International "Build-Own-Transfer" (BOT) Conference

The Indonesian Experience

Prepared for the:

Honorable Delegates
to the
Cairo Regional Centre for
International Commercial Arbitration (CRCICA)
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Presentation Paper

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I. The Indonesian Setting

Over the past thirty years, Indonesia, the world's fourth most populous nation, maintained political stability and achieved a rate of economic growth among the highest realized by any nation in the world. Indonesia's rapid economic growth, strategic location, rich resource endowment, large population, commitment to free de and open markets all combine to underscore the importance of Indonesia's role in world affairs.

Prudent macroeconomic policies, substantial investment in economic and social infrastructure and, particularly since the mid-1980s, structural reforms that launched a series of deregulatory measures to give freer rein to the private sector, lessen its dependance on oil and create employment for an expanding work force, induced a shift away from capital-intensive activities towards outward-oriented, labor-intensive activities were key elements of Indonesia's successful development.

This laudable economic transition would not have been possible without the Government of Indonesia's firm resolve -- translated into policies and a concerted series of actions -- to overcoming a number of impediments. The deregulatory measures undertaken by the Government allowed the private sector to emerge as the nation's main "engine" of economic growth. The emergence of this diversified engine led to a stronger, better balanced economy today. Today's bright economic onditions certainly would not have been considered likely thirty years ago.

II. Indonesia Faces Additional Challenges

Despite substantial achievements, Indonesia faces a number of significant, additional challenges. Achieving high growth based on environmentally sustainable resource-use requires prudent, wide-ranging policy changes combined with wise investments in infrastructure, human resource and institutional development.

One of Indonesia's primary fiscal challenge is one of raising public savings, through reducing current expenditures or raising revenues, or both. Maintaining and expanding the momentum of structural reform will be key to remaining competitive and thereby safeguarding the robust rate of growth that has been responsible for so much of Indonesia's progress during the last decade.

III. CRCICA's International BOT Conference

The Cairo Regional Centre for International Commercial Arbitration (CRCICA) organized this important International BOT Conference to, among other important objectives, provide the delegates with a comparison of the ways infrastructure projects are being implemented. I am honored to be invited to present an overview of the experiences of the Republic of Indonesia.

Because certain of my remarks may be influenced by my personal point of view, it may be helpful for me to provide you with the following information: I am an American attorney who has worked in Indonesia for more than nine years. During the period 1992 - August 1996, I assisted the Indonesian government to: (a) to develop the legal and regulatory framework to improve the efficiency, transparency and openness of the Indonesian government procurement system; (b) strengthen and improve the procurement management functions of fourteen agencies and ten strategic State-Owned-Enterprises; (c) consider alternative policies and procedures concerning the implementation and monitoring of BOO/BOT/KSOs; and (d) evaluate and draft a number of economic laws (including Indonesia's new "Company Law") and government procurement regulations to further sustain and facilitate Indonesia's continued growth and development.

I am currently assigned to the Coordinating Ministry for the Economy, Finance and Development Supervision (EKKU dan WASBANG) as their Legal Advisor for Infrastructure Development.

Although I have assisted the Indonesian government for most of the past nine years, I consider myself rooted in the private sector: Prior to the above advisory assignment, I was employed as an Attorney-Advisor by a private sector Indonesian company which implemented a significant public-private sector telecommunications project. Previously, over a twenty-two year career in the United States (1967 - 1981), I was employed by a multinational corporation and, as a private attorney, counseling businesses and litigating business matters before the Maryland (state), United States District (federal) courts and Board of Contract Appeals. Although non-Indonesians are not permitted to practice law, during a two year period, I was employed by an Indonesian law firm as a Legal Consultant.

IV. Public and Private Investments: An Overview

The Government of the Republic of Indonesia (GOI) recognizes that significant additional physical infrastructure is required to be developed to spur private capital formation and create sustainable economic activity. The GOI National Development Planning Agency (Bappenas) computed the cost to develop infrastructure projects in the power, telecom, transport and water sanitation sectors alone at approximately two hundred billion dollars. The GOI also recognizes, however, that budgetary constraints and the government's commitment to a balanced budget preclude the GOI from financing all of the projects needed to be developed.

After carefully evaluating a wide range of alternatives, the GOI wisely decided to encourage the private sector to finance a significant portion of the projects through "Build-Operate-Transfers" (BOT), "Build-Operate-Own" (BOO) and "Cooperative Agreements" (KSO, the Indonesian abbreviation of Kerja Sama Operasi) and other forms of ownership arrangements often referred to as *public-private* partnerships.

The quantity and efficiency of public investment must also be increased. As with most other nations, the Republic of Indonesia expends a significant portion of the national budget to acquire needed public goods and services. To acquire these goods and services at fair and reasonable prices, the GOI recently adopted a series of regulations that thoroughly revised and significantly improved the Indonesian government procurement system.

The English language title of Presidential Decree No. 16 of Year 1994 (Keppres No. 16), Indonesia's primary procurement regulation is "The *Decree of the President of the* Republic *of Indonesia* No. 16 Year 1994 *Concerning Implementation of the* State Revenues and *Expenditures* Budget." As indicated by its title, the regulation governs the acquisition of goods and services funded by public funds that are carried out by government bodies, agencies and enterprises. The GOI encourages private investment to finance public-private partnership projects to provide a new service to the public and, not inconsequentially, a return on investment to the private parties. Privately funded infrastructure development projects are not governed by Indonesia's procurement regulations. It is important, therefore, to distinguish typical government procurements financed by public funds from public-private partnership projects financed by private funds.

However, the line of demarcation between infrastructure funded by public and private sources are becoming difficult to distinguish. For example, in an infrastructure project financed "solely" by private funds, one may find the government compelled to (a) agree to support, directly or indirectly, a certain minimum "output" or usage of the project; (b) guarantee to repay loans to finance the project in the event of a default by the private sector parties; (c) agree to provide cushions against currency fluctuations or force majeure conditions; and other similar protection. These are contingent liabilities -- all situations where, although, the GOI is not required to expend public funds at the outset of a privately-financed project, Indonesia may be incurring financial liabilities during many phases of project implementation and beyond.

INDONESIA'S INFRASTRUCTURE IMPERATIVE

> ***"The great obstacle that now stands in our way is the limited infrastructure and means to give maximum support to economic growth and the expansion and equitable distribution of its benefits"***
>
> **- President Soeharto, Budget Address**

"During the past twenty years, economic growth in Asia has outperformed any other region of the world, but this has placed an enormous strain on its infrastructure.

The region's ability to sustain present rates of growth now rests with its capacity to develop an infrastructure to meet future industrial and social demands. Recognizing this, Asian governments have placed a high priority on accelerating infrastructure development.

In monetary terms, it is estimated that some US$2.5 trillion will be spent on Asian infrastructure projects through to the end of the century. Asia's booming economies have created an insatiable appetite for electricity, as is evident in countries such as Thailand and Indonesia where increases in demand are rising in excess of 10% per annum.

The massive demand for infrastructure investment can no longer be met by the historic funders - governments and international aid agencies. In order to raise the vast sums of capital required to fuel the necessary rate of development, an increased reliance must be placed on commercial finance and private sector initiatives.

The opportunities for the private sector, in this fertile economic environment, are enormous. But closer cooperation between the public and private sectors is required if we are to see a rapid acceleration of infrastructure development. The stimulus for this cooperation will come from an increased dialogue and exchange of information between the two sectors, to increase understanding and pave the way for public/private partnership opportunities."

"INFRASTRUCTURE AND ECONOMIC GROWTH"
published in an "Invitation to Participate"
issued by the Government of the Republic of Indonesia.

Estimated Infrastructure Needs

Infrastructure Provision in South East Asia

	Indonesia	Malaysia	Thailand	Philippines	Vietnam
GNP per capita (US$) 1993[1]	740	3,140	2,110	850	170
Population, (m) mid 1993	187.2	19.0	58.1	64.8	71.3
Electricity Production (kwh per person), 1993	233	1,612	1,000	419	139
Telecommunications Mainlines per 100 people, 1992	0.8	11.2	3.1	1.0	0.2
Paved roads Road density (km/million people) 1992	160	n/a	841	242	n/a
Water Access to clean water (% pop) 1991	42	78	72	81	50

[1] In early 1995, the Indonesian Central Bureau of Statistics released revised national accounts statistics for 1993 and 1994 that have the effect of raising by about nine percent earlier estimates of per capita income for 1993, as well as increasing 1994 GDP growth as measured in 1993 prices by 0.5 percent. World Bank data draws on the earlier series of statistics. While the changes are significant, they do not alter the relative income comparisons between Indonesia and other countries.

Source: World Bank

Planned Infrastructure Costs in East Asia & The Pacific 1995-2004 (US$ billion)

	Power	Telecoms	Transport	Water & Sanitation	Total
China	200	141	302	101	744
Indonesia	82	23	62	25	192
S. Korea	101	32	132	4	269
Malaysia[1]	17	6	22	4	50
Philippines	19	7	18	4	48
Thailand[1]	49	29	57	10	145
Others[2]	25	18	14	4	61
Total	493	256	607	153	1,509

[1] estimates available only for the public sector; [2] Cambodia, Fiji, Kiribati, Laos, Maldives, Mongolia, Burma, Solomon Islands, Tonga, Vanuatu, Vietnam and Western Samoa

Source: World Bank

Planned Transport Expansion

Implementing Sector (Ministry of Public Works, BUMN and Ministry of Comm.)	Additions April 1994-March 1999 (Repelita VI)
Roads	
New construction	
- artery & collector roads	4,900 kilometres
- local roads	5,100 kilometres
- bridges	30,250 kilometres
- toll roads	310 kilometres
Railways	
Track	
- rehabilitation/upgrading	840 kilometres
- new track	350 kilometres
- upgrading bridges	130 bridges
Procurement	
- diesel locomotives	52
- electric railcars	84
- passenger coaches	170
Sea transport	
Port facilities	
- wharf	14,850 metres
- warehouse	80,000 square metres
- open storage	900,000 square metres
- passenger terminal	24,250 square metres
Air transport	
Airport facilities	
- runway	129,750 square metres
- terminal	93,320 square metres
- operation buildings	18,300 square metres

V. Cross Sectoral Legal and Regulatory Framework

The GOI is inviting private participation to finance many of the infrastructure projects needed to support and sustain Indonesia's rapid rate of economic growth. After carefully evaluating a wide range of alternatives to implement the Sixth Five-Year Development Plan (Repelita VI), the GOI decided to encourage the private sector to finance a significant portion of the projects through public-private partnerships.

To strengthen the GOI's capability to plan, manage and successfully implement infrastructure projects financed by public-private sector partnerships, the National Development Planning Agency (Bappenas) is financing technical assistance for sectoral policy, strategy and planning studies aimed at promotion public private sector participation in the provision of infrastructure as well as for feasibility and engineering studies and various institutional strengthening activities. Entities eligible to apply for funding support include "all GOI departments and agencies at central, sectoral, regional and local levels as well as state-owned-enterprises or enterprises owned by Regional Administrations."

Phase II of the Bappenas Project will focus upon a number of important objectives including the development of the necessary legal and regulatory framework to facilitate and sustain private sector investment.

In many diverse forums, the GOI has stated their intention to foster and encourage the private sector to work in partnership with the public sector to help build the infrastructure. Successful private participation can only be achieved, however, once a strong mutual understanding has been developed among public and private sector participants. The GOI realizes there are impediments to overcome if the full potential for private sector participation is to be realized. The impediments include a lack of:

- clear legal and regulatory framework to guide private sector participation (PSP);
- predictability in the interpretation of the GOI's private sector participation (PSP) policies into implementing procedures and practices;
- effective, broad-based private sector competition;
- compatibility between project structuring, the management of risks and the expectations of financial institutions; and
- current, accurate and complete PSP and project-related information.

These impediments must be overcome while the GOI develops a cross-sectoral framework for structuring private sector participation. Without such framework, agreements are developed on a project-by-project basis culminating in a lack of consistency and difficulty transferring successful experiences from one sector to another. Equally important, the range of interpretations in this approach creates uncertainty for potential investors thus failing to foster an environment to encourage competition.

Key decisions

- **Issue:** Is the appropriate legal framework to facilitate PSP an undang-undang (statutes or laws), Presidential Decree or other form of regulation?

- **Issue:** What is the appropriate scope of the legal framework? What types of projects should be covered? The GOI may decide that, ideally, the scope would apply to all infrastructure projects and public service but, pragmatically, the actual scope may be limited to sectors/services listed in an Attachment. They may also conclude that contracts for creation, rehabilitation, operation and maintenance of infrastructure facilities are examples of the types of projects which may be considered for coverage. The Legal Advisor will assist the Working Group to analyze this issue.

- **Issue:** Should the GOI place any restrictions on the rights of private foreign investors to participate? If there are restrictions, do they conflict with Indonesia's draft Foreign Investment Law?

- **Issue:** Should solicited and unsolicited proposals be permitted? The Legal Advisor will, as required, perform legal research to assist the PSP Working Group to analyze this issue and develop a consensus.

- **Issue:** How can the legal framework be structured to foster competition? The GOI can help to maximize free and fair competition by encouraging effective, broad-based competition. To achieve this objective, the legal framework must be clear and consistent; accessible to the public and private sectors; predictable in its interpretation of policies into procedures and practices; and, to the extent practical, compatible with good commercial practice and the requirements of international financial institutions.

- **Issue:** Should some of the provisions of bilateral investment treaties entered int by the GOI in the past several years be incorporated into development of a cross sectoral framework?

- **Issue:** Would the introduction of fiscal incentives appropriate to enhance the attractiveness of PSP for private investors contravene GATT provisions?

- **Issue:** Should the framework contain detailed arbitration provisions in light of the fact that a general arbitration law does not yet exist in Indonesia?

- **Issue:** To what extent should the framework direct the attention of investors to particular obligations in areas such as labour and environmental law?

VI. Cross Sectoral Regulatory Framework: Government Regulation

These issues are representative of key decisions being discussed among senior GOI officials assigned to draft the cross sectoral framework to facilitate private sector investment in infrastructure projects. The resultant Government Regulation (Peraturan Permerintah in Bahasa Indonesia) is expected to be issued this month.

The Government Regulation was drafted in consideration of:

(1) The importance of developing and expanding Indonesia's infrastructure to improve the quality of life of its people, enhance industrial competitiveness and otherwise promote and sustain economic growth and development;

(2) The benefits of facilitating and expanding private sector involvement in infrastructure development and operation as a means of augmenting budget resources, promoting efficiency in investment and operation and creating new opportunities for the private sector; and

(3) The need to ensure private sector participation in infrastructure development and operation is procured according to competitive and transparent processes and in a manner that is consistent with achieving the'vest value for Indonesia and its people, ensuring social and environmental responsibility, and realizing economic and social development objectives and policies.

VII. Implementing Regulations: Presidential Decree

The GOI also plans to issue a Presidential Decree (Keputusan Presiden or Keppres) to establish a Coordinating Body for public-private partnership investment. The broad function of the Coordinating Body is to coordinate, assist, and monitor the implementation of GOI's policies, regulations and procedures for PPP investment in public infrastructure, and provide for protection of the public interest.

The Coordinating Body will also support the effective transparency in the implementation of GOI's policies, regulations and procedures for PPP for investment in public infrastructure.

The Coordinating Body will comprise important key agencies including the following:

a. Bappenas (the National Development Planning Agency)
b. Ekkuwasbang (the Coordinating Ministry for Economic Affairs)
c. The Office of Coordinator Minister of Production and Distribution.
d. Ministry of Finance
e. Ministry of Public Works
f. Ministry of Communication
g. Ministry of Tourism, Post, and Telecommunication
h. Ministry of Mining and Energy
i. Ministry of Home Affairs

The relationship between a PPP Executing Agency and the specific roles and responsibilities of the Coordinating Body are detailed below.

COORDINATING BODY

(1) The Coordinating Body will prepare, update, and publish monthly (or quarterly), an approved list of PPP projects.

(2) The Coordinating Body will establish an INTERNET "Home Page".

(3) The monthly (or quarterly) updated list of approved list PPP Project will also be published on the Coordinating Body's INTERNET "Home Page".

(4) The Coordinating Body will review, or arrange for an independent review of, all pre-feasibility studies prepared for proposed PPP projects

covering:

- Solicited projects identified by Executing Agencies (or consultants or other entities that have been engaged by Executing Agencies for this purpose), and

- Unsolicited projects identified by project sponsors (or other entities that have prepared and/or submitted pre-feasibility studies for, or on behalf of, such project sponsors).

(5) The Coordinating Body will prepare, update, and publish monthly (or quarterly) a list of all requests for pre-qualification for PPP projects from Executing Agencies.

(6) The Coordinating Body will prepare, update, and publish monthly (or quarterly) a list of Executing Agencies that intend to carry out pre-qualification for PPP projects together with relevant details of the projects and their specifications.

(7) The Coordinating Body will prepare, update, and publish monthly (or quarterly) a list of entities that have signed a contract with an Executing Agency for a PPP project.

(8) The Coordinating Body will prepare, update, and publish monthly (or quarterly) a list of all:

- requests for pre-qualification for PPP projects from Executing Agencies.

- entities that have been pre-qualified for PPP projects by Executing Agencies.

- entities that have, in the current month, signed a contract with an Executing Agency for a PPP project.

- projects for which open competitive bidding procedures as per the Keppres or Procedure have not been adopted, and identify in the list against the respective projects, the name and address of the entity (or entities) that are eligible to bid for (or have been directly appointed for) the project.

PPP EXECUTING AGENCY

(1) Responsibility for the identification, procurement, and monitoring the implementation and operation of a PPP project rests with the Executing Agency.

(2) All Executing Agencies will establish a PPP Planning Unit that will identify and prioritized potential PPP projects (solicited and unsolicited). The PPP Planning Unit will be a part of Executing Agency's planning bureau that is responsible for all project planning.

(3) The PPP Planning Unit will develop and update lists PPP projects (solicited and unsolicited). This list will be updated monthly (or quarterly) and submitted to the Coordinating Body for publication, including publication on the "Home Page" of the Coordinating Body's Internet Site.

(4) The PPP Planning Unit will evaluate and recommend further action or rejection for unsolicited projects.

(5) Unsolicited projects that are to be considered for further processing will included in a list of unsolicited projects. This list will be updated monthly (or quarterly) and submitted to the Coordinating Body for Publication, including publication on the "Home Page" of the Coordinating Body's Internet Site.

VIII. PPP CENTRE

The PPP Centre will report to the Chairman of the Coordinating Body. If the Chairman of the Coordinating Body is a Minister, the PPP Centre will then report to the Coordinating Body through a nominated Echelon I staff.

RESPONSIBILITIES

(1) Conduct studies and reviews to support the tasks of the Coordinating Body.

(2) Review all pre-feasibility studies submitted for PPP projects, and provide advise and recommendations thereon.

(3) Review all procurement submissions by Executing Agencies and monitor compliance with the KEPPRES PROSEDUR.

(4) Develop and maintain a database of PPP projects that satisfies the information and publication requirements of this KEPPRES.

(5) Establish and operate the Coordinating Body's INTERNET Home Page.

(6) Provide information, assistance and support to GOI agencies, Provincial and Local government, BUMN, BUMD and prospective private investors that will facilitate the implementation of GOI's policies and regulations on PPP for infrastructure provision.

(7) Perform secretariat and administrative tasks such as:

- pre-screening recommendations for contract award from Executing Agencies prior to their formal submission to the Coordination Body (e.g., ensuring completeness and adequacy of documentation).

- preparing agenda and minutes for the Coordinating Body.

- undertaking follow-up actions recommended by the Coordinating Body.

- serving as a liaison between Executing Agencies and Investors AND the Coordinating Body arranging meeting of the Coordinating Body.

- other matters as may be deemed necessary from time by the Coordinating Body.

(8) The PPP Centre shall also from a direct liaison with the PPP Planning Units of the Executing Agencies and their respective Ministries and Provincial and Local Government to provide assistance in the implementation of their PPP programs. Such assistance may include, but not necessary be limited to :

- assistance in identifying suitable projects, and structuring such projects to make them attractive for PPP.

- assistance in the preparation of draft advertisements.

- assistance in the pre-qualification and bidding process, as appropriate.

- defining training and human resource development requirements for PPP activities, as required and, as appropriate, procuring and/or supervising PPP training services.

PROJECT MONITORING AND IMPLEMENTATION

(1) Executing Agencies will report every six (6) months on the progress on implementation of the PPP project(s) under their responsibility and recruit suitably qualified independent experts to assist with the monitoring and/or implementation process. A copy of the progress reports will be submitted to the Coordinating Body for its review. Where appropriate, the Coordinating Body will provide comments and the progress reports to the Executing Agency.

(2) The Coordinating Body will negotiate all changes in the scope and cost of PPP projects and related changes to the project contract(s).

CONSTRUCTION COMPLETION EVALUATION

(1) Within six (6) months of the physical completion of the project facilities provided under a PPP project, the Executing Agency prepare and submit a report on the execution of the project including the project cost, implementation schedule, problems encountered during implementation and how these problems were resolved, and indicate the lessons learned. The report will also include a review and analysis of the initial operations of the completed project.

(2) The report of the construction completion evaluation will be submitted to the Coordinating Body who will review the report and, where appropriate provide comment and feedback on the report to the Executing Agency.

CASE STUDY: Paiton Swasta 1

The $2.5 billion, 1230 megawatt Paiton Swasta 1 Power Station ("Paiton") now being completed in the eastern Java village of Paiton dwarfs anything being built or even contemplated in the world. The Paiton case study illustrates the huge stakes involved in undertakings to not only fulfill Indonesia's $192 billion infrastructure needs but for the legions of foreign companies vying to win lucrative concessions and contracts.

Striking big deals in countries that do not yet have clear legal and regulatory framework to guide public-private sector participation can be a laborious process. Few Asian countries can afford to pay for all the improvements they need. Instead of relying on their state-owned utilities they are allowing big projects to be run as private enterprises -- often for the first time, and often by foreign companies such as Mission Energy Company, an affiliate of Southern California Edison company, builds electric power plants. This means international bankers and financial institutions must be convinced the projects will earn a profit or they will refuse to put up the billions of dollars required for construction. But consumers are accustomed to paying low, subsidized rates for electricity and other services and they are prone to balk if they find their charges going up.

With all the difficulties to be overcome -- and all the rewards to be gained -- it is a small wonder that Mission Energy Vice President Robert Edgell spent nearly 500 days in Indonesia to the Paiton project. "There were times when I got frustrated, because it takes a long time to get decisions made in this government," Edgell said. "The Indonesians decide things by consensus. But once the consensus is made the [staff carries it out diligently."

The most complex lessons have been in finance. Four years in the making, the deal was wrapped-up in 1995 when Chase Manhattan and the Industrial Bank of Japan closed on $1.82 billion in non-recourse financing.

The rest of the financing, $680 million, comes from the sponsors. They are the Mission Energy Co. (40%) and General Electric Capital Corp. (12.5%); Japan's Mitsui & Co. (32.5%), and Indonesia's PT Batu Hitam Perkasa (15%).

The $1.8-billion-debt was split; JEXIM came up with a $450-million loan plus a $360-million loan syndicated to commercial banks. EXIM kicked in another $540 million in a post-completion loan and political risk guarantee for the commercial banks while the project is under construction. When the project is done, EXIM will make a direct loan and take out the banks. OPIC is in for $200 million in investment guarantees, and Japan's Ministry of International Trade and Industry is extending 97.5% political and 95% commercial risk guarantees on JEXIM's $360-million syndicated loan.

The early financial complexity was compounded by a debate over whether Paiton's backers would be paid in Japanese yen or Indonesian rupiah during the 30-year power purchase agreement with state-owned utility Perusahaan Listrik Negara, a very significant question considering the subsequent drop in the rupiah. PLN was worried that the yen would continue to appreciate and that the utility would have to allocate increasing amounts of its rupiah-denominated funds to purchase power under a yen-denominated agreement. The answer was a yen-fluctuation clause worked out in tough negotiations.

Once financing was worked out, the design-construct team had 49 months to crank out 615 Mw per unit. The team is led by Mitsui, with the U.S.'s Duke/Fluor Daniel International Services handling the power to block and Japan's Toyo Engineering handling civil works.

Procurement and logistics lessons on the job came early and hard, say Dennis Howell and Terry Maloney, D/FD Administrative Manager and Field Superintendent, respectively. Moving supplies and people to the 40-hectare site from Surabaya has been dicey. Getting through customs is time-consuming and costly. Then there is the 141-km, three-plus hour trip to the site over a traffic-choked two-lane road.

Now nearing completion of the job, the design builders are concentrating their 3,600-person work force on pouring heavily reinforced 27,600-kPa concrete for the power block foundation, erecting power block steel and driving nearly 340 steel piles for the 220-m-tall chimney.

There is also what the team calls "the mother of all excavations." Crews are excavating 1 million cu m of rock for a 35-m-wide, 12-m-deep and 600-m-long seawater intake-outlet canal for the boilers. "Very bad rock put us two weeks behind, but we're catching up," says Kazuo Yamashita, superintendent for civil subcontractor TOA Corp., Tokyo.

Incentive payments tied to milestones keep the focus on schedule but incidents involving materials and communication nearly threw a wrench in the works. The nuts and bolts that hold the power block steel frame to the foundation didn't meet specifications. The 1-m-long bolts were threaded wrong, and the nuts did not meet the A-36 spec, says a source. He saw fold lines in the nuts, which indicated that the temperature of the metal was too low when the nuts were cast. Quick reordering saved the schedule.

It was not so easy with the communications problem. Builders had to break out about 600 cu m of foundation concrete, heavily reinforced and 1 m thick. The problem started when the ice machine feeding the batch plant broke down. Poor communications allowed bad concrete to be placed, say sources. Round-the-clock work avoided a major dent in the schedule, but the miscommunication lesson has not been lost on Mitsui's Yoshiaki Koga, consortium project manager, and Malla Reddy, D/FD senior project director. "We don't have enough hours to talk. Here, there's no such thing as over communication," says Reddy, "especially when ordering supplies and equipment from 23 countries."

"Meeting three to four times a week," says Yoshiaki, "has improved our ability to work quickly through problems and prepare the work ahead of us." The team is ahead of the contract curve, though slightly behind its own accelerated target schedule. "When you're under this big a microscope, this is exactly where we want to be," says John Harrison, site representative for owner PT Paiton Energy Co.

The Paiton 1 power plants calls for PLN to buy power at US$0.0856 per kwh for the first six years. The cost goes down to US$0.0841 per kwh for years 7 - 12 and to US$0.0554 for years 13 - 30.

Discussion: Lessons learned and Keppres No. 37 of Year 1997.

Project Cost

$1,820	non-recourse financing JEXIM came up with a $450-million loan plus a $360-million loan syndicated to commercial banks. EXIM kicked in another $540 million in a post-completion loan and political risk guarantee for the commercial banks while the project is under construction. When the project is done, EXIM will make a direct loan and take out the banks. OPIC is in for $200 million in investment guarantees, and Japan's Ministry of International Trade and Industry is extending 97.5% political and 95% commercial risk guarantees on JEXIM's $360-million syndicated loan.
$ 680	Mission Energy Co. (40%) and General Electric Capital Corp. (12.5%); Japan's Mitsui & Co. (32.5%), and Indonesia's PT Batu Hitam Perkasa (15%)

CASE STUDY: Migas Center

Quoted from the "Jakarta Post," Wednesday 3 May 1995

The government has taken over a project to build an oil and gas business center at the Thamrin thoroughfare and canceled its build-operate-transfer contract with the project's developer, PT Petrobuild Indonesia.

The secretary general of the Ministry of Mines and Energy, Umar Said, announced yesterday that the developer had failed to meet the May 1 deadline for putting up the required equity financing for the project.

"We decided to terminate the BOT contract with Petrobuild because the developer failed to come up with the required equity financing by the deadline." Reported Umar.

He added that the building project, called Migas Center, at the former site of the oil and natural gas directorate general, would be retendered.

Only last Thursday, Petrobuild's President Syarief Tando, showed reporters the progress of piling works at the project site and said that the 32 story building would be completed in 1997 as scheduled.

Tando signed the BOT contract with Oil and Natural Gas Director General Suyitno Patmosukismo on February 20, 1993, which stipulated 42 months to complete the building project, starting from July 1, 1993.

Umar said the developer would not be compensated for the spendings it had thus far invested in the project, including the temporary rental of an office building for the directorate general's personnel.

Tando told The Jakarta Post last night that the takeover was unfair and that the BOT contract could be canceled only through a civil court proceeding.

"I have spent more than US $10 million on the project and I have secured $45 million in equity financing from Arifin Panigoro, Chairman of PT Meta Epsi Duta Corp., and Aburizal Bakrie, Chairman of the Bakrie Brothers Group," Tando added.

He contended that such a move on the part of the government should have been based on a civil court decision to ensure an objective assessment.

Bad precedent:

"If the government can so easily take over a project and cancel a BOT agreement, that could become a bad precedent that might discourage new private investors," Tando said. He declined, however, to specify what course of action he would take regarding the government's move.

The idea of developing a representative oil and gas business center to house the offices of oil companies and the oil and gas directorate general had been conceived in the 1980's.

But the idea was developed into a concrete project only in early 1993 with the full support of the then Minister of Mines and Energy, Ginandjar Kartasasmita who also signed the BOT contract as the witness.

The building project was estimated to cost $150 million, of which $100 million would be financed with loan funds to be arranged by a bank syndication led by the state-owned Development Bank of Indonesia (Bapindo).

Bapindo's board of directors notified Umar Said last August that the bank was arranging a $100 million loan syndication with two other state banks -- Bank Rakyat Indonesia and Bank Ekspor Impor Indonesia -- and two private banks, Nusa Bank and Panin Bank.

Tando contended that despite some difficulties in securing all the necessary permits for the building project, his company would be able to complete the project on schedule.

Discussion: Lessons learned & the Enron Corporation case in India

CASE STUDY: PT Telkom

"For a state-owned monopoly, Indonesia's PT Telkom picked an unconventional way of awarding five contracts to install and operate 2 million new phone lines: . . . rights to install and operate the lines were [awarded] through open and apparently fair competition to private consortiums involving such proven outfits as US West, France Telcom, and Australia's Telstra Corp."

"Now, even some of the losing contenders admit that the process generally met international standards. Says Gerad Rossi, managing director of Nynex Network Systems Indonesia, which did not win a contract: 'I think the bidding was fair.'"

"Business Week" magazine 21 August 1995

Carrying out this concession was just one part of PT Telkom's efforts to convince the world it aims to become a serious player in Asia. As it prepared to raise $2 billion through stock offerings in Jakarta, London, New York and Tokyo, the company is sprucing up its image and balance sheet by boosting revenue, slashing costs and restructuring itself. The goal is to create a bigger, more efficient company that relieves more heavily on the private sector to provide urgently needed telephone service to the 200 million Indonesian citizens.

PT Telkom will focus on major cities but will depend on private companies to develop service in rural areas. While the government will sell some PT Telkom stock to the public, it's likely to retain majority control.

The five private consortiums, which closed their deals, will not only foot the $2.4 billion investment for new rural lines but also pay PT Telkom some $6 billion over 15 years to operate the networks. After that, ownership will be transferred back to PT Telkom. But in the meantime, the revenue is expected to be enough to provide a quite satisfactory long-term strategic return to the foreign providers.

For Indonesia, the payoff will be a workable phone system. PT Telkom, which will continue to provide service in big cities, will use most of its windfall to add 3 million lines in Jakarta and Surabaya by 2010. Meanwhile, PT Telkom engineers will receive valuable training from the foreign-led consortiums.

Joint Venture Partners Participating in Five Indonesia's KSO Projects

Foreign Partners	Local Partners	Location	Investment (million)
US West	Tiga-A	West Java	$600
Nippon Telegraph & Telephone Australia's Telstra	PT Indosat	C. Java	$528
France Telecom	Astra	Sumatera	$552
Telecom Malaysia	Alatief	Kalimantan	$284
Singapore Telecom	Bukaka Telekomindo	Java	$484

IX. Sources of Information Concerning Infrastructure Projects

The Commercial Attache of your Embassy
The Commercial Attache of the Indonesian Embassy in your home country

Bapak Ir. Sanyoto Sastrowardoyo
State Minister of Investment/
Chairman of the Investment Coordinating Board (BKPM)
Jl. Galot Subroto No. 44
Jakarta Selatan
Indonesia
Telephone: (62-21) 525-0023, X-223
Facsimile: (62-21) 525-4945

Bapak Ir. Rahardi Ramelan
Vice Chairman of National Development Planning Board (Bappenas)
Gedung 2A, Lantai Dasar
Jl. Taman Suropati No. 2
Jakarta Pusat
Indonesia
Telephone: (62-21) 334-371, X-236
Facsimile: (62-21) 337-576

Bapak Ir. Ruslan Diwiryo
Secretary General
Ministry of Public Works
Jl. Pattimura No. 20
Jakarta Selatan
Indonesia
Telephone: (021) 724-7564
Facsimile: (021) 739-0856

Booklets Concerning Infrastructure Development in Tollroads and Water Resources

Bapak Muchtarudin Siregar
Secretary General
Ministry of Communications
Jl. Merdeka Barat No. 8, 8th Floor
Jakarta
Indonesia
Telephone: (62-21) 384-0694

Bapak Tribuana Said, MDS
National Development Information Office (NDIO)
Direktorat Jenderal Pajak Building-A, 2nd Floor
Jl. Galot Subroto No. 40-42
Jakarta 10002
Telephone: (62-21) 522-5912
Facsimile: (62-21) 522-5913

"Direct Investment: Strengthening the Foundation for Sustained Economic Growth"
"Indonesia Source Book 1996"

Mr. Denis DeTray
Resident Representative
World Bank Resident Staff in Indonesia
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Jl. H.R. Rasuna Said Kav B-10
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Indonesia Resident Mission
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Mr. Yozo Sasaki
Resident Representative
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Fax: (62-21) 5200975

Ms. Karen Turner
Deputy Mission Director
United States Agency for International Development (USAID)
American Embassy
Jl. Medan Merdeka Selatan
Jakarta 10110
Tel.: (62-21) 344-2211
Fax to: (62-21) 380-6694

Mr. Hiroyuki Kamano, Esquire
Chair, International Trade Committee
Inter-Pacific Bar Association
Kamano Sogo Law Offices
American International Building
20-5, Ichibancho
Chiyoda-ku, Tokyo 102
Japan
Fax: (03) 5276-0132

Bapak Sulistio, SH
Law Offices
Sulistio Anggraeni & Associates
Gedung Argo Manunggal
Lantai 12 A
Jakarta Selatan
Tel. (62-21) 252-0014
Fax (62-21) 252-0404
E-Mail: shllm@idola.net.id

International Law Division
607 14th Street, 9th Floor
Washington, D.C. 20005
Tel (202) 638-0946
Fax (202) 638-0948

These are but a few of the many sources of information available to interested private sector parties. The Internet is also a useful tool.

Osana International's website address is: **http://www.osana.com**

American Investment in Indonesia

Indonesia continues to enjoy excellent relations and close economic ties with the United States. Today, some of America's best recognized and most respected companies are doing business in Indonesia. During March 1997, executives of 96 of American's largest corporations accompanied a United States "Trade Delegation" to the "First ASEAN Business Summit" in Jakarta, Indonesia. "***American Investors Upbeat on RI***" was the headline of the 14 March 1997 edition of the *Jakarta Post*. The consensus of American investors praised Indonesia's economic reforms including the one allowing 100 percent foreign ownership. The Chairman of the U.S.-ASEAN Business Council, George David, provided an illustrative quote: "Indonesia is a wonderful place for American Investment."

The *Jakarta Post* article also provided the following statistics:

"U.S. Department of Commerce figures show bilateral trade between the U.S. and Indonesia has grown more than 132 percent this decade with trade increasing from US $5.2 billion in 1990 to $ 12.2 billion last year.

"U.S. exports to Indonesia have grown 109 percent from 1990 to $ 3.9 billion. During the same period U.S. imports from Indonesia jumped 146 percent to $ 8.2 billion.

"Investment Coordinating Board data shows the U.S. is the third largest investor in Indonesia after Japan and Britain. In 1995, U.S. investment in Indonesia was worth $2.7 billion."

American companies have invested more than $7 billion in Indonesia since 1967 and Indonesia recently secured in excess of $40 billion in US investment contracts for the next half century. Perhaps that's why the US Department of Commerce has designated Indonesia as one of the Top Ten Emerging Markets for US goods and services. English is widely spoke among Indonesian government and business circles and, seemingly, the most visible brand names are uniquely American.

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X. Conclusion

Thank you, ladies and gentlemen for you kind attention during my presentation.

I would also like to thank the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and its very capable Director, DR. M.I.M. Aboul-Enein for inviting me to share with you the Indonesian experience in BOT projects.

Lastly, I would like to thank Professor Don Wallace Jr., Chairman of the Washington, D.C.-based International Law Institute, not only for his chairing the conference but, more importantly, sharing his vast experience and wisdom to assist the Government of the Republic of Indonesia to manage the development of needed infrastructure projects throughout the nation.

Thank you one and all.

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