



**AMCHAM PHILIPPINES**

The American Chamber of Commerce of the Philippines, Inc.

## **STATEMENT ON THE PROPOSED AMENDMENTS TO THE BOT LAW**

19 July 2011

**HON. RONALD COSALAN**

Chairman

Committee on Public Works

House of Representatives

Quezon City, Philippines

Thru: Hon. Teodorico Haresco

Chairman, Technical Working Group on BOT Law Amendments

Dear Chairman Cosalan:

Thank you for your letter of July 12, 2011 requesting our views on two bills your committee is currently studying, H.B. Nos. 759 and 4151, both of which amend the Build-Operate-Transfer (BOT) Law.

While we agree with the need to amend the BOT Law, we wish to recommend a different approach proposed in the above House bills.

The Philippines is a pioneer among developing countries in using BOT schemes for infrastructure development. In 1990, Congress enacted the first BOT law in Asia, Republic Act 6957. This was amended by Congress in 1994 through RA 7718, by increasing the number of variants of BOT contractual arrangements.

The Philippines once had a highly successful record of implementing BOT projects in the 1990s prior to the Asian financial crisis of mid-1997. Thereafter, the change in circumstances, mainly attributable to the negative external financial factors, held back progress in better utilization of the BOT law. Hence the country has lost an important opportunity to modernize more of its infrastructure in recent years causing inefficiency (especially in transportation) and lower investment levels. While large amounts of international capital have been available to invest in well-structure BOT projects, the government has allowed its BOT program to become largely dormant. Implementing agencies are often not trained to carry out complex BOT projects and have been slow to prepare and bid out large projects in transparent fashion. Unsolicited proposals have become the rule instead of the exception.

Sometime in 2006, a team of experts led by former NEDA Director General and UP economist Dante Canlas under a USAID/EMERGE technical assessment evaluated the implementation of the BOT Law. The report resulted in a proposed bill which seeks to enhance public-private partnerships (PPP) in infrastructure development. The report explains that in order to rekindle private interest in PPPs, certain principles must be observed, including transparency, accountability, fiscal soundness, financial viability, institutional credibility and genuine commitment to PPP. Moreover, profound policy and institutional reforms are needed to restore confidence in the BOT Law, including:

1. a legal framework that provides property rights and is committed to enforcement of contracts;
2. the legal and judicial system must be conducive to contractual performance and to fair and timely adjudication of any contractual dispute that may arise;

3. the legal framework must be backed by a substantive and operationally efficient set of implementing rules and regulations (IRR);
4. government implementing agencies and local government units must acquire necessary technical, legal and financial expertise to be able to identify, design, implement and monitor PPP projects;
5. regulatory bodies involved in the implementation of PPP projects must be credible, transparent, accountable and technically competent; and the approving government authorities need to be facilitative without compromising their mandate, while ensuring the consistency of their decisions with existing fiscal and investment incentives and procurement policies of the government.

In the 14th Congress, we were privileged to have garnered the support of former Rep. Paul Daza who filed House Bill 3763, embodying the principles contained in the abovementioned report. This Congress, we are deeply honored that Deputy Speaker Raul Daza decided to re-file the same measure under H.B. 4919. The bill was filed very recently while Congress was on recess and has not been referred to this Committee.

H.B. 4919 is guided by principles aligned with making PPP a state policy in infrastructure development. A hallmark of the proposed amendments is that the bill sets forth general principles for future PPP projects in the country and reduces much of the cumbersome detail in present legislation. Such detail is left to the IRR, which can be adjusted to changing circumstances of international financial markets and the like.

The proposed bill upholds competitive bidding as the core of government procurement policy and discourages the practice of unsolicited bids and negotiated contracts except in certain cases. It makes government agencies project owners and holds them accountable for first-pass approval. It maintains the window for unsolicited proposals but is firm about the government not extending any subsidy or performance undertaking to the unsolicited projects.

We respectfully request this Committee to seriously take into consideration House Bill 4919 in coming out with a Committee Report on the bills at hand.

We do not think that a new government agency such as a BOT Authority needs to be created but rather that institutional capacity within the existing agencies need to be strengthened and principles enunciated above applied. We believe the institutional mechanisms are currently in place for a revived and successful BOT program in the Philippines. However, the implementing agencies need enhancement and support through a Project Development Facility and that the various principles regarding bidding, transparency, contracts and public disclosure described above need to be clearly stated in an amended BOT Law, with elaboration of the principles and procedures in the IRR.

We thank you for consideration of these views. A revised BOT program is essential for the immediate infrastructure modernization in the Philippines by encouraging fuller participation of private resources. In recent years, there have been tens of billions of dollars waiting to be invested in properly-prepared and properly-bid and properly-implemented PPP projects. H.B. 4919 will help unleash these resources for the benefit of the country.

Sincerely,



**MR. JOHN D. FORBES**

Senior Advisor

Investment Climate Improvement Project

American Chamber of Commerce of the Philippines

2<sup>nd</sup> Floor, Corinthian Plaza Building, 121 Paseo de Roxas, Makati City, 1229 Philippines • P.O. Box 2562, CPO Makati City 1299, Philippines  
Telephone: +63 (2) 818-7911 • Fax: +63 (2) 811-3081 • E-mail: [amcham@amchamphilippines.com](mailto:amcham@amchamphilippines.com) • [www.amchamphilippines.com](http://www.amchamphilippines.com)

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