

National PPP Enabling Environment and Lessons Learned from Local PPPs

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Outline of Presentation

Enabling Environment for PPPs

- **Legal Framework**
- **Institutional Framework**
- **National and Local PPPs**

Factors for Success of Local PPPs

- **Enlightened Local Governance**
- **Transparency and Fairness**
- **Project Viability and Bankability**
- **National Government Support**

Legal Framework for Enabling PPPs

1987 Philippine Constitution

Article II – Declaration of Principles and State Policies

Sec. 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

1990 Build-Operate-Transfer Law

R.A. 6957: An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector (9 July 1990)

Sec. 1. It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate favorable incentives to mobilize private resources for the purpose.

1990 Build-Operate-Transfer Law

Sec. 3. Private Initiative in Infrastructure.

All government infrastructure agencies, including government-owned and controlled corporations (GOCCs) and LGUs, are hereby authorized to enter into contract with any duly prequalified private contractor for the financing, construction, operation and maintenance of any financially viable infrastructure facilities through the build-operate-transfer or build-and-transfer scheme, subject to the terms and conditions hereinafter set forth.

1990 Build-Operate-Transfer Law

Publication and Public Bidding

- 1) Upon approval of a project, invitation to bid is published in at least 2 newspapers of general circulation and at least 1 local newspaper.
- 2) The contract shall be awarded to the lowest complying bidder.
- 3) A copy of the contract is submitted to Congress for its information.

1990 Build-Operate-Transfer Law

Build-Operate-Transfer (BOT) Scheme

- 1) Contractor undertakes the construction, including financing, of an infrastructure facility as well as its operation and maintenance for a fixed term which cannot exceed 50 years.
- 2) Contractor may charge users/customers tolls/fees to recover capital and operating costs and earn a reasonable rate of return. Or contractor can receive amortization or availability payments from the government.

1990 Build-Operate-Transfer Law

Build-Transfer (BT) Scheme

- 1) Contractor undertakes the construction, including financing, of an infrastructure facility and turns it over to the government entity immediately after completion, for security or strategic reasons.
- 2) Contractor recovers its investment and earns a reasonable rate of return through amortization payments from the government .

1994 Revised BOT Law

Republic Act 7718 – 5 May 1994

Seven more schemes introduced:

BLT=Build-Lease-Transfer

BTO=Build-Transfer-Operate

BOO= Build-Own-Operate

CAO=Contract-Add-Operate

DOT=Develop-Operate-Transfer

ROT=Rehabilitate-Operate-Transfer

ROO=Rehabilitate-Own-Operate

1994 Revised BOT Law

Additional incentives were offered to private sector:

- 1) For projects that would have difficulty in sourcing funds, up to 50% of project cost may be financed by direct government appropriations or Official Development Assistance(ODA).
- 2) For projects costing above PhP1 billion, incentives provided by Omnibus Investment Code can be availed of, upon registration with the Board of Investments (BOI).
- 3) Creation of investor-friendly business climate with minimum government regulations and specific government undertakings in support of the private sector.

1994 Revised BOT Law

Unsolicited Proposals may be accepted if :

- 1) The project involves a new concept/technology and/or is not part of the list of priority projects;
- 2) No direct government guarantee, subsidy or equity is required; AND
- 3) No other proposal was received for a period of 60 working days after invitation for competitive proposals is published for 3 consecutive weeks in a newspaper of general circulation. If there is a lower price proposal, the original proponent has the right to match that price within 30 working days.

1994 Revised BOT Law

Eligible projects expanded to include not only infrastructure projects but also development projects:

- public market, slaughterhouse, warehouse
- water supply, sewerage, drainage, dredging
- solid waste management
- information technology
- education and health facilities
- roads and bridges
- ports, airports, fishports

1994 Revised BOT Law

Eligible projects expanded to include not only infrastructure projects but also development projects:

- government buildings
- land reclamation projects
- industrial estates or townships
- transport systems
- mini-hydro electric projects
- irrigation projects
- tourism projects

1993 Electric Power Crisis Act

R.A. 7648: An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Electric Power Crisis (5 April 1993)

Sec. 2. It is hereby declared the policy of the State to adopt adequate and effective measures to address the electric power crisis that has disrupted the country's economic and social life and assumed the nature and magnitude of a public calamity.

1993 Electric Power Crisis Act

Sec. 3. Negotiated Contracts

Pursuant to the above declared policy and in the public interest and whenever it is advantageous to the Government, the President may enter into negotiated contracts for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities, subject to the following requirements:

- 1) Salient features and budgetary estimates for pipeline projects are published in a newspaper of general circulation;

1993 Electric Power Crisis Act

- 2) Contracts shall be awarded only to contractors with:
 - a) proven competence and experience in similar projects;
 - b) competent key personnel and sufficient and reliable equipment; and
 - c) sound financial capacity
- 3) Name and qualifications of chosen contractor are published together with terms and conditions of the contract 2 weeks before signing.

1995 Water Crisis Act

R.A. 8041: An Act to Address the National Water Crisis (7 June 1995)

Sec. 6. Negotiated Contracts

For projects to be implemented under BOT and/or related schemes, the President may, for 1 year after effectivity of this Act, enter into negotiated contracts for the financing, construction, repair, rehabilitation, improvement and operation of water facilities and projects related to increasing water supply, its treatment and its distribution to industrial and household consumers: *Provided, That there is no government financing or financing guarantee for the contracts.*

Legal Framework for MWSS PPPs

R.A. 8041 or National Water Crisis Act of 1995

authorized the President to reorganize MWSS, including the privatization of any or all of its segments, operations or facilities, if necessary, to make them more effective and innovative to address the looming water crisis.

Executive Order No. 286 (December 1995)

- Declared the Administration's framework of governance is "to steer rather than row". The National Government shall, to the extent possible, encourage the private sector to participate in the delivery of public goods through franchising, concession, management, privatization or other arrangements of the concerned agencies.

Legal Framework for MWSS PPPs

EO 286 (continued)

- Approved the reorganization of the MWSS, having been designed “to streamline and correct dysfunctions in the structure and operations of the MWSS” to enable it to become more effective, efficient, and responsive to the country's need for potable water, as well as to prepare the ground work for its eventual privatization, where feasible.

Executive Order No. 311 (March 1996)

- Ordered MWSS to enter into arrangements that will result in the involvement or participation of the private sector in any or all of its segments, operations, and/or facilities .

Legal Framework for MWSS PPPs

EO 311 (continued)

- The involvement or participation of the private sector may include, but shall not be limited to:
 - (i) franchising, concession, management, or other arrangements;
 - (ii) privatization; or
 - (iii) contracts for projects to be implemented under BOT and/or related schemes for the financing, construction, repair, rehabilitation, improvement, and operation of water facilities and projects related to consumers.

1991 Local Government Code

Republic Act 7160 – 10 October 1991

Book I, Title One, Chapter I, Sec. 3 “Operative Principles of Decentralization”

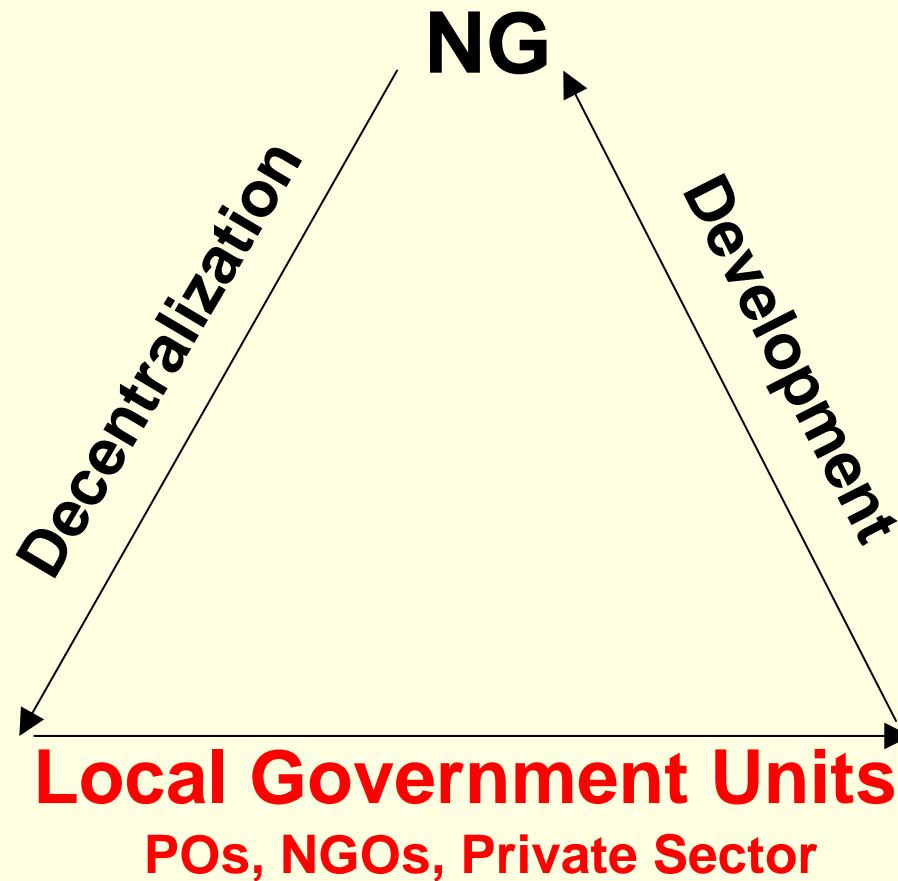
Sec. 3(I). The participation of the private sector in local governance, particularly in the delivery of basic services, shall be encouraged to ensure the viability of local autonomy as an alternative strategy for sustainable development.

Definition of Governance

The exercise of economic, political, and administrative authority to manage the nation's affairs at all levels. It comprises all the mechanisms, processes, and institutions through which the citizens and groups articulate their interests, exercise their legal rights and obligations and mediate their differences. Governance is not the sole domain of government but it transcends government to encompass the business sector and civil society.

Source: OECD Development Assistance Committee

New Development Paradigm



IRRs of 1991 LGC

LGU partnerships with POs, NGOs and Private Sector

Article 62: LGUs shall promote the establishment and operation of people's organizations (POs), NGOs, and the private sector, to make them active partners in the pursuit of local autonomy. They shall be directly involved in the programs, projects and activities of LGUs including joint ventures and cooperative programs or undertakings and financing, construction, maintenance, operation and management of infrastructure projects.

Article 70: LGUs may enter into a contract with any duly prequalified individual contractor for the financing, construction, operation and maintenance of any financially viable infrastructure facilities, under the BOT agreement, subject to the BOT Law and its IRRs and such other terms and conditions as may be agreed upon by the contracting parties.

Institutional Framework for Enabling PPPs

Implementing Agencies (IAs)

- National Government Agencies (NGAs)
 - Department of Transportation and Communication (DOTC)
 - Department of Public Works and Highways (DPWH)
- Government Owned and Controlled Corporations (GOCCs)
 - Metropolitan Waterworks and Sewerage System (MWSS)
- Local Government Units (LGUs)
 - Provinces, cities, municipalities
- Specialized Sub-national Entities
 - Water districts (WDs)
 - Electric cooperatives (ECs)

Approving Bodies

- National Economic and Development Authority (NEDA) Board (upon ICC recommendation)
 - National projects > PhP300 million
 - National negotiated projects
- Investment Coordination Committee(ICC)
 - National projects < PhP300 million
 - Local projects > PhP200 million
- Local Development Councils
 - Regional Dev Council: PhP50 M < local projects < PhP200 M
 - City Dev Council: city projects costing up to PhP50 M
 - Provincial Dev Council: PhP20 M < local projects < PhP50 M
 - Municipal Dev Council: muni projects costing up to PhP20 M

Oversight Bodies

- National Government Agencies (NGAs)
 - National Economic and Development Authority (NEDA)
 - Department of Finance (DOF)
 - Department of Budget and Management (DBM)
 - Department of the Interior and Local Gov't (DILG)
- Regulatory Bodies
 - Toll Regulatory Board (TRB)
 - Energy Regulatory Commission (ERC)
 - Metropolitan Waterworks and Sewerage System (MWSS)
 - Local Water Utilities Administration (LWUA)
- **Public-Private Partnership (PPP) Center**

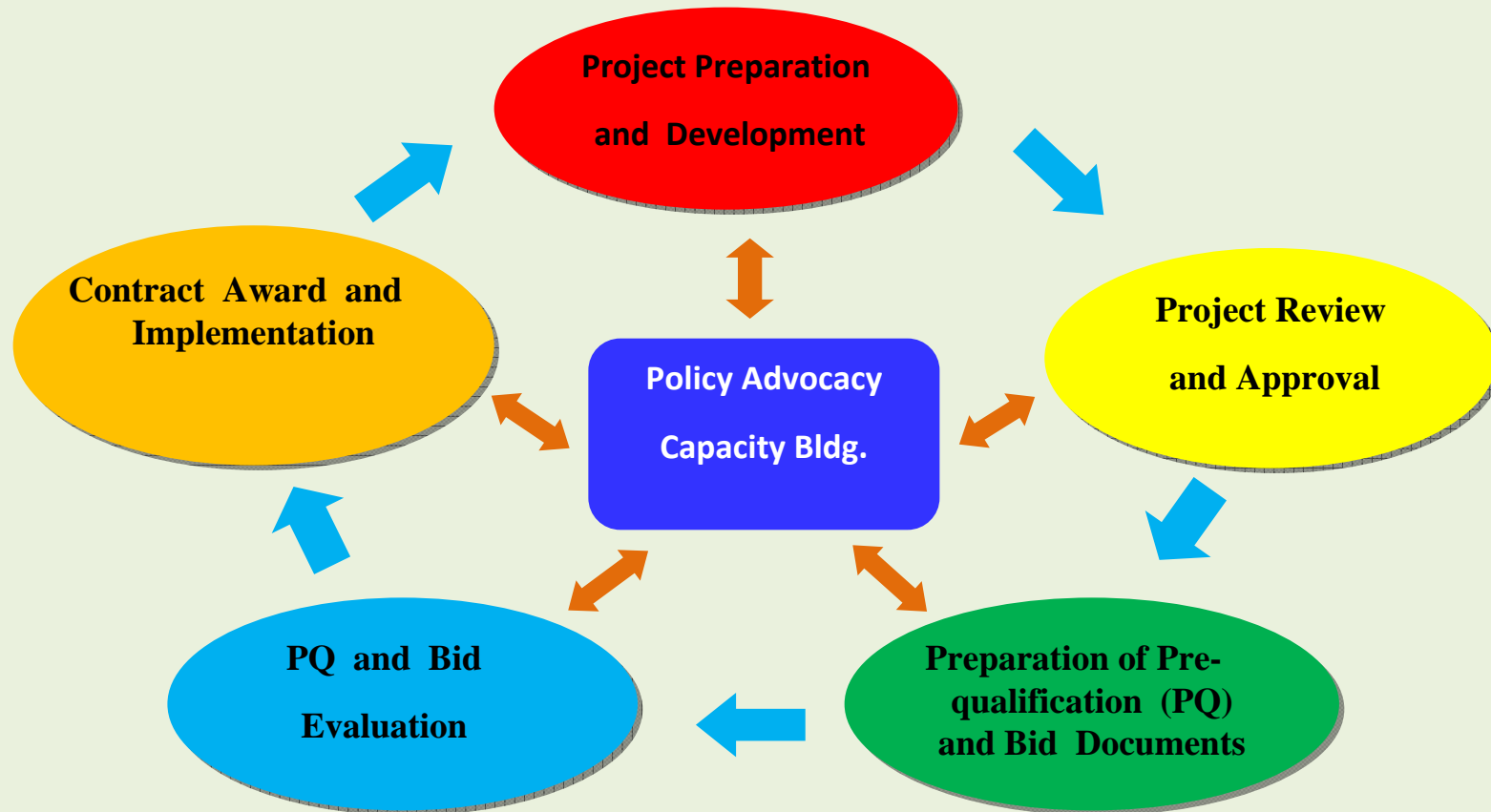
Evolution of PPP Center

- **BOT Center created to comply with Amended BOT Law**
 - As a unit of the Technical Office of the Coordinating Council on the Philippine Assistance Program (CCPAP) mandated to coordinate, monitor and report on all BOT projects
 - With USAID support, provided technical assistance to IAs in developing national and local BOT projects
 - DOF Secretary was CCPAP Chair and BOT Action Officer
- **CCPAP converted to Coordinating Council on Private Sector Participation (CCPSP) in 1999**
 - NEDA Director General made CCPSP Chair
 - Managed the new Project Development Facility (PDF)

Evolution of PPP Center

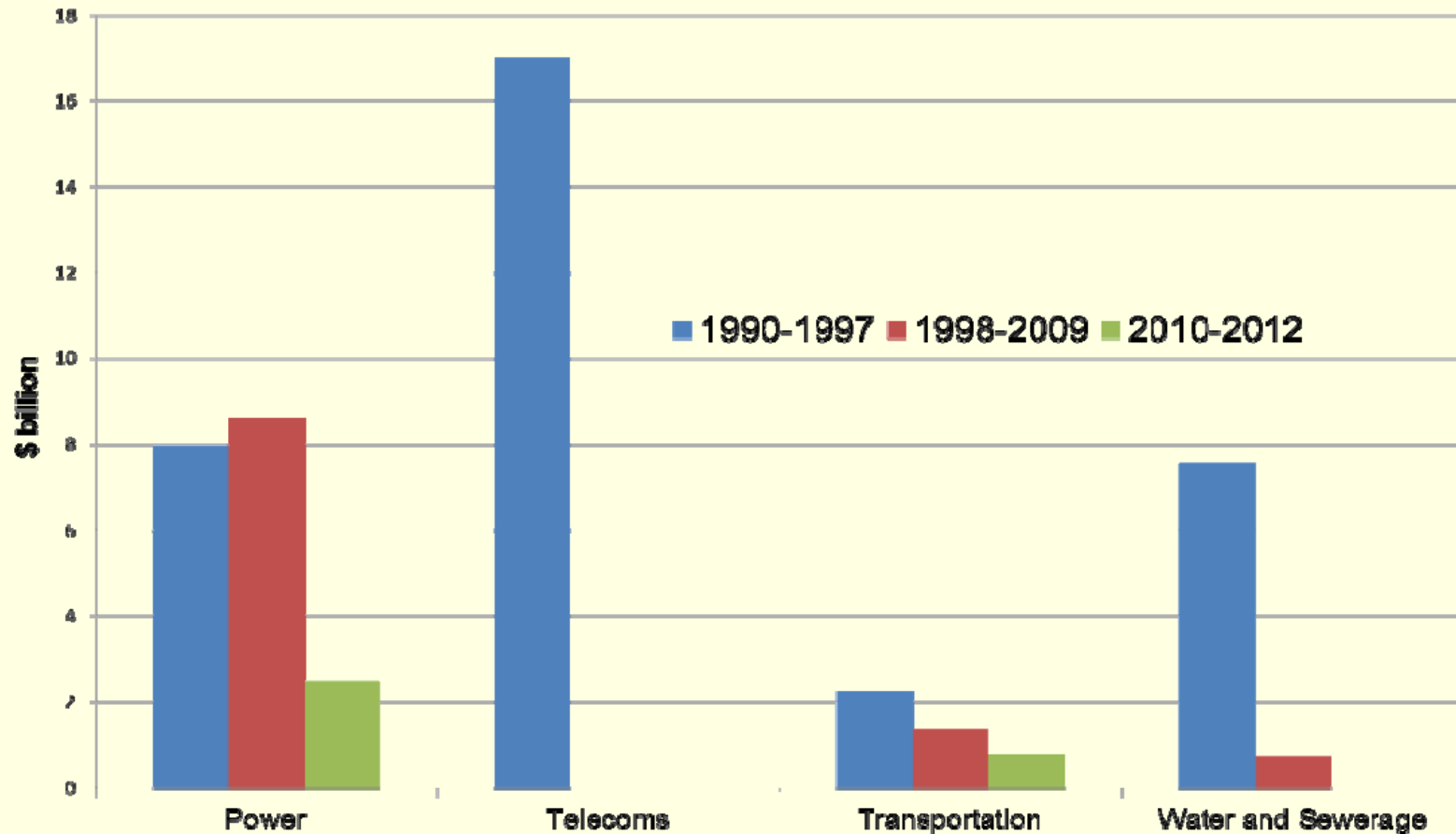
- **CCPSP converted back to BOT Center in 2002**
 - Technical Secretariat/Project Monitoring Office transferred from Office of the President to Department of Trade and Industry (DTI) as part of its Industry and Investments Group
 - BOT projects marketed locally and internationally
- **BOT Center reorganized into PPP Center in 2010**
 - Transferred to NEDA
 - DTI to continue marketing activities
 - Expanded coverage to include Joint Ventures
 - PDF revitalized as Project Development and Monitoring Facility (PDMF) with ODA support

PPP Center



National and Local PPPs

Philippines PPP Projects

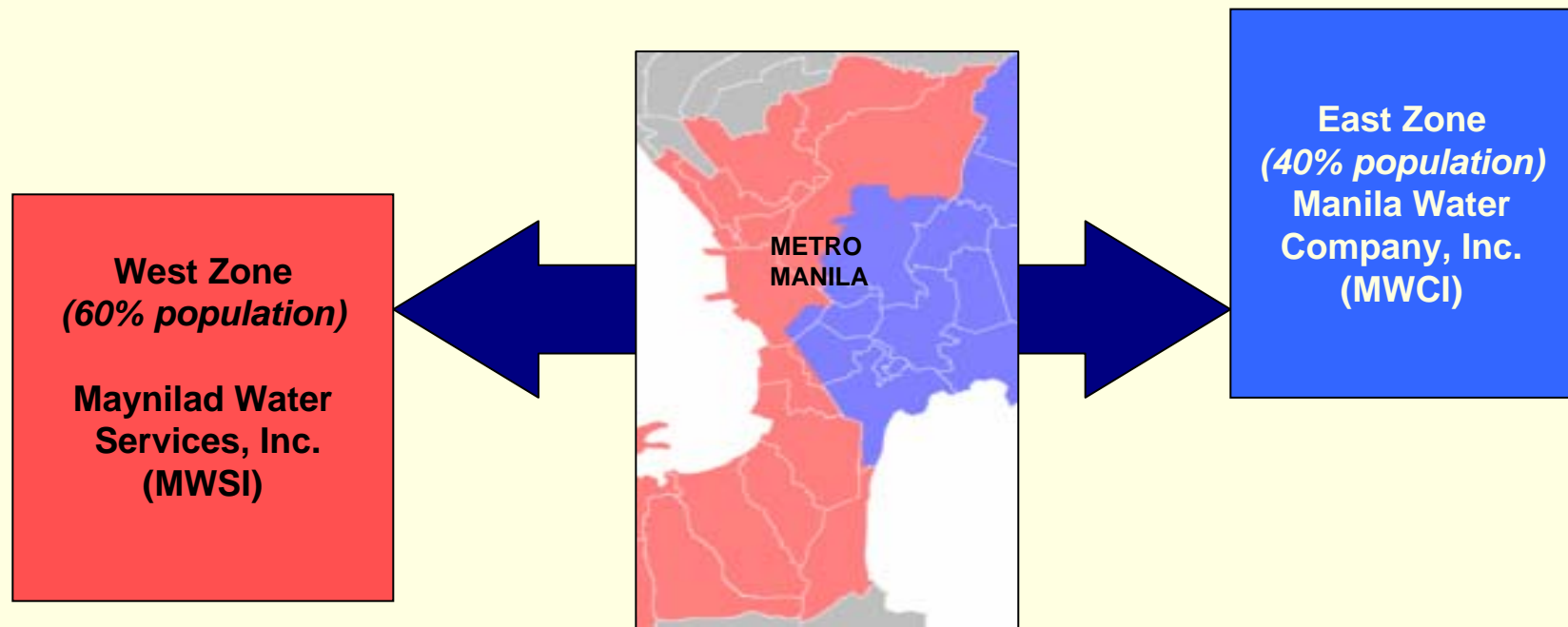


Source of basic data: WB PPI database

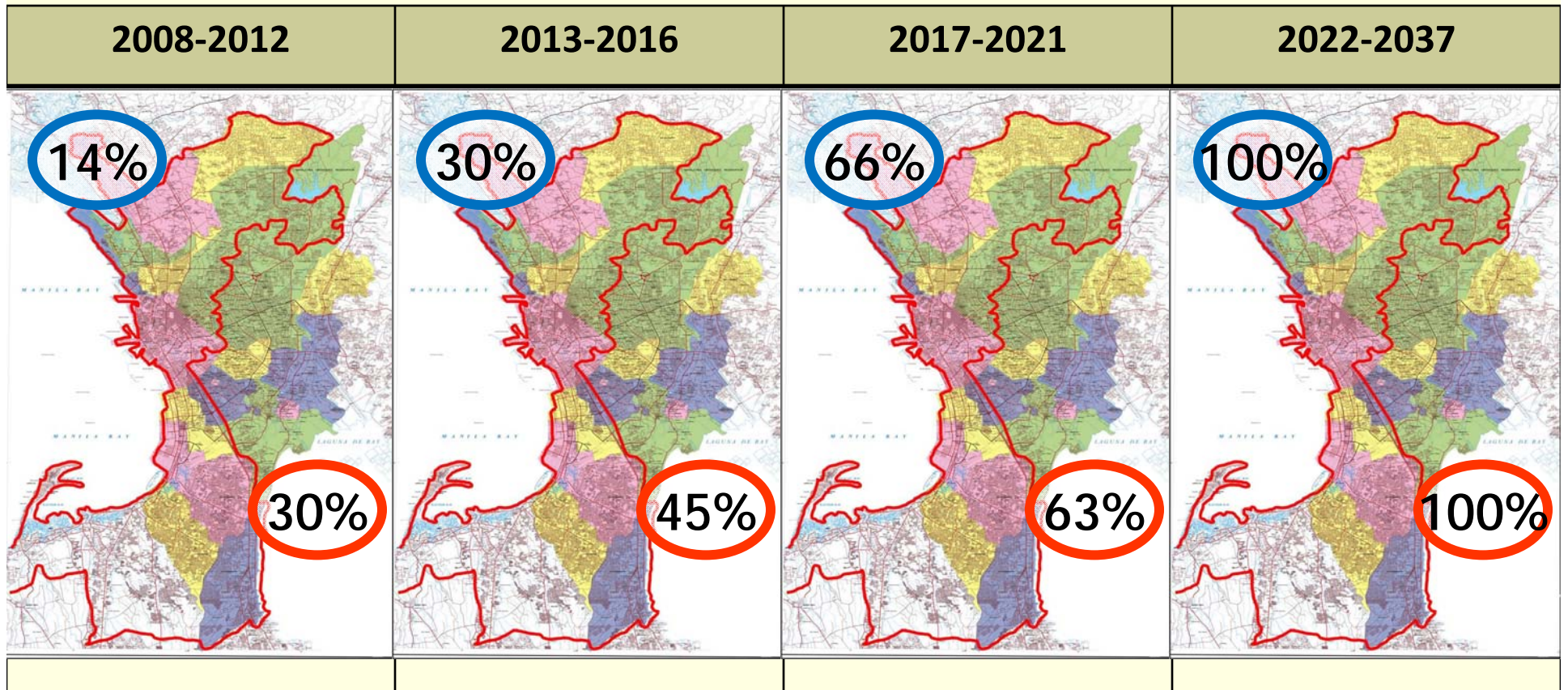
National PPP Projects

- 37 power projects (US\$8.7 B) turned-over/operational
(5 power barges, 31 power plants, 1 multi-purpose project)
- 18 transportation projects (US\$8.4 B) awarded/
operational
(11 tollways, 4 light rails, 1 port, 1 airport and 1 bus terminal)
- 4 water projects (US\$7.8 B) operational
(3 water supply and sewerage, 1 irrigation/power)
- 4 ICT projects (US\$225 M) turned-over/operational
- 2 property development projects (US\$415 M)
operational
- 2 school building projects (US\$451 M) turned-over/
ongoing
- 2 hospital projects (US\$194 M) awarded/operational

Two Concession Areas of the MWSS – East and West of the Pasig River



Sewerage Targets and Investments



	2008-2012	2013-2016	2017-2021	2022-2037	TOTAL
Maynilad	PhP 5.1 B	PhP18.5 B	PhP 27.2 B	PhP 28 B	PhP 79 B
Manila Water	PhP 13.3 B	PhP 30.6 B	PhP 7.4	PhP 21.68	PhP 73 B

New Centennial Water Source Project

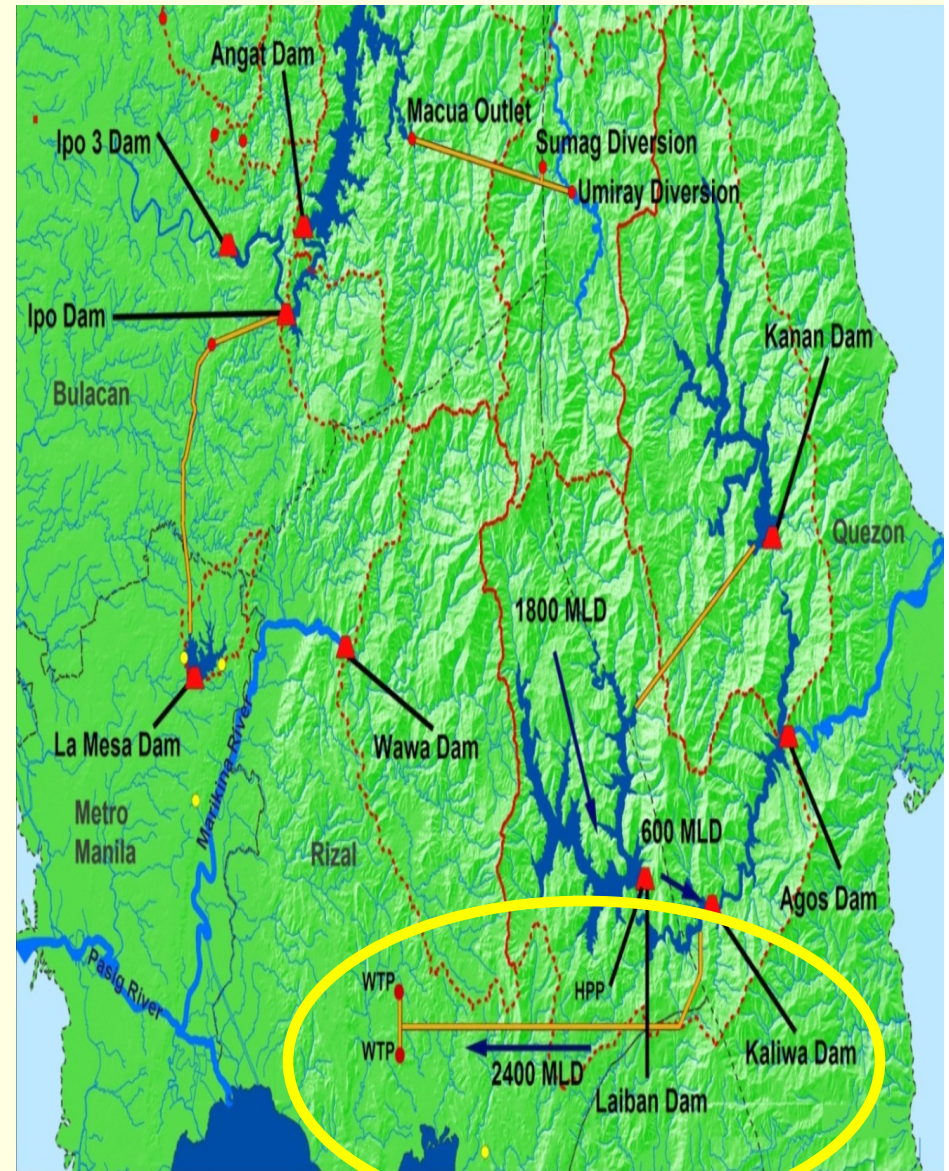
Project Scope:

- Kaliwa Dam: 600 MLD capacity located in Rizal & Quezon Province
- Water Conveyance facilities: 2,400 MLD capacity, 27.7 km. tunnel & pipes

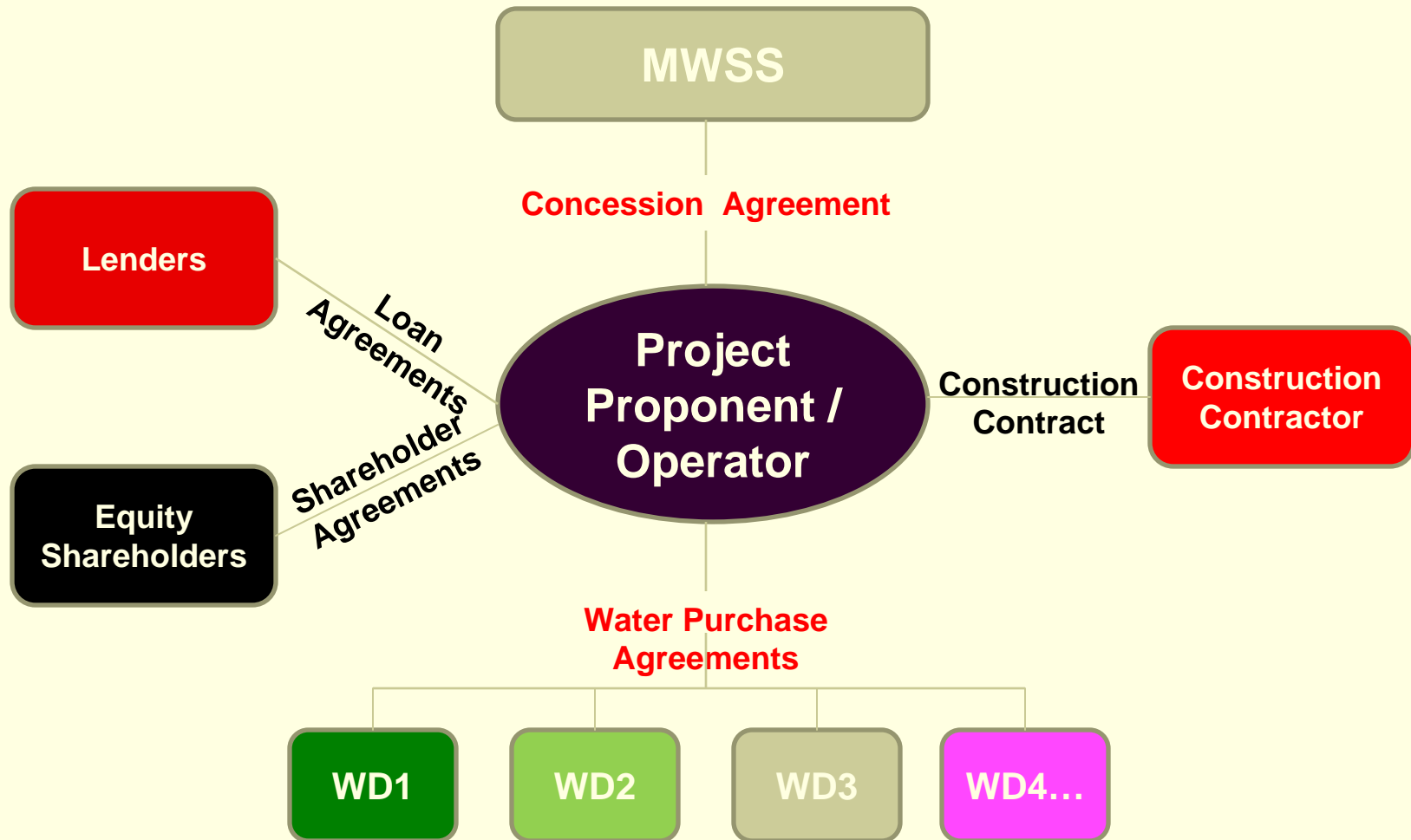
Project Cost: PhP 18.72 B

- Kaliwa Dam - 4.03 B
- Conveyance - 8.21 B
- Resettlement - 2.19 B
- Financing - 4.29 B

**Build-Transfer with
Amortization Payments**



Bulacan Bulk Water Supply Project



Local PPP Projects

- Ten projects (US\$40.78 M) completed/ongoing
(5 public markets, 1 slaughterhouse, 1 city hall, 3 ICT)
- Four contracts (US\$15.98M) terminated
(1 public market, 1 administrative/commercial center,
1 commercial port, 1 bus terminal)
- Two contracts (US\$4.8 M) under court litigation
(2 commercial centers)
- Two joint ventures operating in Bohol: Bohol Water Utilities Inc. (US\$ 14.4 M), Bohol Light Company (US\$ 5 M)
- Power Supply Agreements of Electric Cooperatives
(e.g. Marinduque, Romblon, Masbate, Basilan)
- Joint ventures of water districts for bulk water supply
(e.g. Metro Cebu WD, Tagum WD)
- Olongapo Electricity Distribution Co. took over
Olongapo City Public Utilities Department (PUD)

Factors for Success of Local PPPs

Enlightened Local Governance

- Local leadership that is development-oriented and determined to succeed despite obstacles and initial failures
- Willingness of local stakeholders to keep politics to a minimum, enough to allow for the public good to be served through successful implementation of the proposed PPP project
- LGU officials from different departments working together and getting trained together on PPPs, ideally as a formal PPP unit

Factors for Success of Local PPPs

Transparency and Fairness

- Willingness of the LGU to conduct open and extensive consultations with its constituents
- Willingness of the LGU to ensure that attractive options are provided to employees and communities that may be adversely affected by the proposed PPP arrangement
- Willingness of the LGU to strictly follow the provisions of the BOT law and its IRRs and other relevant laws, particularly with regards to the transparent bidding out of projects

Factors for Success of Local PPPs

Project Viability and Bankability

- A high priority project that is viable and attractive enough for the private sector (project proponents and financiers)
- Well-functioning regulatory regime inside or outside the LGU
- Willingness of the LGU to impose or support higher tariffs for improved services
- Willingness and capacity of the LGU to help make the proposed PPP project financially viable and seek Viability Gap Funding (VGF) support from the National Government, as needed

Factors for Success of Local PPPs

National Government Support

- Timely and appropriate financial and technical support from the concerned national government agencies throughout the project cycle
 - Project Identification – synchronization of national, regional and local development plans and budgets
 - Project preparation – procurement of affordable and responsible consultants to prepare pre-feasibility or feasibility studies including Value for Money analysis and risk allocation matrix
 - Choosing implementation/financing arrangement for the project – PPP or not?
 - Preparation and evaluation of pre-qualification and bidding documents including draft contract – close supervision of consultants by national government personnel experienced and/or trained in PPPs

PPP Project Cycle



Informed Decisions

Continuous learning

Factors for Success of Local PPPs

National Government Support

- Timely and appropriate financial and technical support from the concerned national government agencies throughout the project cycle (continued)
 - Finalization, monitoring and enforcement of the contract – institution and capacity building
 - Technical and financial regulation – oversight and capacity building by national regulatory bodies
 - Maintenance and operation of turned-over facilities – institution and capacity building
 - Project monitoring and evaluation – by the LGU and by oversight agencies (e.g. DOF, NEDA, PPP Center)
 - Incorporating lessons learned into the design and preparation of new projects.