

Handwritten signature and date: 1999, 20/11/99

Briefing Paper:

**International "Build-Own-Transfer" (BOT) Conference
The Indonesian Experience**



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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 trade 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 dependence 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 conditions 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. Public and Private Investments

The Government 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, telcom, 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.

Presidential Decree No. 16 of Year 1994 (Keppres No. 16), Indonesia's primary procurement regulation is titled in the English language as "*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 and by government bodies, agencies and enterprises. Private investment funds public-private partnership projects as a means 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, infrastructure funded by public and private sources are becoming difficult to distinguish. For example, in an infrastructure project financed "solely" by private funds, one usually finds the government (a) agreeing to support, directly or indirectly, a certain minimum "output" or usage of the project; (b) guaranteeing to repay loans to finance the project in the event of a default by the private sector parties; (c) agreeing to provide cushions against currency fluctuations or force majeure conditions; and other similar protection. All of 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	4,900 kilometres
- artery & collector roads	5,100 kilometres
- local roads	30,250 kilometres
- bridges	310 kilometres
- toll roads	
Railways	
Track	840 kilometres
- rehabilitation/upgrading	350 kilometres
- new track	130 bridges
- upgrading bridges	
Procurement	52
- diesel locomotives	84
- electric railcars	170
- passenger coaches	
Sea transport	
Port facilities	14,850 metres
- wharf	80,000 square metres
- warehouse	900,000 square metres
- open storage	24,250 square metres
- passenger terminal	
Air transport	
Airport facilities	129,750 square metres
- runway	93,320 square metres
- terminal	18,300 square metres
- operation buildings	

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, an essential step to achieve Repelita VI objectives, the National Development Planning Agency (Bappenas) is providing Technical Assistance (TA) services for sectoral policy, strategy and planning studies aimed at promoting 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 TAP4I 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 into 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?

These issues are representative of key decisions to be supported by the technical assistance and resolution of these issues will be made in consultation with officials from departments comprising the "GOI Interministerial Working Group on Development of a Framework Approach for Private Sector Participation (PSP) in Infrastructure Provision" (the Working Group). The Legal Advisor will, as required, perform legal research to assist the Working Group to analyze these issues.

[additional briefing materials being prepared.]

Attachment B

**Professional Presentations
and
Training Courses Conducted**

**Professional Presentations
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"INFRA ASIA '97" 6 - 8 May 1997, Infrastructure Advisor, Institute for International Research, Kowloon, *Hong Kong*.

"Joint Ventures in Indonesia," 5 March 1997, Served as Conference Moderator for the Center for Management Technology, Jakarta, Indonesia.

"Joint Ventures in Indonesia," 19 - 20 November 1996, Served as Speaker for the Center for Management Technology, Kuala Lumpur, *Malaysia*

United Nations Commission on International Trade Law (UNCITRAL) "Expert Group on *Public-Private Partnerships*," 2 - 4 October 1996, Vienna, *Austria*

"Strategi Efektif dalam Pembangunan Infrastruktur Secara Kompetitif di Indonesia," June 1996, the Institute for Public Private Partnerships, *Washington*

"How the Private Sector Can Work In Partnership with the Indonesian Government to Successfully Implement Infrastructure Projects," June 1996, the Institute for International Research (IIR), *Jakarta*

"Procurement in the Indonesian Petroleum Industry," December 1995, three-day Training Course presented to thirty-four procurement professionals employed by Production Sharing Contractor (PSC)-members of the Indonesian Petroleum Association (IPA), *Jakarta*

"A Comparison of the World Trade Organization (WTO) Uruguay Round (UR) Agreement, the Optional Government Procurement Agreement (GPA), and the United Nations Commission for International Trade (UNCITRAL) Model Law on Procurement of Goods, Construction and Services," December 1995, a three-day Working Meeting conducted for Indonesian government officials, *Jakarta*

"Issues Concerning Government Procurement Regulations and Public-Private Partnerships," November 1995, Institute for International Research (IIR) "B.O.T. Indonesia '96 Seminar, *Jakarta*

"Indonesia is Developing an Improved Government Procurement System," July 1995, Economic Ministries Meeting, *Jakarta*

"Indonesia Is Encouraging Capable Contractors to Compete for Government Contracts," July 1995, Rotary Club, *Jakarta*.

"Efficiently Negotiating and Administering Donor-Financed Technical Assistance Contracts," May 1990, Training Workshop at the Ministry of Finance.

Attachment A

**Articles and Periodicals
Submitted for Publication**

Articles and Periodicals Submitted for Publication

"Reforming the Indonesian Government Procurement System," March 1996, presented to the World Bank Vice-President and Controller, Mr. Jules Muis. [Similar articles were prepared for and presented to the Asian Development Bank, the Overseas Economic Cooperation Fund of Japan and other organizations.]

"Institutional Development Fund (IDF) Grant Request to Finance a Program of Innovative Technical Assistance Initiatives to Further Strengthen the Indonesian Consulting Profession," March 1996, submitted to the World Bank RSI in Jakarta.

"Survey on Government Procurement Systems" and "Survey on Publication Arrangements for Government Procurement," March 1996, two Government Procurement Surveys distributed by the "Asia Pacific Economic Cooperation" (APEC) for the Government Procurement Experts Group.

"Basic Steps in the Indonesian Government Procurement Process," October 1995, submitted to DKI Jakarta for inclusion in a training manual

"Preparing Contractual Agreements," September 1995, submitted to the "Jurnal Pengadaan" for publication as part of a training manual.

"The Federal Acquisition Regulations Permit Bidders to Protest Proposed Government Contract Awards and the Contracts Disputes Act of 1978 Permits Contractors to Contest Government Decisions," September 1995, submitted to the "Jurnal Pengadaan" for publication.

"Keppres No. 16 Tahun 1994 Improves the GOI Procurement System," May 1994, submitted to the Directorate General of Budgets, Ministry of Finance. Published in the government-wide "Anggaran" magazine.

"Developing Standard Curricula for Government-Wide Procurement Training," December 1993, a report submitted to the Inpres 1 Team.

"The Indonesian Legal System and its Impact Upon Private Sector Participation," November 1993, submitted to the World Bank, Washington, D.C. in conjunction with Osana International Inc.

"An Overview of Key Procurement, Investment and Financial Issues: Build-Operate-Transfers (BOT), Build-Operate-Own-Transfers (BOOT) and Build-Operate-Own (BOO)," May 1994, submitted to the Office of the Coordinating Ministry, EKKU dan WASBANG.

"Efficiently Negotiating and Administering Donor-Financed Technical Assistance Contracts," May 1990, submitted to DR. Fuad Bawazier, Ministry of Finance.

"Indonesian Odyssey," January 1990, a personalized travelogue submitted pro bono to the Directorate General of Tourism.