participation

Without public participation in the decision process, the privatization initiative would not have prospered. The chronology of events shows the extent of consultations held with the public. The political leadership took its time to explain the advantages and disadvantages of privatization. **Employees who were to be directly affected by the move were consulted.** The consultative process resulted in a more manageable opposition, with the latter limited mostly to the political opponents of the incumbent administration.

Private Sector Interest

The experience established private sector interest in local government enterprises. Seven private sector groups expressed interest in the offering. Interest was sustained throughout the tender period. Five bids were received for the power supply facility. The experience belies the allegation that the private sector shies away from transactions involving local governments. Perhaps an attractive feature of the Bohol transaction was the transparency with which the provincial government carried out the process.

Selection by Competitive Bidding

Selection by competitive bidding indeed allows the local government to get the best conditions from the private sector. It is important, however, to establish the legitimacy of a prospective offeror. In this respect, the prebidding conference allows the local government to know all interested parties. At that conference, all prospective investors are asked to provide the LGU with their respective credentials. The LGU must spare no effort to check on those credentials.

The Bohol experience established that there are enough good rules and regulations to guide LGUs in their privatization effort. In the case of Bohol, the guidelines established under Republic Act No. 7718 were strictly followed. The CCPSP supported the effort. That support proved crucial in settling the controversy over whether or not the water utility project had to be rebid because there was only one bidder. It would be wise for all LGUs to follow the same guidelines and involve CCPSP in the process.

Legal Tussles

The LGU must expect legal opposition to privatization, especially from political adversaries. It must take extra care to ensure that all laws, rules, and regulations are followed to minimize serious legal controversies. Perhaps the most common legal hurdle would be the TRO. **A transparent process is the best prescription against legal discomforts.**

Privatization

Contrary to the most widely held view, **the Bohol experience showed that privatization can be directly and indirectly beneficial to the community.** Under the operating agreement with the joint venture partner, power and water rates will be lowered with no power rate increases over a 5-year period. Additional discounts for the water consumers will be put in place with no rate increases in the next 2 years.

The provincial government benefits with the takeout of an outstanding loan amounting to P21 million and the guarantee to absorb all employees of the two utility departments under terms better than what they were receiving. In addition, the province received a total amount of P185 million for both facilities.

ANNEX B

LOCAL GOVERNMENT UNIT BONDS GUARANTEED BY THE LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION

Name of LGU/Bond Issue	LGU Bond Rating	Project	Amount (Million P)	Issue Date	Term (Years)
Redeemed					
Urdaneta City/Urdaneta City Municipal Bonds	Ba	Urdaneta City Abattoir	25.00	28 May 1999	5
Aklan Province/Boracay-Aklan Provincial Bonds	Ba	Caticlan-Boracay Jetty Port and Terminal Building	40.00	1 July 1999	7
Puerto Princesa City/Puerto Princesa City Green Bonds	Ba	Puerto Princesa City Socialized Housing	320.00	24 February 2000	7
Caloocan City/Katipunan Bonds—Series A	Ba	Poblacion Public Market	185.00	5 December 2000	7
Caloocan City/Katipunan Bonds—Series B	Ba	City Hall Park with Commercial Center and Toll Parking	225.00	5 December 2000	7
Caloocan City/Katipunan Bonds—Series C	Ba	General Hospital	210.00	5 December 2000	7
Tagaytay City/Tagaytay City Tourism Bonds	A	International Convention Center and Lodging Facility	220.00	12 March 2001	7
Iloilo City/Iloilo City Bonds	Ba	Iloilo City Employees Housing	130.00	20 April 2001	3
Daraga, Albay/Daraga Municipal Bonds	Ba (negative bias)	Daraga Public Market	75.00	30 May 2002	7
Bayambang, Pangasinan/ Bayambang Aliguas Bonds	Ba (negative bias)	Bayambang Dry Goods Market Block II	42.00	9 August 2002	7
Leyte Province/Leyte Liberation Bonds—Series A	Ba	Leyte Academic Center	205.00	6 March 2003	7
San Juan City/San Juan Pinaglabanan Bonds	Aa	San Juan Multipurpose Gymnasium, Commercial and Toll Parking Complex	390.00	30 July 2003	7
Carmona, Cavite/ Carmona Bonds	A	Carmona Housing	150.00	11 March 2004	7
Pasay City/Pasay Kaunlaran Bonds	Ba	Pasay City Public Market and Commercial Center	500.00	6 August 2004	7
Imus, Cavite/Imus Bonds—Series A	A	New Imus Slaughterhouse	47.00	10 August 2004	7
Baliwag, Bulacan/ Baliwag Star Bonds	A	Baliwag Integrated Solid Waste Management and Materials Recovery Facility	50.00	19 June 2006	7

continued on next page ➤

Continued

Name of LGU/Bond Issue	LGU Bond Rating	Project	Amount (Million P)	Issue Date	Term (Years)
Outstanding					
Alfonso Lista, Ifugao/ Alfonso Lista Water Bonds	Ba	Construction of Water Supply and Distribution System	72.50	25 March 2010	10
Aklan Province/Caticlan Super Marina Bonds	A	Renovation/Rehabilitation of Caticlan Passenger Terminal, Enhancement/Recovery of Old Coastline, Reclamation of a Portion of Foreshore	260.00	30 April 2010	10
Infanta, Pangasinan/ Infanta Water Bonds	Ba	Construction of Water Supply and Distribution System	50.00	25 October 2011	10

LGU = local government unit.

Notes: Aa—High credit standing (loans to these LGUs are of good quality and carry low risks of default).

A—Good credit standing (loans to these LGUs carry low risk of default).

Ba—Average credit standing (these LGUs operate under a clear presence of risk factors, the effect of which on the assurance of interest and principal payments may show up in the future).

Source: LGU Guarantee Corporation.

ANNEX C

LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION-GUARANTEED LOANS OF LOCAL GOVERNMENT UNITS FROM PRIVATE FINANCIAL INSTITUTIONS

LGU	Income Class	Project	Amount (Million P)	Initial Release Date	Term (Years)	PFI
Agoo, La Union	1st	Construction of Public Market	110.00	16 June 2008	10	Allied Bank and BPI
Imus, Cavite	1st	Multipurpose Cadastral Survey	23.00	28 June 2008	5	BPI
Rosario, La Union	1st	Construction of Public Market and Municipal Abattoir	70.00	17 November 2009	10	BPI
Binalonan, Pangasinan	1st	Refinancing of Loan from LBP	25.00	2 December 2010	10	BPI
Binalonan, Pangasinan	1st	Construction of New Building of University of Eastern Pangasinan	45.00	2 June 2011	10	BPI
Agoo, La Union	1st	Construction of Agoo Hypermarket Phase III	49.00	17 October 2011	10	BPI

BPI = Bank of the Philippine Islands, LGU = local government unit, PFI = private financial institution.

Sources: LGU Guarantee Corporation; Bureau of Local Government Finance, DOF (for LGU income class).

ANNEX D

LOCAL GOVERNMENT UNITS WITH QUALIFIED DEBT INSTRUMENTS UNDER LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION'S AUTOMATIC GUARANTEE LINE FOR PHILIPPINE VETERANS BANK

LGU	Income Class	Project	Amount (Million P)	Initial Release Date	Term	Lender
Angeles City, Pampanga	1st	Purchase of Land and the Design, Construction, and Development of Angeles City Sport Coliseum	250.00	27 October 2009	12 years	PVB—Assignor BPI—Assignee
Toledo City, Cebu	3rd	Construction and Site Development of Toledo City Hotel	58.44	25 November 2009	7 years	PVB—Assignor BPI—Assignee
Zamboanga Sibugay	2nd	Purchase, Operation Maintenance, and Repair/Lease of Medical Equipment and Rehabilitation/ Repair of Satellite Center	50.00	21 December 2009	9 years	PVB
Trece Martires City, Cavite	4th	Slaughterhouse and 13-Tower Building	72.66	22 December 2009	7 years	PVB
Caraga, Davao Oriental	1st	Construction of the Caraga Public Market, Terminal, and Commercial Complex	88.81	20 June 2010	4 years	PVB
San Miguel, Bulacan	1st	Purchase of Various Heavy Equipment	40.09	23 December 2010	7 years	PVB
San Pedro, Laguna	1st	Construction of the New Municipal Hall Building and to Finance the Renovation of the Jose L. Amante Hospital	149.94	18 July 2011	12 years	PVB
Province of Palawan	1st	Refinancing Outstanding Loan with LBP and Financing Various Priority Projects of the LGU	144.10	2 August 2011	Tranche 1: 8 years Tranche 2: 10 years	PVB

BPI = Bank of the Philippine Islands, LBP = Land Bank of the Philippines, LGU = local government unit, PVB = Philippine Veterans Bank.

Sources: LGU Guarantee Corporation; Bureau of Local Government Finance, DOF (for LGU income class).

ANNEX E

LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION-GUARANTEED LOANS OF WATER DISTRICTS

Water District	Project	Amount (Million P)	Initial Release Date	Term (Years)	Lender
Metro Iloilo	Pipeline Rehabilitation	38.13	31 March 2006	7	PNB
Calamba	Repair and Rehabilitation of Existing Water System	40.00	29 June 2007	5	BPI
Legaspi	Bulk Water Supply	105.00	5 October 2007	7	BPI
Silang	Rehabilitation and Expansion of Water System	189.00	29 November 2007	10	PNB
Laguna	Expansion of Water System	99.49	19 December 2007	10	BPI
San Fernando, Pampanga	Rehabilitation and Expansion of Water System	226.00	9 April 2008	10	BPI Allied Bank
Indang	Expansion of Water System	15.00	5 May 2008	10	BPI
Cabanatuan	Rehabilitation and Expansion of Water System	250.00	27 June 2008	10	BPI MetroBank
Mabalacat	Construction of Ground Reservoir and Upgrading of Water System	135.00	5 December 2008	10	Allied Bank
Norzagaray	Bulk Water Supply	70.00	3 June 2009	7	MetroBank
Zamboanga	Rehabilitation and Expansion of Water System	200.00	2 August 2010	10	Security Bank
Puerto Princesa	New Water Source; Rehabilitation and Expansion of Water Supply System	120.66	29 October 2010	10	BPI
Indang	Additional Facility for Expansion of Water System	16.00	31 March 2011	10	BPI
Mabalacat	Additional Facility for Construction of Water Filtration of the Central Ground Reservoir	50.00	5 September 2011	10	Allied Bank
Tarlac City	System Improvement Programs and Expansion of the Water Supply System	116.00	4 October 2011	10[a]	BPI

BPI = Bank of the Philippine Islands, PNB = Philippine National Bank.

[a] Extendible by 5 years upon BPI's discretion.

Source: LGU Guarantee Corporation.

ANNEX F

LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION-GUARANTEED LOANS OF ELECTRIC COOPERATIVES

Electric Cooperative	Project	Amount (Million P)	Initial Release Date	Term (Years)	Lender
Misamis Oriental I Rural Electric Service Cooperative (MORESCO I)	Installation of 10 MVA Substation in Canituan, Quibonbon, and Moog	115.00	16 August 2010	10	Security Bank
Pangasinan I Electric Cooperative (PANELCO I)	Installation of 10 MVA Substation in Dasol, Construction of 28 km 69 kV Transmission Line from Palamis, Alaminos to Bobonot, Dasol, and Replacement of Distribution Transformer	113.00	20 November 2010	7	BPI
South Cotabato I Electric Cooperative (SOCOTECO I)	Construction of 5 MVA Substation and 16.5 km 69 kV Line and Rehabilitation/ Upgrading of Distribution/Transmission Line	102.42	14 January 2011	10	BPI
Surigao del Norte Electric Cooperative (SURNECO)	Construction of 20 MVA Substation, Acquisition and Construction of New Transmission Lines, and Rehabilitation/ Upgrading/Conversion of Distribution Lines	85.00	31 May 2011	10	United Coconut Planters Bank
First Bukidnon Electric Cooperative (FIBECO)	Construction of 69 kV Subtransmission Line, Refurbishment of a 5 MVA Power Transformer and Installation of Protective Device, Controls and Accessories, and Construction of #4/0 Tie Line and Parallel Phase Line	143.00	13 June 2011	10	Allied Banking Corporation
Bukidnon Second Electric Cooperative (BUSECO)	Installation of 10 MVA Substation, Construction of 25 km 69 kV Line and Reconductoring of Existing Backbone Line from 2/0 to 4/0 ACSR	135.90	19 August 2011	10	BPI
Bohol I Electric Cooperative (BOHECO)	Capital Expenditure Projects	109.62	30 September 2011	15	Development Bank of the Philippines
Misamis Oriental II Rural Electric Service Cooperative (MORESCO II)	Capital Expenditure Projects	215.49	27 December 2011	10	BPI
Davao Del Norte Electric Cooperative (DANECO)	Capital Expenditure Projects	325.84	27 December 2011	10	United Coconut Planters Bank
Camarines Norte Electric Cooperative (CANORECO)	Capital Expenditure Projects	133.25	15 July 2011 (loan signing)	10	BPI
Camiguin Island Electric Cooperative (CAMELCO)	Capital Expenditure Projects	220.00	9 November 2011 (loan signing)	10	BPI

BPI = Bank of the Philippine Islands, km = kilometer, kV= kilovolt, MVA= megavolt-ampere.

Source: LGU Guarantee Corporation.

ANNEX G

LOCAL GOVERNMENT UNIT GUARANTEE CORPORATION-GUARANTEED LOANS OF MEDIUM AND LARGE ENTERPRISES FROM PRIVATE FINANCIAL INSTITUTIONS

Medium or Large Enterprise	Project	Amount (Million P)	Initial Release Date	Term (Years)	PFI
Worldchem Enviro Technologies	Construction of Pinagsama Sewage Treatment Plant	50.00	13 May 2010	1	BPI
Healthserv Los Baños	Four-Story, 80-Bed Capacity Tertiary Hospital	100.00	25 June 2010	10	BPI
Amertech Industrial Ventures	Steam Boiler to Serve the Dry Steam Requirements of the Coca-Cola Bottlers Philippines	70.00	20 September 2010	5	BPI
Amertech Industrial Ventures	Additional Facility for Steam Boiler to Serve the Dry Steam Requirements of the CCBPI	35.00	17 June 2011	5	BPI
A.M. Gatbonton	Construction of Bulk Water Supply Facilities for Tagaytay City Water District and City of San Fernando Water District	13.50	23 September 2011	5	Allied Bank

BPI = Bank of the Philippine Islands, PFI = private financial institution.

Source: LGU Guarantee Corporation.

ANNEX H

RECOMMENDATIONS ON COMPOSITION OF PUBLIC–PRIVATE PARTNERSHIP SUBCOMMITTEE OF LOCAL DEVELOPMENT COUNCILS

Background

Through Memorandum Circular No. 2011-16 dated 31 January 2011, the Department of the Interior and Local Government enjoined all local chief executives to create a public–private partnership (PPP) subcommittee in their respective Local Development Councils.

In Volume 1 of the draft manual for local government units (LGUs) prepared by the PPP Center, the following local executive offices and legislative committees were identified to be relevant participants in the local PPP process because of their roles and responsibilities as provided for in the Local Government Code and pertinent Department of the Interior and Local Government issuances including Memorandum Circular No. 2010-113 and Memorandum Circular No. 2011-16. In Table A1, additional responsibilities of the Planning and Development Coordinator and Local Economic and Investment Promotion Officer were added (*in italics*) to emphasize the role of the Local Finance Committee created by Section 316 of the Local Government Code.

Table A1: Relevant Local Government Unit Offices and Bodies for Public–Private Partnership Projects

LGU Office	Responsibilities
Planning and Development Coordinator	☐ Formulate integrated economic, social, physical, and other development plans and policies for consideration of the local development council ☐ Monitor and evaluate the implementation of the different development programs, projects, and activities in the LGU following the approved development plan ☐ *Analyze the income and expenditure patterns, and formulate and recommend fiscal plans and policies for consideration of the LGU's Finance Committee (of which he is a member, together with the local treasurer and budget officer) as provided under Title Five, Book II of the LGC*
Engineer	☐ Initiate, review, and recommend changes in policies and objectives, plans and programs, techniques, procedures, and practices in infrastructure development and public works of the local government unit concerned ☐ Provide engineering services to the local government unit concerned, including investigation and survey, engineering designs, feasibility studies, and project management
Local Economic and Investment Promotion Officer	☐ Prepare, coordinate, and execute local economic and investment promotion policies, projects and activities at the provincial, municipal, and city levels ☐ *Establish a local economic database containing relevant facts and figures* ☐ *In the promotion of economic activities, coordinate with the Planning and Development, Treasury and Budget Offices and local Sanggunians* ☐ Head the PPP Subcommittee in the case of provinces and cities
PPP Subcommittee of the Provincial, City, and Municipal Local Development Council	☐ Assist the Local Development Council in the formulation of action plans and strategies related to the implementation of PPP programs and projects
Provincial, City, and Municipal Local Development Council	☐ Appraise and prioritize socioeconomic development programs and projects ☐ Coordinate, monitor, and evaluate the implementation of development programs and projects ☐ Endorse to the Sanggunian a PPP project that has passed the review and appraisal process
Provincial, City, and Municipal Sanggunian	☐ Issue resolutions approving PPP projects and contracts

LGC = Local Government Code, LGU = local government unit, PPP = public–private partnership.

Source: The Local Government Code of 1991, DILG MC No. 2011-16 (issued 31 January 2011), DILG MC No. 2010-113 (issued 13 October 2010).

Recommendation

Since the LGU will have to conduct a review of the technical, financial, environmental, and economic aspects of all proposed PPP projects and eventually pass local ordinances or enter into legal contracts, it is strongly recommended that in addition to the LGU officers mentioned above, the following officers also be included in the PPP Subcommittee in view of their responsibilities mentioned in Table A2.

Table A2: Additional Relevant LGU Offices and Sanggunian Committees for Public–Private Partnership Projects

LGU Office	Responsibilities
Treasurer	☐ Advise the LCE, Sanggunian, and other local government and national officials concerned regarding the disposition of local government funds and on such other matters relative to public finance ☐ Take custody and exercise proper management of the LGU's funds ☐ Take charge of the disbursement of all local government funds and such other funds, the custody of may be entrusted to him by law or other competent authority ☐ Inspect private commercial and industrial establishments within the LGU's jurisdiction in relation to the implementation of tax ordinances, pursuant to the provisions of Book II of the LGC
Accountant	☐ Prepare and submit financial statements to the LCE and Sanggunian concerned and apprise them of the financial condition and operations of the LGU ☐ Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged ☐ Prepare journals and the analysis of obligations and maintain and keep all records and reports related thereto
Budget Officer	☐ Review and consolidate the budget proposals of the different departments and offices of the LGU and assist the LCE in the preparation of the budget and during budget hearings ☐ Coordinate with the planning and development coordinator in the formulation of the local development plan and also with the treasurer and accountant for the purpose of budgeting ☐ Submit periodic budgetary reports to the Department of Budget and Management
Environment and Natural Resources Officer	☐ Formulate measures for consideration of the Sanggunian and provide technical support to the LCE in carrying out measures to ensure the delivery of basic services and provision of adequate facilities relative to environment and natural resources services as provided under Section 17 of the LGC ☐ Coordinate with NGAs and NGOs in the implementation of measures to prevent and control land, air and water pollution, with the assistance of the Department of Environment and Natural Resources ☐ Recommend to the Sanggunian and advise the LCE on all matters relative to the protection, conservation, maximum utilization, application of appropriate technology, and other matters related to the environment and natural resources
Legal Officer	☐ Formulate measures for the consideration of the Sanggunian and provide legal assistance and support to the LCE in carrying out the delivery of basic services and provision of adequate facilities as provided under Section 17 of the LGC ☐ When required by the LCE or Sanggunian, draft ordinances, contracts, bonds, leases, and other instruments involving any interest of the LGU and provide comments and recommendations on any instruments already drawn ☐ Investigate or cause to be investigated any person, firm, or corporation holding any franchise or exercising any public privilege for failure to comply with any term or condition in the grant of such franchise or privilege and recommend appropriate action to the LCE or Sanggunian, as the case may be

LCE = local chief executive, LGC = Local Government Code, LGU = local government unit, NGA = national government agency, NGO = nongovernment organization.

The major roles and responsibilities of the abovementioned officials with regard to PPP projects are proposed below (*in italics*). Some changes are also suggested (*in italics*) in the roles and responsibilities of the officers and institutions identified earlier by the PPP Center as critical in local PPPs.

(a) Local Planning and Development Coordinator

- *In coordination with the treasurer and budget officer who are also members of the Finance Committee*, identifies possible projects of local departments for PPP during the LGU's investment programming cycle;
- Ensures that LGU PPP projects are consistent and included in the LGU's Comprehensive Development Plan, Local Development Investment Program, and Annual Investment Plan;
- Secures approval of proposed LGU PPP projects from necessary approving bodies (local and national, depending on the nature and amount of the project);
- Coordinates with concerned local departments and national line agencies to firm up the development of local projects for PPP;
- Ensures that all technical requirements needed in project development are met;
- Monitors and reports the progress of PPP project implementation and its contribution to the achievement of its local development plan objectives; and
- Evaluates the PPP project after its implementation and provides a report to the concerned local bodies (i.e., Sanggunian) and national government agencies (i.e., PPP Center).

(b) Local Treasurer

- *As a member of the Finance Committee, reviews estimates of the revenue-generating capacity of proposed priority projects and helps to identify those that are suitable for PPP projects;*
- *Provides and reviews financial inputs to the technical working group (TWG) of the LGU developing the prefeasibility study or feasibility study; and*
- *Studies and evaluates the proposed financing structure and strategies for the proposed PPP projects and submits comments and recommendations thereon.*

(c) Local Accountant

- *Provides financial statements and other information needed by the TWG of the LGU developing the prefeasibility study or feasibility study; and*
- *Studies and evaluates the accounting treatment of the projected and actual revenues, expenditures, assets, and liabilities of the proposed PPP projects and submits comments and recommendations thereon.*

(d) Local Budget Officer

- *As a member of the Finance Committee, estimates the fiscal capacity of the LGU to undertake priority projects and helps to identify those that are suitable for PPP arrangements;*
- *Provides budgetary inputs and guidance to the TWG of the LGU developing the prefeasibility study or feasibility study; and*
- *Studies and evaluates the budgetary implications of proposed PPP projects and submits comments and recommendations thereon.*

(e) Local Engineer

- *Provides technical inputs to the TWG of the LGU developing the prefeasibility study or feasibility study; and*
- *Ensures that technical designs and specifications required for the project adhere to engineering and building standards.*

(f) Local Environment and Natural Resources Officer

- *Provides technical inputs to the TWG of the LGU developing the prefeasibility study or feasibility study;*
- *Ensures that technical designs and specifications required for the project adhere to environmental standards; and*
- *Reviews proposed measures and structures to mitigate environmental risks and concerns.*

(g) Local Legal Officer

- *Provides legal inputs to the TWG of the LGU developing the prefeasibility study or feasibility study;*
- *Prepares or reviews drafts of local ordinances and contracts needed to implement the proposed PPP projects; and*
- *Monitors compliance of the LGU and its private sector partner with the terms of the PPP contract and recommends appropriate actions as needed.*

(h) Local Economic and Investment Promotion Officer

- *Prepares, coordinates, and executes local economic and investment promotion policies, projects, and activities at the provincial, municipal, and city levels;*
- *Ensures the functionality of the PPP Subcommittee;*
- *Conducts activities supportive of collaboration with the private sector for LGU PPAs; and*
- *Works with the abovementioned LGU officials in coordinating with concerned national agencies for LGU PPP projects.*

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Philippines: Public–Private Partnerships by Local Government Units

The Philippine infrastructure gap is prominent at the local government level. This study looks at past experiences of public–private partnership (PPP) projects of local government units (LGUs) in the Philippines. It reviews international experiences of PPPs at the local level and draws lessons from the successful revival of the Philippine PPP program at the central government level. The study then suggests ways forward to help LGUs prepare bankable PPPs, ensure efficient project procurement, enhance financial viability of PPPs, and strengthen LGUs' PPP legal and institutional frameworks to enable leveraging more private investment in local economic and social infrastructure.

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