

# **PUBLIC HEARING PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE BOT LAW**

EDSA Shangri-la Hotel  
Mandaluyong City  
10 May 2007

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## ***PROCEEDINGS***

Around one o'clock in the afternoon, participants to the public hearing already started to register. Participants represented various sectors and organizations: the Implementing Rules and Regulations (IRR) Committee, Oversight Committee, Implementing Agencies, Government Owned and Controlled Corporations/Government Financial Institutions, other government agencies, Regulatory Bodies, Private Sector, Academe/Institutions/International Financial Institutions, Non-government organizations, Private sector proponents, National Economic Development Authority, Economic Policy Reform and Advocacy and the media. A total of 224 registered, 85 of which are women and 139 are men.

Benjamin Turiano, Development Information Director III of NEDA, facilitated the public hearing.

At 1:55 in the afternoon, the public hearing formally began with the singing of the Philippine National Anthem.

*Mr. Turiano*

We welcome you all to this afternoon's public hearing on the proposed amendment to the BOT Law. Some might ask a question as to why we are holding this public hearing this afternoon. We might not be on timing considering that the election is on Monday. But we would like to reassure you that this event is not political. In fact, this has been sponsored by some independent financing agencies like the National Economic Development Authority, agencies for economic development, the Action for Economic Reforms, and Economic Policy Reform and Advocacy.

And to welcome us all, I would like to call on our assistant director general of NEDA to give you the welcome remarks and overview of the proposed amendments to the BOT Law Implementing Rules and Regulations, ladies, and gentlemen, NEDA ADG, Rolando Tungpalan.



WELCOME ADDRESS  
ROLANDO TUNGPALAN  
Assistant Director-General  
NEDA

Thank you, Benjie. As I entered the room, I thought it was a long room and might minimize the interactions by those in the upfront and those who are behind. We hope we could manage to elicit the widest discussion, suggestion, to this public forum, notwithstanding the way this room is configured. Rest assured that there are no first class and second-class seats in a public hearing as this. But let me start my statement.

Distinguished guests from the private sector, the academe, civil society, donor partners, government, the general public, ladies and gentlemen, at the outset, I wish to welcome you all to this public hearing on the proposed amendments to the rules and regulations of the BOT Law. I am impressed by the interest with how the project was strongly manifested particularly by the fact that in this forum, articles of media have focused on public-private sector investment. BOT arrangement has been a major type in the Philippines' infrastructure development since early 1990s. The government has been trying to provide the most appropriate incentives to mobilize the private resources for financing the construction of infrastructure. It is recognized that the private sector has an indispensable role. I recall that Secretary Neri. He mentioned to us the many things he sees in the private sector, that it is characterized by private sector corruption. I think it is easy for many of us to agree to this statement. In the early part of the BOT, it was once heralded that the Philippines led in showcasing BOT and yet many of these BOT projects seems to have translated into contingent liability to casual liability. But I think now, it is a thing of the past. The MTPDP and companion MTPIP has gone down to meeting the development objectives in order to catch up with the backlog and accelerate economic development. We are committed to increase spending to about 4.5% GDP from 2-3 in 2003 and 2005. In last week's infrastructure session, the challenge was to increase the infrastructure development in the GDP not only to catch up with the lost time but to prepare for the challenges of the present century the comprehensive infrastructure development. These projects to have total to approximately 1.9-trillion. The 66-billion would involve public-private partnership investment. Recently, Secretary Neri presented before the American Chamber of Commerce around 74-billion selected priority projects, which are up for bidding and targeted by 2010. Among these are the North Luzon Extension PROJECT, Panguil bridge

in Mindanao, North Luzon Expressway Project...East West, North and South MRT capacity expansion. The Philippine Development Plan in March this year likewise NEDA presented this project involving those for PDP.

Today, we are going to another important process-that of having the BOT-IRR once amended and consistent with BOT law itself. My colleague, ADG Ruben Reinoso, will present the proposed amendments. These proposed amendments were taken from our own experience in processing at the NEDA-ICC. Many of these encountered protracted processing schedules and accountability. Unlike most public hearing, today's event benefits from presentations and a focused reaction of a select stakeholders, a cross-section of non-GO partners. Their individual presentations may be the springboard for the wider participation of the rest of you this afternoon. We encourage you all to be constructive of your comments and even better to provide so called language on specific provisions of the proposed amendments to reflect as comments and suggestions.

This event likewise benefits support from the USAID, particularly EPRA as headed by Dr. Cielito Habito, our erstwhile head of NEDA-DG and our erstwhile NEDA head, Dr. Canlas.

Indeed, true partnership may be achieved with all of us having a shared objective of our country's development. We owe it to the Filipino and I look forward therefore to another productive day.

Thank you and good afternoon.



PRESENTATION OF PROPOSED AMENDMENTS OF THE BOT LAW IRR  
**RUBEN REINOSO**  
Assistant Director-General  
NEDA

Thank you Benjie. To all colleagues in the government, partners from the private sector, donor community, civil society organization, a pleasant good afternoon. As we are all aware, RA 6957 otherwise known as BOT law was enacted sometime in 1990. It has undergone one amendment, RA 7718 and at least two (2) amendments to the IRR. The intent of the law is in the IRR of the BOT law which seeks to review on a continuing basis the provisions of the IRR with the end in view of streamlining and expediting the approval-process, and hopefully encouraging greater private sector interest in the development undertaking of the government. The proposed amendments emanated from suggestions from other government agencies, BOT committee, and private sector, who are interested to participate in the BOT process, deliberated and discussed among government agencies, BOT Committee as well as the cabinet of Gloria Macapagal-Arroyo. The proposed amendments being laid down seek to further improve processing of a streamlined and expedited BOT proposal. It is very long but we will just present to you the substantive proposal to amend the BOT-IRR.

*Sec. 2.2 Eligible Types of Projects*

The requirement for a cost recovery component covering at least 50% of the project cost of eligible projects, or as determined by the approving body is being proposed for deletion.

The BOT Law did not give explicit authority to the approving body to determine such cost recovery component. Further, Section 2 of the Law did not state a cost recovery component. However, such component may be prescribed by the ICC in its review/approval of the List of Priority Projects

*Sec. 2.7 Approval of the List of Priority Projects*

While the present IRR mandates the approving body to approve individual projects and contracts, the proposed amendment mandates the approving authority to approve the List of Priority projects as endorsed by the head of agency/LGU. Said list shall have a 2-year validity period. As for unsolicited projects, the ICC shall only determine the reasonable rate of return on investments and O&M costs.

This amendment is being introduced to reflect the intent of Section 4 of the BOT Law. However, only those projects approved by the approving body shall be included in the List of Priority Projects. Nonetheless, detailed guidelines on the approval process shall be formulated by the concerned approving body. This gives agencies/LGUs greater flexibility and accountability in pursuing BOT projects.

*Section 5.2 Publication of Invitation to Pre-Qualify and to Bid*

The proposed amendment requires the head of an agency/LGU to approve the bid/tender documents, including the draft contract, before publishing said invitation. Since project development is undertaken by the agency/LGU, the agency/LGU should likewise ensure that all project documents, including the draft contract, have been prepared diligently before it is bid out.

The proposed amendment requires the agency/LGU to consider all applicable laws, rules and regulations in the formulation of the pre-qualification requirements during project tendering. This will ensure that the requirements for pre-qualification do not violate any law, rule, or regulation that may apply to a specific pre-qualification requirement.

*Section 5.5 Pre-qualified and disqualified proponents*

The appeal fee to be filed by a disqualified proponent together with its appeal for reconsideration of its disqualification has been reduced, from the present ½ of 1% to 1/10th of 1%. Said fee is being reduced since past experience under a similar protest fee under RA 9184 (Procurement Law) reveals that the amount may serve as basis for a court to grant a request for a TRO since this impedes on the basic right of a contractor to due process. The reduction will also lessen the constraints on the part of a disqualified proponent in appealing its disqualification.

*Section 10.9 Approval of Unsolicited Projects/Contracts by the Approving Body*

Said section is being proposed for deletion since the approving body shall no longer review projects and contracts, except for those mandated by the BOT Law. Since the approval of the approving body shall apply only to the list of priority projects, pursuant to the intent of the BOT Law, the detailed review and processing of individual projects and contracts shall now be the accountability of the concerned agency/LGU.

*Section 12.1 Execution/Approval of the Contract*

The proposed amendment designates the concerned head of agency/LGU as the signatory for the contract. Prior approval of the project and contract by the approving body is no longer necessary. Said section also requires that the agency/LGU transmit a signed copy of the contract to the NEDA Board through the ICC for information only. This amendment clarifies the approving authority, being the signatory, to be the head of agency/LGU for a specific contract.

*Section 12.11 Contract Variations*

The proposed amendment to this provision identifies the head of agency/LGU as the approving authority on any contract variation during contract implementation. Any

variation implemented without the approval of the head of agency/LGU shall be considered void.

The amendment is being proposed to clarify that being the signatory for the government in the contract, the head of agency/LGU is likewise mandated to authorize/approve a contract variation.

*Section 15.3 Transitory Provision*

The proposed amendment shall make the IRR applicable to all BOT projects including those undergoing and have completed project processing. Projects under implementation shall not be covered by the revised IRR, but shall be governed by their respective contracts. This amendment sets the applicability of the amended IRR to include all projects not yet implemented.

*Reduction of Timelines in the Processing/Evaluation of Proposals*

The reduction of timelines in some activities under the IRR is being introduced in order to facilitate the processing and evaluation of BOT proposals.

Under Section 5.3, for the preparation of prequalification documents for projects costing below PhP 300 million, the period shall be 15 working days from the last date of publication of the invitation to pre-qualify and to bid. For projects costing at least PhP 300 million, the period shall be 30 working days from the last date of said publication.

Under Section 5.5, disqualified bidders shall be given 7 working days from receipt of the notice of disqualification to file an appeal. Action on the appeal should be made within 30 working days upon receipt of the appeal. This is to facilitate resolution of issues during the bidding process.

Under Section 6.3, for projects costing at least PhP 300 million, the pre-bid conference should be undertaken 45-90 calendar days before the submission of bids. This gives leeway for the agency/LGU to set the period of bid preparation depending on project scope and complexity.

Under Section 10.11, the publication of the invitation for comparative proposals shall be made within 7 calendar days upon issuance of the certification of a successful negotiation between the agency/LGU and the private sector proponent. This is to expedite the conduct of the price challenge.

That's all.



Thank you.

**REACTIONS**

REPRESENTATIVE FROM THE ACADEME  
DR. DANTE CANLAS  
Professor  
UP School of Economics

*He used to be a deputy general of the NEDA and later became the director general and co-currently socio-economic planning secretary. He also served as Executive Director of the Asian Development Board. Dr. Dante V. Canlas holds the Enrique Virata... Economics at UP, School of Economics. He finished his BS Mathematics degree and BS Economics at UP. He has held visiting appointments at the Princeton University, Northern Illinois University and in the Institute of Developing Economy in Tokyo.*

Thank you very much, Benjie. It's a pleasure to be here and be a part of this very important public hearing. I've organized my remarks starting from... and a general observation that I hope will underscore the importance of this public hearing this afternoon and also my assessment later.

Let me start by saying that the BOT Law or RA 6957 as amended by RA 7718 is the primary legal instrument that...for PSP in infrastructure development program of the government. This is very clear from the Declaration of Policy, Section 1.1 of the law. As such, it can hold a basis for PSP in infrastructure development. And we know, everybody of us in the room that the PSP is a strategy of the government as spelled out in the MTPDP. In this context, the hearing on the proposed amendment to the IRR can be expected to have a significant impact on the state's infrastructure system. Now, next PSP, we all know is a viable integration to our partner in survey from a specific infrastructure facility...and potential users who are willing to pay the fee for the service can be excluded from the survey. And there is a reason private sector may offer to build the infrastructure facility provided that they can recover cost which is now normal profit. And creditors offer financing...in normal traffic is minimal or manageable. If the expected net benefits to all parties have been realized in the project, PSP has now been materialized. We, in fact, agree that the proposed amendment would want to give preference the post-recovery mechanism. Next, it seems clear that the BOT undertaking, in principle, aims for mutually beneficial

exchanges among the parties involved. All changes are governed by contract, whether explicit or implicit. Government procurement of any infrastructure facility is covered by explicit contract. The rights and responsibilities of the parties are spelled out. These rights and obligations are undertaken under risk and uncertainties. Contingent contracts are written. At the time of writing of contract, if the parties cannot handle... and so provisions are written allowing re-opening of contract negotiation under certain conditions...if the contracts are incomplete and they have to be opened at some point.

In actual implementation, agencies may go overboard and therefore you need an oversight body that will be looking at some of the conditions that can be spelled out for contract reopening.

Now, with all those general observations, let me turn to some specific comments to the proposed amendment of the IRR. I will leave myself with two (2) or three (3) sections on the proposed IRR. These are on list of priority projects with the approval of list of projects, together with the oversight ...with these changes of...On Section 2.3, the proposal is to delete provisions which states that "Priority projects shall include but not be limited to those identifies in the Medium Term Philippine Development Plan (MTPDP), Medium-Term Public Investment Programs (MTIP), Regional Development Programs (RDPs), Regional Development Investment Programs (RDIPs) as well as specific LGU development plans. The MTPDP and the companion document MTIP guide the formulation of the regional development plans by the regions, and the local governments in the formulations of the local development plan. Now the proponent submits the reference to the ICC and all its related documents and refers merely to a list of priority projects to be submitted by the head of agencies to an approving body. I believe this is unfortunate. The key word is priority not list. When national government agency submits its lists of priority projects to an approving body, the agency must have done the necessary project evaluation and cost benefit analysis even in preliminary form to have a basis on determining why it's called a priority project. Having done so, it's then prepared a list of priority projects that may be submitted for inclusion in the MTPDP and companion document MTPIP. If the agency submits a list of priority projects that does not appear in the MTPDP and MTPIP, the approving body might view at as a mere project title. If the agency had not made any form of project evaluation, then the approving body has no basis of approving the list of projects. The list has to be returned to the agencies, resulting to delay and with unwanted contract cost. The point is this: the approving body when they may release priority must be assured that the agency had really done priority work including project evaluation cost-benefit analysis... And removing the reference to MTPDP and MTPIP and related documents for the region may seem to the approving body that no such work has been undertaken.

The approving body knows fully well that you cannot build a modern infrastructure system, BOT or otherwise, on the basis of the project title. And the returned list submitted to the agency... project motivation that delay and project may be rushed and utterly demented at the great loss of the country.

My suggestion is that the IRR must be as unambiguous as possible to proposal to delete those reference to the MTPDP and other formulated guidelines. Again, later, it's just

at this point in time, I just know that all these guidelines have been evolving in reaction to some specific conditions and again remove that and then come up again with initial guidelines that will take a waste of time.

So the IRR must be unambiguous as possible and not be procedurally insufficient. It should state clearly the official documents where the lists of priority projects come from. And the MTPDP or MTPIP, Regional and Local Development Plan are the starting point.

If we cannot plan MTPDP or MTPIP as source of priority projects then which document can be planned? We must also know that before, the oversight agencies DOF, DBM, and NEDA are working closely to strengthen the use of MTPDP and annual budget of the national government. We cannot process MTPDP and MTPIP separately. One document should be linked to another document.

And the other thing is that initially the reference to MTPDP and MTPIP... and we learned the submission to agency concerned create too many entrances before you know it... Later, this point, I just raised, proposed section 2.7 entitled approval of list of priority projects. It replaces projects by list of priority projects. If we carry it out, then we must be assured that the agencies have done the proper project evaluation and related analysis. The approving body must articulate this requirement in the IRR and make it an agency with responsibility. It will help spell the perfection that the agency will likely emerge from all efforts of assorted lobbying and compliance.

The proposed changes Sections 2.3 and 2.7 maintains 2.8 and 2.9 which styles to consider either time by placing the phrase "the approval of project platform contract" with an "approval list of priority project." The oversight function currently exercised by ICC is significantly reduced if not exculpated. The major oversight role of the ICC is to look into the fiscal impact of major capital project. And historically, we know that the ICC is being chaired by the Secretary of DOF whose office has been strengthened, following the Foreign Debt Crisis of 1983. Before the crisis, for example, contingent liabilities of government and corporations were not properly incorporated in project evaluation, that resulted in a ballooning of foreign debtor liability from government corporation which was guaranteed by the government.

The proposed IRR will now...2.9 Policy on Deviations from Approved Contracts. Without any oversight on variation orders, for example, the country is inviting another Foreign Debt Crisis. We know that there will always be intensive capability problems in the agency level. We cannot expect all senior officials of the agency in the interest of the project... It sounds that they may be motivated by self-interest... And so there's an intensive campaign problem that will arrive... And therefore, if you remove oversight over their reaction, that could create a cause of a rotten government...

Now, I will not move to other proposed amendments of IRR, I hope the other reactors will, given the time constraint.

To me, while I sense from the proposed IRR at hand seeks systematic efforts to weaken oversight function of ICC, I don't believe this is the way to modernize the

country's infrastructure system which can just lead to depriving... and that is bad for the country.

But I agree with empowering implementing agencies. In fact, I am of this belief that they must "own" the projects that they propose but of course, they must raise their technical, financial and legal expertise.

Oversight work must stay and be strengthened. And here, this must be guided by actual experiences with BOT projects, particularly those that failed.

I also agree that there's a need for streamlining the work of ICC. At the most rudimentary level, membership must be limited to the oversight agency, the DOF, which shall ensure consistency with the fiscal program including fiscal incentive from the government. You know that the work of the government is trying to rationalize this special fiscal intervention ...The DBM should also be there. It will take care of any budgetary scores to the project and ensure consistency with new law on government procurement because it chairs the procurement board which is a newly-enacted law. BSP is needed to ensure that the rate of the banking system... which many are minimal and all financial flow from the project are alive and existing BOT project on the matter... And lastly, the OP Legal, so that someone could be looking up at the legal requirements.

And lastly, the requirement for...which has been to put to use because it is specially a very helpful committee and the need for the InfraCom of the NEDA Board, that is another IAC... And at the very least, it does recommend policies and infrastructure that it mandates, and can be counted for help on highly technical matters.

Thank you very much.



REPRESENTATIVE FROM THE PRIVATE SECTOR  
**ATTY. GEORGE DELA CUESTA**  
Legal Counsel  
Hanjin Heavy Industries and Construction, Ltd.

*Atty. George de la Cuesta is currently the in-house counsel of Hanjin Heavy Industries and Construction Company, Limited. Prior to that, he was counsel for Mirant for seven (7) years. He handled the implementation of two (2) of the biggest BOT projects of the country. He was also previously a consultant to the PNOC-ENC, where he advised on the legal framework for the resolution of real property taxation. He used to be with DENR where he provided legal advice to the presidential staff corps on water resources information management. He used to be an associate of the Philippine Office of the Chicago Bay Firm of McKenzie where he worked on a multi-million project such as the Catandan, another BOT project. He is a graduate of the UP College of Law and his undergraduate, also at UP.*

Thank you, sir. Good afternoon everyone. Let me just make a clarification. I would not claim that I represent the business sector because a lot of you are here. And you might think that what I am saying is wrong for I feel that it might be inconsistent with your experience. I hope you will also be able to share it with us. Maybe in another open forum.

Let me just say at the outset that business supports any plans to expedite PSP development process.. A project that gets approved in a short span of period generally means less developmental and construction cost. It also means fast delivery of services to the public. Experience tells us, however, that speedy approval does not always translate into a project, which could withstand scrutiny. Experience tell us also, on the other hand, that the contracts could still be nullified by the courts, turned down by Congress and discredited by the media and the public even though it went through a long and rigorous process. In both these instances, there's always a proponent or investor or businessman, who reaches the highs and lows. It is the businessman left fighting the government and parrying questions from its stakeholders. In particular, it slanders. To generally allow the businessman to spend their money on account of a businessman's hesitation... there are modifications and ratifications. In light of these experiences, the ultimate concern for the businessman would be on how to ensure the investment would be protected?

A review of the proposal and existing regulations, business is usually guided by the following questions:

Let me discuss the first question. Will it entail cost? On its face, the proposed IRR seems not to produce such an effect. Cost may be incurred. However, if the agency-LGU does not have sufficient sophistication to complex PSP contracts, this plan of institutional capacity of government agencies is not imaginable. In fact, it has been documented. Now, these agencies are having difficulty in implementing development projects. I would like to cite the Commission on Audit 2005 Report, which studied five (5) PSP projects. All of the five projects failed. In the report, the COA concluded that, and I quote: "The PSP projects were not sufficiently implemented citing governmental and public interest in view of the selection of the appropriate skills. In proper manner, inadequate contract evaluation, all the five projects were not delivered as scheduled due to, among others, lack of institutional capacity of implementing agencies and inadequate project planning and design. "This study was conducted less than three (3) years ago.

One wonders whether all agencies are now equipped of institutional capacity to process PSP projects on their own. It would also be interesting to know how LGUs, which are now one of the approving bodies, are doing in terms of capacity building. I asked because from my experience in dealing with a quasi-public corporation cooperatives. And I am talking here about class A cooperatives, as classified by the National Electrification Administration. It is not unusual for renegotiations to be sought, due to misunderstanding of government financial contract undertaking, cost recovery, force majeure, liquidated damages, and dispute resolutions, among others. I believe, which American Business are required to put on record, FSA, we will get reaction from a scratch in the head, a violent outburst. But the government will be returning the readiness of the agencies and the LGUs in handling PSP projects first before the proposed IRR is enforced.

The new requirement is subjected to due diligence by the bidders, the moment that the documents come out. All development and constructional cost hinge from the documents that are offered to the businessman. Any amendment to the contract, subsequent to the award will certainly revolve around the proponent. Sec.29 of the present IRR renders the contract invalid if there are deviations from the approved contract. Sec. 2.9, in effect, discourages changes in the contract. Under the Revised IRR, the agency-LGU is bound to issue compliance with this. The proposed IRR delete the provisions in its entirety. The explanatory note explains that Sec. 2.9 is still a reference to the ICC as the approving body. With the proposed deletion, one would ask: Would changes be allowed if the agencies have already approved the contract? Or, Dr. Canlas has already expounded on that. My question is: What happens when there is material change in the contract afterwards? Who would be responsible for such deviation? And at what cost?

Next point. Will there be new requirements? The BOT Center was served at the Monetary Board for PSP projects. The concept of the BOT Center was abandoned with a directive to abolish it. It used to be that the BOT Center at DTI was a one-stop shop for businessman seeking information on PSP projects. Now, with its abolition,

businessman are seeking they could get the information to do the business, coffee shops, hotel lobbies.

Should business now get to the pre-qualified in all infrastructure agencies? Should they all now move to the pre-qualified in all agencies? I guess that is something that we have to address later on.

In relation to this, one wonders the agencies-LGUs having BOT Center issuing such regulation for its own BOT Project. Also, we have the agency-LGU posing new requirements. Who will ensure that the additional requirements will not be imposed? The bigger related issue, of course as already discussed by Dr. Canlas: Who will monitor PSP projects in general? The proposed IRR would stop monitoring after all? Will this work? Would self-monitoring eventually be a part of the Philippines' best practices? I will let you, the audience, develop your answer.

Let's go to the next question: Is it clear and consistent with other laws and regulations? Will it deviate from current practice and procedures? First point, as envisioned in the previous IRR, the ICC plays a central role in the approval of the PSP projects. It is the ideal approving body. It is cross-sectoral and a multi-agency entity. In the ICC, you will find representatives from the finance sector, the inter-structure agencies, and some regulatory bodies providing collegial approach to each other. With such collegial approach to the ICC, it is but logical to the ICC, approval as a prerequisite to Monetary Board approval of foreign loans for PSP projects. Since the ICC will no longer have this cross-sectoral review, will ICC approval be a requisite to foreign loans not only the list of priority projects which shall require Monetary Board certification? How about projects requiring funding from ODA? Will the ICC retain its oversight function? What's the advantage about having this ICC is that it allows coordination of multi-agency involvement. I handled the project at San Roque and Cataganan Project. One wonders how coordination and monitoring will be facilitated for these types of projects without multi-agency oversight.

Second point. Oversight overlap.

Since we are talking about oversight, I would like to pose a query on how the proposed amendment will work in, like the EPERA or Electric Power Reform Act. There are entities providing oversight functions of the agencies. I am referring of course to the joint committee of Congress, the PSALM or Power Sector Assets and Liabilities Management. All these agencies exercise function in regulating these agencies. There are other examples which you may cite which shows jurisdictional overlap. What comes to mind is the Philippine Reclamation Authority which has conflicting jurisdiction with the Philippine Ports Authority and PPA with conflicting powers with DPWH in terms of locating the foreshore with the Department of Environment. I remember in passing for the government to realize the importance of inter-agency and cross-sectoral approach.

Next point. Proliferation of unsolicited projects. Putting the LGU-agency at the forefront of the PSP contracting is not objectionable in principle. One concern is that the LGU-agency, no independent review or approval will be made except for BOOs

which requires the president's approval. As stated in our first bullet, this might result into serious complication as far as institution is concerned. The legal concern is, however, that the absence of an inter-agency cross-sectoral approach could lead to proliferation of unsolicited proposals. Without a monitoring/oversight body of the PSP projects, there is now a wider window for unsolicited proposals. While I must admit that for some businessman, this could be a welcome change. But I hope the others can discuss on the problems of unsolicited proposals further. So, I would not dwell on it now. Allow me to say that most of the problems that the government has encountered in the PSP projects are related from unsolicited proposals.

Let us go to the third question. Is it reasonable? The proposed IRR downgrades the ICCs role in approving the list of priority project. However, it is not clear how the ICC approve the previous rate of returns (RoR) without interfering in the project itself and the contract.

I guess other points are self-explanatory. Majority of the changes to the IRR pertains to the reduction of period for the parties to act. The concern at this point is whether there are repercussions in case of delay on the part of the agencies-LGU. The IRR is silent on this. Are the... directory or merely mandatory? In a court case, it is not unusual for a litigant to seek extension for a court case. It is also not unusual to grant that motion for extension. Will extensions be allowed in case of PSP projects? I guess the answer is yes, for reasons that are justifiable. If this is the case, I see no compelling reason for the timelines in the IRR for the sake of the reduction.

General observation. This is one serious revision for seven (7) days for the disqualified proponent. This is more stringent, I would say, than the rules of court. I was thinking how about the foreign bidders coming from different time zones. I don't know how it will apply in the end.

Another is opening of Sec 5.4 which mandates the agency to ensure that all pre-qualified/pre-qualification requirements are consistent with all applicable laws, rules and regulations. Do we really have to put this in the IRR?

The agency-LGU is duty bound to act and comply with the law. What makes the provision more serious is that it does not say what will happen if the agency-LGU fails to comply with the mandate.

I think my time is up. Maybe only one more minute remaining. Let me just go to the most important question. These are questions from the perspective a businessman. Will my investment be impaired? Sadly, we cannot answer the question and determine.

I am really looking at the proposed regulation. At the end of the day, it is how the IRR is enforced which matters. The PIATCO case is an eye opener for us. Here is a contract under the unsolicited mode, high level of negotiations, approved by NEDA, negotiated by the top law firms of the country, overseen by multi-lateral lending agencies, yet the contract was struck down by the Supreme Court. It's such an embarrassment to the parties involved. Can you blame the current BOR Law and its IRR for what happened to the PIATCO case? I guess not. For there are, thankfully, PSP projects

under scrutiny which continue to have harmonious relationship with all its stakeholders. Under the present regulatory board, I would dare say that there are more PSP projects existing than those that are considered deviation. But sadly, what are highlighted in our society are the failed contracts and projects. The good name of a businessman who has become fairly or unfairly synonymous to a business fiasco. In light of experiences, a businessman would like to avoid becoming such a business fiasco. In closing, for business laws to fast track the proposed development projects, the business community's more fervent desire is to see a process that will ensure that a project will be able to withstand any legal, financial, technical and procedural inquiry.

How the proposed IRR will be implemented in the light of past lapses is something that the business community will be watching closely.

Thank you.



REPRESENTATIVE FROM AN NGO  
**ATTY. NEPOMUCENO MALALUAN**  
Trustee, Action for Economic Reforms  
Co-convenor, Access to Information Network

*Atty. Nepomuceno Malaluan is a trustee of Action for Economic Reforms, a co-convenor of the Access to Information Network, and a representative of the Global Transparency Initiative. He holds a BS Economics and Law Degrees at UP-Diliman.*

Thank you very much. And we thank the BOT-IRR Committee for giving us an opportunity for expressing our views on the revised IRR of the BOT Law. Like Attorney dela Cuesta, I do not represent a unified view from the Non-government Organization. My positions here will reflect on my engagements with organizations with such an issue on private sector participation process particularly in relation with power and water. My organization, Action for Economic Reforms, has done several studies about regulatory issues surrounding the power sector. And on power, I am co-counsel on the tax power group in our attempt to intervene in the rehabilitation proceedings of the Maynilad and MWSS. If I may summarize based on a reading on the proposed amendments, we can sum up into the following:

The project subject to approval, whether solicited or unsolicited, and the subsequent deviation from parameters in the terms and conditions of draft contract, contract deviation under contract execution, and the coordination in one dark of onward project shall now rest primarily, if not solely, with the contracting agency-LGU. The Investment Coordinating Committee or NEDA-ICChe Local Development Council which chartered the present IRR, has approving authority for BOT contract as well as other variations and deviations thereof shall now rest on approval of the list of priority projects. The only exception is for purely owned and operated contracts and contractual enumeration in the present IRR. The contract requires approval of the president, NEDA-ICC and the Board retains its recommendatory authority, the oversight function of the NEDA-ICC. Unfortunately, the reference materials that were distributed in this public hearing were composed only of the amendments and those explanations are provided in the BOT-IRR Committee's analysis of the present problems of the present IRR and how the proposed amendments will address them. Suffice it to say that the proposed substantive amendment strips to the barest the oversight function with the objective as stated earlier by Mr. Reinoso of fast-tracking the approval of the contract. And we certainly hope that this public hearing will be discerning of the issues and the soundness of the substantive changes. But rather than on focusing on the issues of trade-off between existing oversight functions of the NEDA-ICC, I would like to approach this question by looking at how the changes derail

with progress that confronted consumers and taxpayers and the public sector advocates in the private sector management made possible under BOT Law. Our experience has been that the BOT Law and its IRR has in general resorted to a violation of the freedom to access to information and the private sector participation redress contracts that are clearly imbued with public interest.

This matter as I mention that the freedom of access to information is highly considered in the BOT Law and the present IRR unexpectedly and even less so in the actual private sector infrastructure private contracts. More specifically, the BOT Law refers exclusively to private sector concerns in particular the recognition of the indispensable role of the private sector as the main engine of national growth, provision of incentive, and a financial support of minimum government regulation and less government undertaking, encourage private financing, construction operation and maintenance of infrastructure and development projects. The fact that the private sector infrastructure development projects are imbued with public interest, however, is indisputable. The terms of such contract, its amendments and its resolution of undisputed lease contracts all have direct effects. And this is the tariff, rates and toll as far as public interest is concerned, in terms of obligations and performance on the grant of special privileges on fiscal issues such as custody, debt, clarity. Yet, there is no variance policy in the BOT Law and its IRR on public access to information operated and redress and they lose to cooperate...completely in the BOT Law and in the IRR which is discussed. For example, there are no mechanisms in the BOT Law and its IRR of public sector access to information consultation in project development phase in the level of the agency or group.

In the project solicitation phase, there is a requirement for publication and audit of priority projects and of investor pre-qualification to bid. But this requirement of publication to bid is really intended for private sector proponent. Access to pre-qualification requirement likely discourages access to such public document. In the bidding phase, access to information and participation has become even more surmountable. Issuance of these documents which contain all the material details of the proposed transactions, the fact that the pre-qualified bidders with fund requirements solicitation in the non-voting by a facility bids and awards committee who is required from a duly recognized accounting organization.

Third, the concluded contracts, in general, make the public strangers to this contract. They have no access to consultation, no recognition in contractual processes such as contract amendments, prohibition, and dispute resolution. And fourth, is no provision on procedure of access to information within the amendments thereto. And looking at the proposed amendments, clearly, there is no attempt to address these concerns. In fact, there should be an intensification of roles in the proposed situation in case the oversight function is removed. To be sure, I guess as what Atty. Dela Cuesta has said earlier, it could be enforced in the regular courts. Past experiences like Adams vs. ... Fiasco. But we must know that the intervention is access to such fact, such legal intervention after the accomplished fact, if not straightforward. The hurdle, in particular, the third party trades to the contract which might take twelve (12) years before you can get a ruling on that issue of standing to intervene. In a recent round table discussion a few weeks ago where Dr. Gilbert Tiazon presented issues on private

sector participation infrastructure development project. He noticed a turn between taxpayers and public interest group. While the response was, while it was difficult to get everyone on the table for such contract, and in theory, the government agencies have the interest to publish. I find it hard to get along with such reasoning. For one, undertaking by the private sector is that of the government which is also public interest. And yet the right to information, participation, and redress get far better recognition than in the private sector participation framework. And for another, private participations points in part the reality of corruption and lack of capacity on the part of the government. The appreciation of such reality is somehow lost when in the contract of private sector participation, the action becomes now good governance representing the interest of the public in theory. Let me clarify that though some NGOs often oppose to privatization per se, there a lot of NGOs representing consumer public interest that are not in conflict with the private sector participation of public service which is exclusively at the helm of the private sector. My organization, Action for Economic Reforms, for once certainly recognizes the complementary role of state and market instruments in the attainment of development objectives. But the option really and we want only is for us really to be given a fair opportunity in setting our own interest in the private sector participation. I mean I heard Atty. Dela Cuesta expressed grievances on the part of the private sector thereto. We agree on the general grievances of the public. If the government will consider the freedom of access to information, particularly participation and redress in the private sector infrastructure development project, amending the IRR certainly is a viable thing to start. There could be a public hearing on the project development phase-LGU. There could be included access to public information, procedure, pre-qualification, bidding and implementation phase of such relevant documents particularly the express recognition of taxpayers and consumers within the content and providing clear remedies and relief within the contractor. I would say that instead of an immediate action after a question has been passed to the...and over after years has been overturned as far as the responsibilities of the parties. And this is rather than the immediate action to rid the courts of authority, its jurisdiction to intervene in such contracts to instead try to integrate sources of questions of both contracts within the project development, bids, and awards phase. It might seem that in the long term, we thought in greater clarification of the rules and regulations in the words of the contract. We don't have to deal probably less of a recurring issue of a court intervention somewhere down the line.

In addition to the IRR, the other areas for reform, regulatory reforms in the area private sector participation infrastructure development projects. The regulatory standing varies among sectors... But this may not... in the transportation sector, for example.

I think on the part of asserting the right to information and address remedies and redress mechanism on clear public interest issues have to be addressed in the BOT Law, IRR, the regulatory agency and the private sector participation. We hope the proposed IRR will consider those concerns. If the same considers it, we would be very happy to submit amendatory provisions to the BOT-IRR.

I did not comment on the issue trade offs removing the oversight, especially that we have an issue on that. But what I am saying here is that in both instances, whether it is stripped or retained, the fact is that the mechanism for access to information, consultation, redress have been marginalized in both cases.

May I just comment on the oversight function of LGUs of going overboard. I see the danger likely in both areas. While local agencies can go overboard, there are instances when the oversight agencies can go overboard as well.



REPRESENTATIVE FROM DONOR COMMUNITY  
**MR. BEN EIJBERGEN**  
Infrastructure Sector Coordinator

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*Public Hearing* 19  
*Implementing Rules and Regulations of the BOT Law*  
*EDSA Shangri-la Hotel, Mandaluyong City*  
*10 May 2007*

## World Bank

*Mr. Eijbergen is the Infrastructure Coordinator at World Bank in Manila. He has a strong and in-depth understanding of the transport sector policy as well as a proven track record on the public-private sector and a strong emphasis on infrastructure policies, infrastructure investment, communication and participation speeches. Mr. Eijbergen worked for a year in Washington as the Diplomatic Representative for the Dutch Community. And later on he joined the bank where he worked as a transport anchor. He worked as a transport anchor and as a...specialist and a bank liaison with Global Business...Partnership. He is the present Program Manager of the Trust Fund and will work on... transport sector as a Program Manager for the Transport Trust Fund and as a Bank Liaison for road safety. Mr. Eijbergen finished his Bachelor of Business Economics and Masters Degree in Economics at Erasmus University, Netherlands.*

THE BOT APPROVAL PROCESS: Why are projects moving so slowly?  
Accelerating and leveraging private infrastructure investment in the Philippines.  
Ben Eijbergen, World Bank Infrastructure Coordinator

### Accelerating Private Infrastructure Investment in the Philippines Introduction

- Problem: Delayed Project Execution, Unexpected Government Contribution for BOTs
- Why are projects moving so slowly?
- Example-LRT 1 South Extension
- Critical Issues: Mixed BOT Projects: Fiscal Impacts and GOP Credit Rating
- Accelerate BOT Project Execution under Government Financial Support Constraints

### LRT 1 South Extension: Mixed BOT Project History

- SNC Lavilin Unsolicited BOT Proposal and LRTA JV (2000)
- Procurement via Unsolicited Proposal under BOT Law (NEDA inputs); Swiss Challenge
- LRTA Terminates the Agreement 2005; LRTA proceeds with solicited proposal

### Lessons Learned

- Terms of initial Agreements changed as more detailed engineering and cost data became available and projects risks better understood
- Substantial shifting of risk allocation between the public and private parties that required substantial Government Financial Support

Additional Lessons Learned

Setting the stage: Funding Constraints and Stakeholder objectives in mixed BOT projects:

Balance between: NG Budget, GOCC Financial Condition, Private Equity Returns

- Government Financial Support - Resource Allocation between fiduciary role of DOF/DBM and execution role of Line Agencies and GOCCs;
- Between Government and Private Sector - Maximum NG Budget Leverage versus Maximum Profit
- Majority of SONA Projects are Mixed BOTs/GOCC

SONA Projects Funding Requirements  
Table 1: GOCC/NG/PP Project Funding Sources

CAPITAL EXPENDITURE (Millions PHP) GOCC/PPP Project	TOTAL	ODA	NG	GOCC	PRIVATE
Port Irene (CEZA)	2750	0.00	00.00	550.00	2200.00

Subic Seaport (SBMA) 20% GOCC	6911.0	0.00	00.00	1382.36	5529.44
Phase 1	150.0	0.00	0.00	150.00	0.00
Phase 2	46988.0	0.00	0.00	150.00	0.00
Subic-Clark-Tarlac 20% GOCC	20969.0	0.00	0.00	4193.00	16775.20
Northrail to Tarlac	25152.0	20121.6	5030.40	0.00	0.00
Caloocan-Alabang (commuter)	2521.0	2016.8	504.20	0.00	0.00
Alabang-Calamba	4413.0	3530.4	882.60	0.00	0.00
Calamba-Lucena	10988.0	8798.4	2199.60	0.00	0.00
Lucena-Legaspi	23531.0	18824.8	4706.20	0.00	0.00
Legaspi-Matnog (Long Distance)	16732.0	13385.6	3346.40	0.00	0.00
Coastal Road Bacoor to Cavite (PRA)	5576.0	0.0	0.00	1115.20	4460.60
LRT-North Ext. to Monumento 42%/58%	36728.0				
DOTC/LRTA		15425.76	0.00	0.00	0.00
PPP		0.00	0.00	0.00	21302.24
LRT-North Ext. to Monumento 42%/58%	35516.0	0.00	0.00	0.00	0.00
DOTC/LRTA		14916.72	0.00	0.00	0.00
PPP					20599.28
<b>CAPITAL EXPENDITURE (Millions of PHP)</b>	<b>35516.0</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>NG/PPP PROJECTS</b>					
	<b>TOTAL</b>	<b>ODA</b>	<b>NG</b>	<b>GOCC</b>	<b>PRIVATE</b>
C5 link to NLT PPP/DPWH					
ROW (DPWH)	1320.0	0.00	1320.00		
Construction (PPP)	3704.0	0.00	0.00	0.00	3704.00
San Jose Airport	3030.0	0.00	0.00	0.00	3030.0
Panglao Bohol Int'l Airport	2700.0	0.00	0.00	0.00	2700.0
Busuanga (Palawan Airport)					
Phase 1 (DOTC&PPP)	15.0	0.00	15.00	0.00	0.00
Phase 2 DOTC	163.0	163.00	0.00	0.00	0.00
<b>CAPITAL EXPENDITURES PPP PROJECTS</b>					
SLEX Widening Alabang to Calamba	3000.0	0.00	0.00	0.00	3000.00
SLEX Calamba-Sto. Tomas Expressway	1560.0	0.00	0.00	0.00	1560.0
Lipa Batangas Exp (STAR)	1900.0	0.00	0.00	0.00	1900.00
Pangul Bridge in Mindanao	2671.0	0.00	900.00	0.00	1771.00
<b>TOTAL</b>	<b>258.998.8</b>	<b>97163.1</b>	<b>18904.4</b>	<b>16789.0</b>	<b>126.122.4</b>
<b>PERCENT DISTRIBUTION BY FUNDING SOURCE</b>		<b>37.5%</b>	<b>7.3%</b>	<b>6.5%</b>	<b>48.7%</b>

SONA Project Fiscal/  
Leveraging Impacts

Table 2 SONA Project Sectors		
	TOTAL	PERCENT
Roads/bridge	35, 124	13.6%
Urban rail	161, 167	62.2%
Airports	53, 046	20.5%
Ports	9, 662	3.7%
	258, 999	100.0%

Fiscal and Leveraging Impact Assumptions:

- GOCC projects funded primarily by ODA require a 20% NG counterpart contribution for local currency expenditures (ROW, taxes and duties, administrative costs, etc.)
- GOCCs projects assume a 20% GOCC contribution and 80% Private Sector equity; debt ratio
- FIRR Risks
  1. Tariff levels are sufficiently high to cover Development, Construction and Operating Procedures over the life of the BOT contract and amortize the private sector loans; and annual operating net income to distribute shareholder dividends that achieve a 15-20% return;
  2. Timely NG and GOCC contributions during project construction

BOT Priority List: Process and Criteria  
Raising the Bar

Phase I  
BOT Modality  
Government Financial Support  
Risk Allocation

Phase II  
Feasibility study requirements  
Financial Plan  
Draft Concession Agreement/Risk Allocations

Phase I BOT Modality and Government Financial Support  
Two step priority list process:  
Phase 1: Select the appropriate BOT mode and identify Extent of Government Support  
Phase 2: Submit Project to NEDA/ICC After Feasibility Study

Phase 1 Project Data Requirements to assess the appropriate project modality, government and private sector fiscal/FIRR risks: ERR/FIRR balance

- Capital and Recurrent Cost Estimate Based on 5-10% Engineering Level
- Cost Contingency Factors that reflect substantial uncertainty (25-40%)
- Construction Schedule that is realistic and includes Capital and Recurrent Inflation Adjustment
- Tariff assumptions that are based on current levels and service delivery performance
- Demand Analysis
- Financial Plan that identifies all sources and uses of funds required for project design, construction, operating and maintenance and major renewal

#### Financial Plan Assumptions

- Will the project require NG Budget support, ODA, and/or additional GOCC equity?
- Is the project in the GOCC or Line Agency Budget, MTEF?
- If project sponsored by a GOCC, has the board approved the GOCC contribution and/or corporate loan guarantees?

#### Private Funding

- Are the terms of the loans from the private lenders consistent with current market practice?
- Is the FIRR sufficient to attract the required private equity investment and consistent with current market practice?
- Are the tariffs based on current levels?
- Is the demand forecast reasonable and reflect current experience?

#### Phase II Feasibility Study Requirements

- Engineering feasibility at 15-22% of Final Design (specific guidelines for each sector)
- Allows for more accurate Capital Cost estimates and Environmental Impact Analysis
- Rigorous Demand Analysis that accurately measures operating outputs and performance, operating and maintenance costs, and majority rehabilitation requirements over the concession life
- Detailed Financial Plan that reflects market Private Sector Equity returns; market driven domestic and foreign loan terms and conditions: Foreign Exchange and Inflation factors related to domestic and foreign content, etc.
- Draft Concession Agreement that allocates risks between the public and private sector and the balance between social benefits and private returns (ERR/FIRR balance)

#### Required Activities for ICC/NEDA Priority List Approval based on possible guidelines:

- Assess the Extent of Governmental Financial Support and Determine the Appropriate Project Modality (Public, Corporate, Private or Mixed)
- Based on the Appropriate Modality, determine the Extent of Government Financial Support (Direct and Contingent Liability)
- If project includes Government Financial Support, determine if the sponsoring Line Agency/GOCC has the NG budget Allocation or GOCC Board Approval

- Project must have NG MTEF Budget Allocation or GOCC Board Approval before proceeding to the Feasibility Phase (25-30% of Final Design)

Following this process: What would have been the result for the LRT 1 project?

- It would have been built and would be carrying passengers
- We would have sorted out the right financing modality with a sound and transparent risk sharing agreement between private and public
- Unlike MRT 3...

IRR BOT Law

- The IRR should reflect an upfront rigorous project preparation and appraisal by sponsors, line agencies and oversight agencies
- Not meant to slow down the process but to accelerate
- Extra funding needed to prepare the feasibility studies, project preparation facility

*Mr. Turiano*

Thank you, Mr. Eiberjen. We are now finished with our four (4) panels of reactors.

#### **Suggestion from ADG Tungpalan**

I would like to modify the suggestion to get them up front so that we will be less dispersive, they are also scattered over the room. If it is relevant to their agencies, may we just request the members of the agencies to just pick up the microphones and help us clarify the queries. I think some of you are already comfortably seated in your department.

Okay, I was just told that you don't want to go to the front. By the way, for the open forum, you can comment or ask question on the proposed amendments and we also encourage that you write your comments in a piece of paper and we will submit to the IRR Committee. Do not worry we are not going to revise or amend your written comments. I will only correct the grammatical errors. By the way, please state your name, your affiliation and your comments or questions.

## OPEN FORUM



**MR. AQUINO**  
Congressional Planning and Budget Development Office

I would like to ask on Section 2.7: Which is more exhaustive, the MTPDP, MTIP versus the list of priorities? If you delete the plan, it may end up with the proliferation of more problematic unsolicited proposals. The delay in the approval actually comes from the lack of separation and with the past system, the solution is not to do away with the ICC. Rather, the past system should be reviewed to streamline the membership of the ICC, as proposed by Dr. Canlas, and give it purely oversight role. It is also necessary to improve the capacity of agencies to avoid delays in the approval due to deficiencies in their evaluation

As to sec. 4.3, who will now prescribe the economic parameters? Would the economic parameters now be equal or similar or across the board or be by agencies/LGU's?

As to the impact set-up, if we delete that, who is now be held as accountable agencies?

Can draft contracts as approved by heads of agencies or the LGU's be published or uploaded from the web or be made available to all stakeholders? Not only with the bidders, in fact, we had one proposal before that even the contract be uploaded from the web coming from the private sector.

Section 4.1. Official agencies don't have copies of contracts. In fact, this is the problem. This has been pointed out by oversight agencies. What happens is that the original copy of the contract is not submitted to NEDA/ICC within the specified time frame. Who would then be accountable repository agency of all filed contracts?

Section 12.2. Who approves the fundamental variations in the contract which has been approved by the Sanggunian or by the ICC....

Section 14.3, a report is filed on salient features or a copy of each contract be submitted to congress. It is all plain end to come up with the salient features. The problem is that the salient features do not tell everything, the contract does.

#### **RESPONSE FROM ADG TUNGPALAN**

These are very broad statements. It would be very unrealistic to respond to all questions but given the diversity and the interest, what we want to do now is to, if we are not able to respond to that now, be assured that they be will part of the process of bringing this up to IRR Committee. The discomfort about coming with a list of priority projects is unfounded. It is not meant to set aside MTPDP. The President has stated in all cabinet meetings that government cannot reinvent priorities because there is already the MTPDP that constitutes as the set of priorities.

But the discomfort about coming with a list of priority projects is not to relieve the MTPDP. The answer is the President has stated in all cabinet meetings, that you cannot reinvent our priority because the MTPDP constitutes our priority. I guess this is the fear that there would be outside and inconsistent with the MTPDP. And she gets to scold line agencies for de facto de-prioritizing for coming up with respective priorities.

On the constructing procurement side, I agree that public disclosure is a must for us. We are all working for the freedom of information act. The fact that even draft contracts seem to be inaccessible to many, except to those who are directly involved, is a valid concern. What we can do to agencies that do not provide us copies of contracts, I guess, there are other laws/regulations that govern such behavior in case of non-compliance of line agencies.

#### **MRS. TERESITA FERNANDEZ LAMONG**

**President of Travel International and member of MRT4 Consortium**

The IRR should be made to apply to new projects unlike what the proposed transitory provisions provide. The latter states that the new IRR will apply to all projects so long as they are not yet in the implementation stage.

*Mr. Turiano*

If only I can answer your question, but I am afraid that I am going to lose my job!

#### RESPONSE FROM AGD TUNGPALAN

Sometimes I'm very bookish, I recall that...for policy today under BOT IRR, I know we all have our positive and bad experiences... to be constructive and focus on amendments to IRR, to be forwarded to IRR committee, I am reminded that this is a hearing not a debate...we are not bound to reply to every comments, otherwise we will lose focus... I hope that's fair enough. We will have our respective roundtable over coffee, dessert. But lets choose the forum. I have nothing against anybody. I'm just reminded to focus on the objectives of today's event.

#### MARLYN AQUINO

Sycip, Salazar, Hernandez

Just a comment. There is an attempt to change the system from a centralized system to devolution of bidding process to agencies and LGUs. As I recalled, most of the comments of the private sector is really the delay. I don't think there is an expertise to run the whole process, and may not be necessarily called in a new system. The system is already 80% good for the whole process. We can streamline it for the days to be shortened but we are really here experimenting for a new system. We are trying to empower the LGU which may not have the expertise, the legal expertise, for example.

Negotiating an infrastructure project requires a lot of expertise, for example, a trained lawyer for five (5) years in infrastructure contracts. It is so hard to be optimistic that the LGU-agencies will have the necessary expertise in negotiating infrastructure contracts of the government. It seems that we are losing the system that the ICC has developed the expertise. We need to develop the expertise so that the lawyers of the government can sit down with the lawyers of the private sector. They are well equipped to represent the interest of the government. What we have now is a legal memory. We used to have those who know how to handle cases of force majeure, delays, and liquidated damages. But with the new system, we might lose the expertise. We should enhance it. In fact, being in the private sector, we are disheartened all the time down to the lawyers of the government. The lawyer of the government is so good in defending the rights of the government. In fact, we can really see the government do on its own because once it turn out to be a grossly disadvantageous contract to the government, the private sector also lose. I think it is really important for the government to preserve such expertise. I don't think a devolution of each and every agency-LGUs can retain such expertise. I'd like you to consider that.

#### RESPONSE FROM ADG TUNGPALAN

Noted suggestion from the participants: (1) to keep a strong oversight function, (2) to improve the competencies of the line agencies so that they can also be accountable, (3) the need for quality project preparation despite the review process.

*Mr. Turiano*

For those who have questions, you can put it into writing and send it to us.

**JOHN FORT**  
American Chamber of Commerce

...in one case, the airport terminal. I don't want to focus on the negative side of it rather on what we have learned. Secretary Neri, in his speech last fall, along with other lawyers, believed there were billions of dollars lost just for a single project.

...I hope the Philippines can get this right. It seems to me that being right is not giving the corrupt agencies to get it wrong. I wish it was otherwise. I heard Secretary Neri saying that the agencies might do it better. But the record is mixed. About the surveys that the Philippines is a corrupt model...

The government should change that perception and by performing to international standards. I heard earlier from the World Bank representative about that. That's what the USAID has been doing since 1989.

...Let's get it right... The World Bank and USAID say that their technical assistance will be available. Last week at Shangri-la, when several government agencies attended, said that they need many dollars to get the project go. I think there is a swift challenge for the Lrt7...to draft the documents.

My question is what happened to the BOT Center? And what happened to the exercise we did several years ago? I just thought about the public hearing that I attended years ago. We were talking about the BOT-IRR. We don't have any experts anymore...What is the reason why there is no more BOT Center where the expertise can be centralized in the government?

#### **RESPONSE FROM ADG TUNGPALAN**

I presume that we heard awhile ago that the president has decided to abolish the BOT Center for reasons that it was not intended for such purpose. Originally, the BOT Center was for promotional purpose only. It clearly overlaps the Board of Investment. That is why the task was given to DTI years ago. The president feels that it does not serve its purpose. And so last year, she decided to abolish it. But nevertheless, the premise over the one stop shop where the government can go to, may have already created for a BOT Law in preparation for what may happen in the future. But it's really NEDA, in determining the amount that we really need or volume of activities where NEDA-BOT Group propose to undertake. Notice in the IRR. The BOT Center has not been provided budget for 2007 and so it cannot continue as an institution unless the president allocates funds to the agency.

PANCHO UMALI  
Villaraza Law

Requested for a solicited proposal that involved a Build-Own and Operate (BOO) or BOT variant. When is a presidential approval in the flow chart of process? It appears that in determining a reasonable return via negotiations does not mean that it is a BOO or a variant project. And hence, no presidential approval required.

TYLER HOLT  
USAID

I just want to give the views of the USAID that it has supported the BOT Center, BOT Law and its third generation amendment to the IRR. In fact, the first time that I came here in the Philippines two (2) years ago, I was immediately transported to the BOT Center-IRR bureau. And they told me the process that's being done in the Philippines. There's an open hearing first so that the people can air their comments, take the comments for consideration, draft the policies. And that is wonderful. I spent five (5) years in Egypt where the people can publicly air their comments. But afterwards, they will drive you off.

This is amazing! I also have an optimistic view in this public hearing that the consensus view on these matters will, hopefully, be translated into public policies. That's the reason USAID is supporting this kind of activity.

Someone mentioned earlier about USAID supporting project development which we still are. And our projects, in the good old days are being reviewed by the BOT Center. I think it's available and still on the table. We believe that it can be used by any implementing agency. And whatever becomes of it, we still continue to make that available. And I think there are other agencies that feel the same way like the World Bank.

There are donors who can provide technical assistance and support to project development in the Philippines, study and evaluation. But really the proper oversight should be the Government of the Philippines. And we can act as consultant to resources. And probably some are already through. But you know, we, at the USAID believe that it is imprudent to remove that kind of oversight. I learned from a couple of months ago about the SWS, getting back repercussions to the...but in that survey of November 2006, it was asked: What is the common reason the government enforces its projects including the BOT project? Perceptions are important. The most common reason given was that there was government corruption, corruption on the private contract. Fifty-five (55%) percent and forty-three (43%) percent, respectively. That is the public perception. And in contrast, that the delay of the project was excessive red tape, comes to 18%. So just a minute, regardless of the reality, I think that if we move into the area of ultra-streamlining in the interest of fast-tracking this project, I think it's just going to exacerbate the public perception that there's something shady going on. And I don't think we want to move in into that direction.

AID proves and supports BOT policies. I think, we, worldwide now, are seeing the money flowing back to the emerging markets. Private sector is once again interested in contributing source of funding, good return on infrastructure projects and the Philippines once again can enjoy that funding. The government has now finely, a little money to spend on infrastructure. The private sector is coming in to contribute its share. It's really a solution in putting more funding to infrastructure.

**DR. CIELITO HABITO**  
**EPRA**

We are also co-partner in sponsoring this, EPRA or the Economic Policy Reform and Advocacy, supported by USAID. We are working with Ateneo. But I am speaking here more from the perspective of an academe now and hopefully, not as a former NEDA also. But what I am to say would hopefully be covered in four (4) quick points.

First point comes from what Dir. Canlas said about deletion of provision on defining priority as MTPDP-MTIP and from the previous discussion, I gathered that. In fact, the intent of the president, as indicated by Mr. Tungpalan was that she insists that the agencies adhere and so what she is compelling on removing that language of consistency to the MTPDP. I only just keep that in. One could only suspect that the headquarters' deletion could open up the way for more unsolicited project because that is exactly what the problem is. When you have an unsolicited project, they do it on the part of the MTPIP. Let me mention here that after two (2) years of consultation on another modified/ a set of amendments to the IRR which by the way was actually approved last year, but was quickly superseded by the new proposed amendments revision again, we, at EPRA had help/help of BOT-DOTC center at that time. We could say now that there should be less unsolicited projects.

Unsolicited projects have become the rule instead of exception in the experience of BOT. The general consensus was that there should be less. Removing that provision inconsistent with MTPDP only invites even more unsolicited projects. So what are we doing here?

Second. NEDA-ICC oversight is not the problem. That seems the premise in removing the role of the NEDA in evaluating the project. In the 1990s, when I was the head of NEDA, we were pressured to rush the evaluation or approval of the EDSA-MRT project. Fine. It was a very big project. We had to take due diligence but we were under severe pressure...

We prioritized time in the ICC to make it faster in the evaluation. What happened? It took two (2) years to finally find the financing to the proponent. The original proponent already sold his right to the project to someone else.

In short, delay happens after the ICC approval. So in the end, we hurried up to wait. So this is the kind of situation that unfairly brings back the delay to NEDA-ICC. It is not the problem. It's the water, right of way acquisition, and lawsuit-violation of bidder that delay the project, not the evaluation. We are taking up the wrong view when we

are trying to remove that process. It takes pride precisely in naming public interest in the name of supposed streamlining and avoiding delay.

Third. Transparency is key. What is particularly bothersome to me is the information that we had is that NEDA could not even get possession of the final contract, until recently, of PIATCO which was a very controversial project. How can it be that the oversight contract of PIATCO even NEDA does not have the contract that was signed up? How can this be? How can government sponsor public interest in the project itself when we don't have transparency? And that is the reason why we are also have been taking cause for the freedom to information act for transparency in government in general. What we are trying to avoid here is the fact that some contracts actually insert into the contract that it will be confidential. And that NEDA..that DOT from sharing the contract with them because the contract says that it must be confidential. This kind of provision in a contract for a public contract like this will be outlawed. That's why we need the freedom of access to information act.

Finally, ADG Tungpalan has told us that we should be more constructive and present alternative language. As I said earlier, for two (2) years since a three-year project began, we were assisting consultation which is very expensive. We heard the private sector, government, NGO, all concerned stakeholders and came up in partnership with DTI, BOI, and UP Center at that time, NEDA and came up with a new set of IRR to the BOT. That finally got signed by the BOT-IRR Committee. The last was from DENR. But right after it was finally signed, it was ready for promulgation, then we got...In other words, it might be unfair to be described that way...This well-consulted set of revisions to the IRR was set aside. That is the alternative draft that I would like to suggest because that has undergone public scrutiny and due diligence. And yet, it was set aside for what appears now from all intervention. It could be a reckless set of revisions to the BOT-IRR.

So anyway, I would like to suggest that alternative language to look at. In the end, this proposed deletion does not seem to me to protect streamlining for the public interest. It's mainly for the interest of the private sector. It seems to me to be an attempt to streamline for some very particular interest...Now, I am pleased that many of you can agree to that. Let me ask: Can it be motivated then by the desire to open for many projects that will never see the light... I have always told the people that during my time at NEDA, there were delays because we were simply trying to protect the president, the different government agencies from the Blue Ribbon Hearing Committees later on. I have attended several Blue Ribbon Committee hearings long before I left the government...protecting Secretary Neri, Pres. Macapagal-Arroyo, Secretary Mendoza and all others from the similar things. Would that new revisions do that? I don't think so.

**Lauro Ortille**  
**Clark Development Corporation**

Under Section 5 of RA 7718, 2<sup>nd</sup> par., last sentence, the winning proponent shall be automatically granted by the appropriate agency. If you refer to this, the IRR, it says

here the regulator on a provisional basis on franchises. The law says automatic grant of franchise and then the facility and so forth.

And so the question is in the process of approval. The agency is prepared to submit to... for approval then goes back to the agency, conduct the bidding and make the award. Now, does that mean that the winning proponent will not go to the regulator? And then be submitted to a public hearing? And another concern that may be considered by the committee is, I am not a lawyer, but there was ruling of the Supreme Court which states that, "the agency can no longer negotiate a contract after it has gone through a public hearing." And so if it will go through a public hearing from a regulator of a public utility, it defeats the purpose of the bidding, right?

... A suggestion on the evaluation of the regulator should coincide already and be reviewed by ICC only for one time instead of a consequential process. That is, if the ICC and regulator will be simultaneous. If the regulator or agency in toto always be with ICC, would that be okay? If it will escalate the price, bring back toll, fees and charges, what happens to the bidding? Those are the problems that might be encountered later on for consideration of the Committee.

#### **RESPONSE FROM ADG TUNGPALAN**

For any decision that will affect the public in general, a public hearing is required. And it is required under the Constitution. You cannot be above the law. Are you talking about the automatic franchise here? The regulator will automatically grant the franchise provided that you comply with the requirements as prescribed by the regulator. You cannot be granted a franchise just because you won the bidding. The implementing agencies do not regulate because they are not the regulator. And that is why we have the regulatory bodies like the ERC. It is their mandate to regulate. Now, public hearing is always required. Public utilities will affect the end-user or consumer so the provision of the franchise, part of the authenticity, the winning bidder to construct until such time that they are able to comply with the requirements of the pre-existing regulation.

**LAURO ORTILLE**  
(follow up)

What I got from you, sir, is that the proponent may not qualify and not be able to comply with the requirement of 60% Filipino owning the company. That would be considered a requirement already for the pre-qualification, right?

Did you include that already? So all the bidders must comply already with the requirements?

#### **RESPONSE FROM ADG TUNGPALAN**

I think your bottom line is on the frequent charges.

**LAURO ORTILLE**  
(another follow up)

If you conduct bidding for a particular public utility or BOT project, they must submit now a price for the charges for that particular utility. Now if it will be subject, the regulatory agency decided otherwise from the result of the bidding, what will happen now to the result of the bidding? Will the price increase or decrease? How do we compare the price with the regulator with that result of the bidding? In case the regulator does not agree with the result of the bidding?

**RESPONSE FROM ADG TUNGPALAN**

That is what we want, an independent regulator not bound by implementing agencies. The operator cannot be a regulator...And as I said, public hearing is required under the Constitution unless you amend the Constitution.

**LAURO ORTILLE**  
(follow up)

Another is if the implementing agencies become the regulator.

**RESPONSE FROM ADG TUNGPALAN**

It's a constitutional requirement, Larry. That's what I am saying. It cannot be challenged just because as I have said it is null and void if it contravenes the Constitution. I presume everyone of us here know about that basic tenets of the law. No law can be above the Constitution. It shall be deemed null and void by the courts if it contrary to the spirit and intent of the Constitution.

**LAURO ORTILLE**  
(last follow up)

Just a clarification. Like the PPA, an implementing agency and at the same time a regulator. So after the bidding, the award is done and again will now conduct a public bidding. That's the way I understand it.

***UNIDENTIFIED***

I just want a clarification. I cannot answer Benny and Larry. To the proposal, we want to fast-track the process for approval. And then the agency has the task of submitting a list of projects to the ICC for approval. The ICC has to approve the list, not to approve the project. Is that right?

The project identification review and approval will be the responsibility of the agency. And then the ICC will just conform whether the list of projects is consistent with the

MTPDP or MTPIP. It seems that the explanation in the IRR is too long. And that is why I need to be enlightened here. If that statement is correct, then there's a conflict of interest at the agency level. The agency reviews and is the one approving. And the agency will also be responsible for drafting the contract, consultation to the winning bidder and approving the contract as well. There will be no more third parties who would check on the effectivity of the contract. Would that contract be grossly disadvantageous to the government? At the end of the day, private sector will also notice.

Second, about the unsolicited proposals. What's the process? But it appears that the solution is wrong. The problem is not to fast-track the approval. The other aspect, as I see it, the contract does not go back to us. We don't know if in the contract it is still consistent with what is approved by the ICC. I think the proposed revision is inadequate.

#### **RESPONSE FROM ADG TUNGPALAN**

We will take note of that. As expounded by Dr. Canlas awhile ago, the list of priority project is subject to many interpretations. One is how can you say that it's a priority if you still haven't analyzed the project per se. It means that if you want to look at the project, you want to analyze it. At the very least, there must be a feasibility study. We can approve several projects. But once it is considered a priority, the government is bound to implement it. Now, we go back to same question. How can you know if it is the priority or not if you are just looking at the title? Those are the things that need to be clarified. At NEDA, we have a clear understanding of what it is. But that is something that we need the BOT-IRR Committee to expound on how the priority is determined.

On the unsolicited proposals, the ICC is required under the proposed amendments to set a reasonable return of investments because it is on the assumption that there will be no government exposure undertaking of the project if it is purely private sector undertaking recovering capital cost from the revenue that will be generated from the project.

In short, our understanding there is that it is a non-report financing. The project would have to collect revenues and make a reasonable profit as prescribed by the ICC, the essence of the law in setting a reasonable project. That is clear.

#### **RONALD ORTEGA LRA**

My first question deals about liquidated damages.

As provided in Sec. 12.14, it is clear that the project proponent-agency-LGU, as certified in the contract for failure to complete the work. It also says here that liquidated damage may also be assessed for the proponent by the agency during the construction period for a similar failure. Would it be not possible to indicate in the IRR

itself the formula for determining the formula for liquidated damages other than allow or give it to the agencies the LGU the amount in such event?

The second question deals about the audit of collections provided in Section 12.19 which states: "Revenues, share pertaining to or accruing to the agency for LGU concern shall be subject to examination audit by COA."

And the second paragraph says: "All revenues, receipts pertaining to or accruing to the project proponent shall be treated as private funds. " Does it mean that in so far as revenues and receipts are, now, not subject to the audit of COA?

Lastly, on the matter of withdrawal for substitution of members of the consortium. It does not speak here of addition of or change of equity structure or consortium in the event of an addition. It seems to me that addition to shareholders is not allowed under the proposed amendment.

Thank you.

#### **RESPONSE FROM ADG TUNGPALAN**

On the computation for the liquidated damages, it will be very difficult because each project has its won peculiarities and there are different trends for each project. It would be very difficult to pick a formula in the IRR because we know that both parties have flexibility in determining the appropriate liquidated damages.

**RONALD ORTEGA**  
(follow up)

Are you trying to say, sir, that it is the proponent and the agency who will agree? Or is it left to the latter alone?

#### **RESPONSE FROM ADG TUNGPALAN**

It is really the contracting parties and normally it is incorporated as one of the provisions in the contract.

**RONALD ORTEGA**  
(follow up)

But the wording of the IRR does not reflect your understanding.

#### **RESPONSE FROM ADG TUNGPALAN**

Precisely, in the IRR, it does not mention the formula. So, this means that the IRR designates to the parties the negotiation to agree on the formula because if the IRR or the law intends to fix the liquidated damages, it could have indicated so.

**RONALD ORTEGA**  
(last follow up)

Being a representative of the government, to whom can we go to or to seek guidance to arrive at the amount?

**RESPONSE FROM ADG TUNGPALAN**

That could be negotiated by the parties.

**BEN AUSTRIA**  
Chairman  
Energy Committee of the Philippine Chamber of Commerce

If I may be able to contribute to this discussion, these are my personal comments. I haven't discussed this up with the management and officers of PCCI but I will cite later on those that were previously taken by PCCI.

With regard to liquidated damages, there is a profile or benchmark like the experience in other countries. There are also for certain agencies which specialize in technical, legal and other expertise. For example, I am very familiar with the energy sector so that in a very high risk capital intensive petroleum oil exploration case, it is the Department of Petroleum which has the expertise than the others. That's why the Petroleum Association of the Philippines was very concerned about the executive order that was requiring PNOC, an exploration company, to follow the usual public bidding rules. And we will mitigate what will be the usual practice in exploration. They go through the public bidding process which could go through a very long time to really delay the much needed development of the private sector. For certain agencies, there will already be expertise developed. Our colleague from the power sector has already developed the expertise/experience so that perhaps the gap aspects of the contracts, we can check the experience of others to see what is the normal practice.

In the case of suggestions regarding the proposed amendments. In the past, the PCCI advocated enhancing competitiveness as done in the power sector. The Electric Power Industry Reform Act of 2001 (EPIRA) were designed to promote socio-economic development. But in the process, government must not forget what its objective is, for example, the privatization of Transco. The order of the president was to maximize revenues and the highest cost will also result in a higher transmission cost.

Similarly, in Section 4.2, there is a criteria that has been suggested and anyone can follow that. This is good because this will favor the lower tolls. But no. 4 will be maximizing government revenues. And if that is what's followed, then the less privilege of our society will be affected by such criterion.

So, in order that we can ensure public welfare, instead of accusing anyone, since we are amending the BOT, we can use any tool. Since we are maximizing government revenues but also lowering tolls, fees and others.

Thank you.

**BEN AUSTRIA**

In the case of the petroleum sector, it is very common because as I mentioned earlier. The business is high, very high-risk capital intensive, and so even large companies like Shell would take partners like PETRON, PNOC. So, it's not unusual for winners of contract to change the structure in order to have a mechanism to mitigate risk. You might want to protect this than to have a smaller protection.

**MRS. TERESITA FERNANDEZ-LAMONG**

This refers to the representation to the World Bank and other financing institution. I was wondering with all my frustrations in the MRT4 project, I received the invitation from the Euro Money Council with a meeting about the global markets... They were even considering non-solvent financing so that means that instead of the Philippines, it does not have to be the Republic of the Philippines but the ancestral domains. Why not? They hold the gold of the world. I was wondering the non-solvent simply private sector, or this may not be award but division. But a consideration in the global markets in so far as financing is concerned.

**MICHAEL MUNDO**  
**Makati Business Club**

I noticed in Section 3.1, the composition of BOT-PBAC has been reduced. There's no longer a representative from BOT for national projects. May I suggest to the BOT-IRR Committee that the private sector representation be increased from 2 to 3, adding another one from a duly recognized non-government organization?

*Mr. Turiano*

Anybody from the BOT-IRR Committee can respond to that. I am really wondering why the BOT-IRR is very timid right now. But the secretary has taken down your suggestion. I think it is a valid one.

**RONALD ORTEGA**  
**LRA**

I would like to reiterate my third question earlier about the audit to those concerned, on that pertaining to revenues and receipt approved by project proponent which are treated as private funds. Does that mean that the COA does not have jurisdiction thereto? Or stop payment to the project proponents?

**ADG QUIRINO**  
**NEDA**

In evidence, sir, we would like to submit that issue with the committee for consideration and clarification because I believe that the audit being conducted by COA on funds accruing to the private proponent, is a major factor in so far as the decision of the funders especially when foreign funds are concerned.

CLOSING REMARKS  
SEC. ROMULO NERI  
NEDA

Thank you very much Benj. I presume that this forum is well-attended by many. I can see Dr. Habito, Mr. Eiberjen, Atty. de la Cuesta and... the academe, the private sector, the NGO Community. Ladies and gentlemen, thank you for being with us today.

I believe that we have been able to engage in a very meaningful and successful discussion this afternoon. Looking forward is a challenge to further the right to... infrastructure development, as they have been exhausted earlier. This conference was rendered by the fact that the president has complained about the fact that the BOT Law was being very troublesome. It has undergone a very long, democratic process and she felt the BOT Law-IRR has not been fruitful...I wrote the law and I know that it was easy to implement. And of course the process which is the role of NEDA, which has become important because here, we have to classify the role of NEDA. I believe it is to prioritize and set the proper return parameters. And that's about it. I guess the rest is done by the agency. And the role of the agency is very critical here. And I guess the whole idea is to empower agencies. But in as much as we may not trust the agency to do the right thing...NEDA, part of the review of the concern but I believe personally that we have to empower the agencies. Otherwise, they may not even...Apparently, the BOTC did not feed its purpose well. I guess presumably. But they considered the proposal which they submitted to NEDA for processing. And in the process, it became GTG or government to government instead of a BOT which was presented by... But we have to emphasize the role of NEDA to just determine project investment economic returns vis-à-vis national priority. But as far as the socio-economic is concerned technically or supply is concerned, NEDA does not choose. We have to emphasize that. That's why in this case, they come back to us and we always refer them back to the implementing agencies. And I like them to be more and more responsible as in the case of the irrigation project. We could see the agency did not perform its function well. It started its project with 1.4 B. In a span of 2 months after, it became 2.4B, so a 60% increase type. And after a span of 3 years, they come back to us then there's a 65% increase. It shows to some extent, there is high responsibility on the part of the implementing agencies. We don't want that to happen. NEDA can only do so much. If it keeps on changing and changing without NEDA authorization, we have to consider the fact that there's a possibility that the contract may have been voided. If NEDA authorized them to buy a Toyota...they want to market instead of... And the project has not been authorized by NEDA. That is why the agencies are deemed more responsible, to take greater responsibility in the choice of the project, integrity and validity of the project to make sure that it is a sound project. But at the same time, we encourage the agencies to make sure as much as possible and to make it easier for the proponent.

I think NEDA's role is to make sure of the financial integrity of the project. And that's about it. As far as dealing with the proponent is concerned, we would like to let go and maximize the role here of the implementing agencies. For the mean time, the implementing agencies have a greater responsibility for this project. And of course, as

I said, that while we are trying to simplify the whole process and provide simplified environment for BOT project, we have to make sure that integrity in terms of financial viability, economic soundness...and the project is in the best interest of the country. At the same time, it is cost-effective. What we would not like to happen is that the project gets higher and higher as they approach politician number 1, influential number 2,...3. It has become more expensive over time. These can be done away with. There's so much corruption happening in the process. So, we have to ensure the integrity of the project. We have the proponent not having to go to many people, in several ways. So this is the challenge we would like to install at the same time.

So we hope that this gathering has brought proper information sharing. I was also given by Rolly the recommendations and comments here which include retaining the ICC oversight functions but we'd like to do that. But at the same time, we don't want the ICC with so many responsibilities which the agencies should be responsible. And also to limit the deviation from the approved contract, it has to be direct now. As of now, we have estimated deviation that we presented to NEDA-ICC that amounted to 35-billion, in fact, from the irrigation, DOTC, DPWH. This is very quite substantial. It is easy to ask. How do you implement the project in the first place? Did we come up with the proper competent people to do the feasibility because... comes up with a consultant. Somehow, the project is more expensive, 40%. Then overtime, as the project is implemented, the projects get more and more expensive. The deviation is more, and so forth. There has to be discipline so we can anticipate the project properties so that undue deviation will not happen.

The rest is how to make the project more and more facilitative rather than control-oriented. How to make life easier for the proponent and at the same time, lay out the proponent-friendly type of regulatory structure. And at the same time, maintaining the integrity of the project and ensuring that in the end, the project is to the best interest of the country.

I hope that the gathering today has ensured that regulatory environment that we want to pursue.

Again, thank you very much for coming and staying. The best gauge of a good conference is the fact that people stayed to the end. And I can see that the tables are still full. That's why I assume that it has been a very fruitful discussion.

Thank you very much.

At past 5, dinner was served.

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