MBC CongressWatch Report
Towards Greater Voter Involvement

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Infrastructure, infrastructure, infrastructure

The Public-Private Partnership (PPP) program, the Aquino Administration's flagship infrastructure initiative, was lauded as a driver of growth that was envisioned to boost government spending, generate employment, and improve competitiveness. While concerns have been raised due to numerous delays in the roll-out of projects since the launch of the initial batch of PPP projects for bidding in March 2011, the program has since caught up both in terms of number of projects and in value.

The PPP Center currently maintains a pipeline of 51 projects. This does not count the projects that are being directly implemented by the relevant government agencies (e.g. LRT-2 East Extension and the Cebu Bus Rapid Transit, among others). 17 projects are in the advanced stages – for awarding of contract, for bid submission, or publication of invitation to bid – with a total value of P627.85 billion.

To date, 10 projects – transport (7), education (2) and health (1) – have been awarded with total value of P189 billion. Five of these are expected to be completed within the current administration, with the Muntinlupa-Cavite Expressway (or the Daang Hari-SLEX Connector) being the first PPP project to be finished last 25 July.

Awarded PPP Projects (as of September 2015)

Awarded Projects					
Project	Awarded to	Implementing Agency	Total Cost	Status	Target completion
Daang Hari-SLEX Connector	Ayala Corporation	DPWH	P2.01 B	Operations commenced on 25 July 2015	2015

PPP for School Infrastructure Phase I	BF Corp. and Megawide	DepEd	P16.43 B	As of 31 August 2015: 98% of classrooms completed Completed: 9,162 classrooms Started construction: 134 classrooms	2015
NAIA Expressway	San Miguel Corporation	DPWH	P15.86 B	As of 11 September 2015: 52% complete	2015 (May be delayed until Apr 2016)
PPP for School Infrastructure Phase II	Vicente Lao Construction and Megawide	DepEd	P3.86 B	As of 31 August 2015: 33% of classrooms completed Completed: 1,454 classrooms Ongoing construction: 1,505 classrooms Pre-construction phase: 1,411 classrooms	2015
Modernization of the Philippine Orthopedic Center	World Citi and Megawide	DOH	P8.69 B	Ongoing procurement of Independent Consultant and awaiting issuance of Certificate of Possession for the Project Site Contract awarded on 6 December 2013	2017
Mactan-Cebu International Airport Expansion	Megawide -GMR	DOTC	P17.52 B	Megawide-GMR assumed O&M on 1 Nov 2014 Construction ongoing, 9.06% completed Groundbreaking ceremony held last 29 June 2015	2018
Automatic Fare Collection System	Ayala Corporation and Metro Pacific	DOTC	P1.72 B	Ongoing pre-operation activities in MRT-3 Pre-full system acceptance for LRT-2 Ongoing limited public trial for LRT-1	2015

LRT-1 Cavite Extension and O&M	Ayala Corporation and Metro Pacific	DOTC	P64.9 B	Construction supposed to start on Sept 2015 and will last for 54 months. However, issues on the LRT-1, MRT-3, MRT-7 common station are apparently causing delay Handover of LRT-1 existing system to private consortium on 12 September 2015 Contract signed on 2 Oct 2014	2019
Integrated Transport System – Southwest Terminal	Megawide	DOTC	P2.5 B	Ongoing pre-construction activities and procurement of independent consultant Contract signed on 24 April 2015	2017
Cavite-Laguna Expressway	Metro Pacific	DPWH	P55.51 B	Contract signed on 10 July 2015 Ongoing procurement of independent consultant and negotiation	2018

Source: compiled from PPP Center data by Paolo Monteiro, MBC Research

There are however, at least four projects that have faced or are currently facing stumbling blocks:

1. Mactan-Cebu International Airport Expansion. There are several motions to suspend implementation filed before the Supreme Court.
2. LRT 1 Extension and O&M. Only one bidder submitted in 2013, resulting in re-bidding, which was awarded in 2014. The Supreme Court issued a TRO on the LRT-MRT common station construction component.
3. Cavite-Laguna Expressway. The project was rebidded following the appeal of a disqualified bidder to the Office of the President.
4. NLEX-SLEX Connector Road. The project was originally conceived as a joint venture, but an opinion by the Department of Justice may cause the project to be subjected to a Swiss challenge.

The BOT Law

In order to sustain the country's growth momentum through the steady roll-out of PPP projects, the PBG-JFC (Philippine Business Groups and Joint Foreign Chambers) believes that it is imperative to update and strengthen the existing law governing all public-private undertakings: Republic Act 6957, or the Build-Operate-Transfer (BOT) Law, enacted in 1990, and its subsequent amendment in 1994, Republic Act 7718. Meanwhile, the implementing rules and regulations (IRR) of the BOT Law has already undergone three revisions: 1999, 2006, and 2012.

RA 6957, which authorized the financing, construction, operation and maintenance of infrastructure projects by the private sector, was primarily enacted to arrest the power crisis that occurred alongside government's budget constraints. Under this build-operate-and-transfer contractual arrangement, the contractor undertakes the construction, including financing of an infrastructure facility. The contractor then operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges sufficient to enable the contractor to recover its operating and maintenance expenses and its investment in the project plus a reasonable rate of return. After a fixed term which shall not be beyond 50 years, the contractor transfers the facility to the government agency or to the concerned local government unit.

The other scheme provided for under RA 6957 is the build-and-transfer arrangement whereby the facility is turned over to the appropriate government agency or concerned LGU upon completion. This undertaking is particularly useful for strategic projects where operation by the government is deemed critical.

The subsequent amendments under RA 7718 provided for more variations of contractual arrangements (these will be defined in the succeeding section):

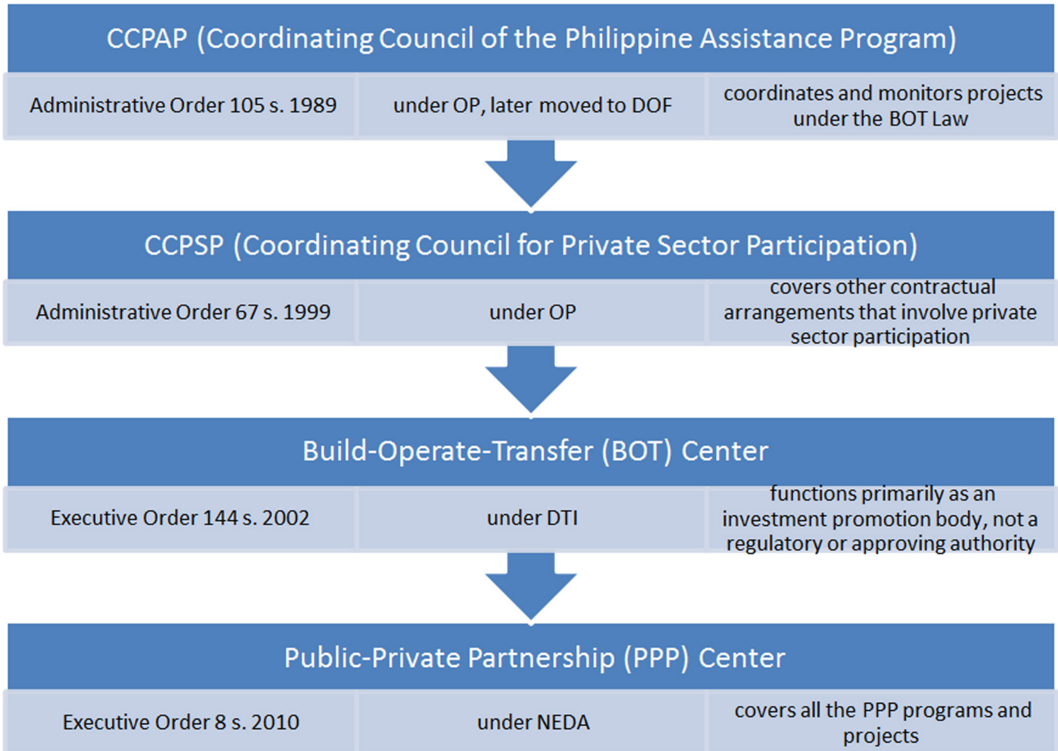
1. build-own-and-operate
2. build-lease-and-transfer
3. build-transfer-and-operate
4. contract-add-and-operate
5. develop-operate-and-transfer
6. rehabilitate-operate-and-transfer
7. rehabilitate-own-and-operate

The law also explicitly defined that public-private sector infrastructure or development projects will include, but are not limited to: power plants, highways, ports, canals, dams, hydropower projects, water supply, irrigation, railroads and railways, transport systems, reclamation, industrial estates or townships, housing, government buildings, markets, slaughterhouses, warehouses, solid waste management, sewerage, drainage, and dredging. Also identified are other projects regarding information technology networks and database infrastructure, tourism, education and health facilities.

RA 7718 likewise introduced the concept of unsolicited proposals that may be accepted by government on a negotiated basis. It however requires that: (1) such projects introduce a new concept or technology and/or are included in the list of priority projects, (2) no direct government guarantee, subsidy or equity will be required, and (3) the publication requirement and challenge provisions have been met.

Apart from clarifying bidding procedures, the law grants incentives provided by the Investments Code to projects that exceed P1 billion pesos. It also institutionalized the Coordinating Council of the Philippine Assistance Program (CCPAP), which is responsible for

Development of the PPP Center



coordinating and monitoring body of BOT projects. The CCPAP is the predecessor of the current PPP Center.

The Proposed PPP Act

The PPP Center is actively advocating for the passage of the Amendments to the BOT Law, also known as the PPP Act, to institutionalize the existing PPP framework and its processes, as well as its innovations to further strengthen the system. At present the PPP Center and its functions are bound only by Executive issuances.

The proposed PPP Act was identified by both leaders of Congress as priority measure for consideration by the 16th Congress. A committee report was already approved by the House Committee on Public Works and Highways, and has since been pending approval by the Committee on Appropriations for the budget component. Meanwhile, a technical working group under the Senate Committee on Public Works has conducted several hearings and is preparing the substitute version.

The following are the salient features of the Proposed Public-Private Partnership (PPP) Act in the both House and Senate:

	HOUSE	SENATE
Related bills	HBs 2022 (R. Acop), 2906 (J. Sacdalan), 3951 (F. Belmonte Jr.), and 4895 (R. Cosalan)	SB 459 (R. Recto), SB 2665 (F. Marcos), and SB 2672 (S. Angara)
Primary Committee	Public Works and Highways	Public Works
Chairperson	Rep. Ronald Cosalan	Sen. Ferdinand Marcos Jr.
Status	Pending in Committee (Committee Report for filing)	Pending in Committee (Under TWG)

- Refers to PPP as a contractual arrangement between the implementing agency and the roject proponent for the financing, design, construction, operation, and maintenance, or any combination thereof, of an infrastructure facility, in which the project proponent bears significant risk, management responsibility, or both.

- Identifies the <u>DIFFERENT VARIATIONS OF CONTRACTUAL ARRANGEMENTS:</u>

  i. Build-and-transfer – refers to a contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure facility and after the completion thereof, turns it over to the implementing agency concerned, which shall pay the project proponent on an agreed schedule its total investments expended on the project, plus a rate of return thereon. This arrangement may be employed in the construction of any infrastructure facility, including critical facilities which, for security or strategic reasons, must be operated directly by the government.

  ii. Build-lease-and-transfer – refers to a contractual arrangement whereby a project proponent undertakes to finance and construct an infrastructure facility and upon its completion turns it over to the implementing agency concerned on a lease arrangement for a cooperation period, after which ownership thereof is automatically transferred to the implementing agency concerned.

  iii. Build-own-and-operate – refers to a contractual arrangement whereby a project proponent is authorized to undertake a PPP project, specifically to finance, construct, own, operate and maintain an infrastructure facility from which the project proponent is allowed to recover its total investment, operating and maintenance costs plus a return thereon by collecting tolls, fees, rentals or other charges from facility users.

  iv. Build-operate-and-transfer

  v. Build-transfer-and-operate – refers to a contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to a project proponent. Once commissioned satisfactorily, ownership is transferred to the implementing agency. The project proponent, however, operates the facility on behalf of the agency.

  vi. Contract-add-and-operate – refers to a contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government.

It operates the expanded infrastructure facility over an agreed cooperation period. There may, or may not be, a transfer arrangement in regard to said facility.
vii. Develop-operate-and-transfer – refers to a contractual arrangement whereby favorable conditions external to a new PPP project which is to be built by a project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property or rent values.
viii. Joint Venture – refers to a contractual arrangement whereby a private person or a group of private persons and an implementing agency contribute money, services, assets, or a combination of any or all of the foregoing to undertake a PPP project, with the intention to share profits, risks and losses. Assets may include equipment, land, intellectual property or anything of value.

[Continuation of the definition of the joint venture in HB 3951]
*In case of a Joint Venture Company, the equity contribution of the implementing agency shall in no case exceed 50% of the outstanding capital stock of the said company; provided, that the said equity contribution shall be entitled to the same rate of profit or return on investment as that of the private equity.

[Found in a separate section on Miscellaneous Provisions of SBs 2665 and 2672, as well as in the PPP Center-supported draft.]
*For joint venture agreements, the ownership of the infrastructure facility may be transferred to either the implementing agency or to the project proponent; provided that in the latter case, the transfer shall be made under competitive market conditions; provided further, that the equity contribution of the implementing agency in a joint venture corporation shall in no case exceed fifty percent 50% of the outstanding capital stock of the said corporation; and provided finally, that the return on investment of either party shall be in proportion to their respective contribution.

ix. Operations and Maintenance Contract – refers to a contractual arrangement whereby the project proponent undertakes the day-to-day operation and maintenance of an infrastructure facility owned by the implementing agency. The project proponent shall undertake the acquisition or provision and upgrading of equipment, systems, and other items related to operation and maintenance. The project proponent shall be compensated in the form of a performance-based management or service fee during the cooperation period.
x. Rehabilitate-operate-and-transfer – refers to a contractual agreement whereby an existing infrastructure facility is turned over to the project proponent to refurbish, improve, operate and maintain for a cooperation period, at the expiry of which the ownership of the facility is transferred to the implementing agency.
xi. Supply-and-Operate – refers to a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the government so requires, operates such facility.

■ Prescribes guidelines for APPROVAL OF PPP PROJECTS

HB 3951	Senate TWG working draft*
National Projects a. Projects costing P5 billion and below shall be approved by the Investment Coordination Committee (ICC)[1] b. Projects costing more than P5 billion shall be approved by the NEDA Board, upon prior recommendation by the ICC c. All unsolicited PPP projects shall be approved by the NEDA Board upon prior recommendation by the ICC	National Projects PPP projects shall be approved by the ICC or by the NEDA Board or both, depending on the project cost as prescribed in the IRR. Note: Project cost is not specified in the bill, but is subject for determination in the IRR.
The approval of the ICC and/or the NEDA Board shall be carried by the GOCCs concerned.	Such approval shall be carried by the implementing agency or grantor concerned.
The endorsement by the Regional Development Council (RDC) for national projects that have an impact on the region shall be secured after the approval of the ICC and/or the NEDA Board but prior to the implementation of PPP projects. Provided, that such endorsement shall not be a condition precedent to the awarding of PPP contracts.	For national projects that have an impact on the region, the implementing agency shall secure the endorsement of the RDC prior to submitting the project for approval to the Approving Body. The RDC shall have 10 working days from receipt of the request of the implementing agency within which to issue its endorsement; otherwise the same shall be deemed automatically endorsed by the RDC.
Local Projects All PPP projects to be implemented by the LGUs shall be submitted for confirmation by the following: a. To the Municipal Development Council for projects consisting up to P20 million b. To the Provincial Development Council for projects costing above P20 million to P50 million c. To the City Development Council for projects costing above P50 million d. To the RDC, or in case of Metro Manila projects, the RDC for Metro Manila, for projects costing above P50 million up to P500 million e. To the ICC for projects costing above P500 million up to P5 billion f. To the NEDA Board for projects costing above P5 billion, upon prior recommendation by the ICC	Local Projects Local projects shall be approved by the local development councils concerned, and if specified in the IRR, by the ICC or NEDA Board.

**Unless otherwise indicated, the provisions are also found in the PPP Center draft, as well as in SBs 2665 and 2672.*

■ Creates the Project Development and Monitoring Facility (PDMF), which shall be used for the procurement of advisory and support services related to the preparation, structuring, probity management, procurement, financial close, and monitoring of implementation of PPP projects. The PDMF specifies that the consulting services shall be conducted through a two-stage competitive selection process: (1) establishment of a panel of prequalified consultants, and (2) selection of consultants from the panel for individual consultancy contracts within a fixed budget ceiling.

[1] *The body which evaluates the fiscal, monetary and balance of payments implications of major national projects, and recommends to the President the timetable of their implementation on a regular basis. The ICC consists of the Secretary of Finance (chair), the NEDA Director-General (co-chair), the Executive Secretary, Secretaries of Agriculture, Trade and Industry, Budget and Management, and the Bangko Sentral Governor (all members).*

- In all stages of the procurement process, the following protest protocol shall be followed:
  i. Decisions of the Prequalification Bids and Awards Committee (PBAC) may be questioned by filing a motion for reconsideration within a period prescribed in the IRR.
  ii. The decision of the PBAC on the motion for reconsideration in the immediately preceding paragraph may be further questioned by filing an appeal to the head of agency concerned and paying a non-refundable appeal fee in an amount equivalent to no less than ½ of 1% of the project cost within a period prescribed in the IRR.
  iii. The decision of the Department Secretary may be questioned by filing an appeal to the Office of the President.

- Copies of all PPP contracts shall be considered public documents. However, proprietary information in the contract and its annexes may be kept confidential for a limited period, as may be determined by the implementing agency but not to exceed five years.

- Prohibits the issuance of TROs and preliminary injunctions by courts against all PPP projects, except by the Supreme Court for a maximum of six months.

- PPP projects in excess of P1 billion shall be automatically entitled to incentives under the Investments Code, upon approval of the project. In lieu of income tax holiday, a corporate income tax of 15% shall be imposed to BOI-registered firms undertaking a PPP project.

Projects of National Significance

In order to encourage private sector participation in key development areas, the proposed law provides a section covering projects of national significance.

Upon certification and recommendation by the ICC, and prior consultation with the DILG, the President may classify certain projects, such as energy, toll road, mass transit, water, sewerage and other such projects as projects of national significance, which shall be entitled to the following incentives:

i. Exemption from real property taxes of all real properties that are actually and directly used for the project
ii. Exemption from transfer taxes any other local taxes, fees and charges.
iii. Automatic grant or issuance of the necessary local franchise, business permits, including renewals thereof, and exemption from costs or fees related thereto.

In lieu of exempted taxes, charges and fees, the provincial government concerned may assess the project proponent a special tax not to exceed 1% of their gross sales or receipts of the preceding calendar year. It shall be paid and remitted directly to the provincial government where such PPP shall be located, and shall be further distributed to the affected to the affected component cities, municipalities, and barangays.

For a project to qualify as a project of national significance, it shall meet the following criteria:

i. total project cost falls within the threshold set by the ICC.
ii. project has a direct economic impact which should not be less than the threshold set by the ICC.
iii. project has a direct positive impact on at least two cities and municipalities.
iv. project can create new jobs

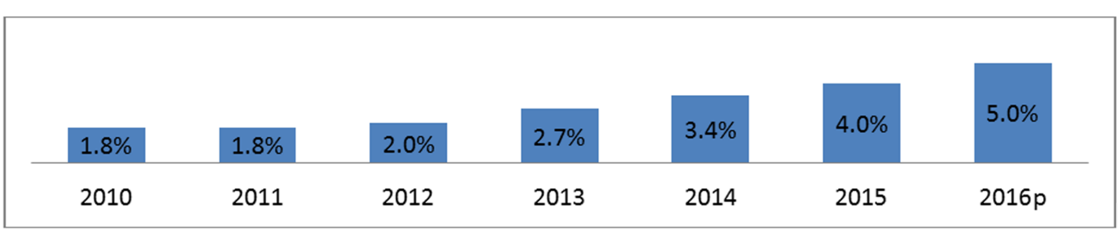
Funding infrastructure competitiveness

Presently, the country certainly has a lot of catching up to do in terms of infrastructure competitiveness. While the Philippines is already ranked 47th out of the 140 in overall competitiveness in the recent World Economic Forum Global Competitiveness Index 2015-2016, leaping 38 places from 85th out of 139 economies in 2010, infrastructure has remained the laggard, ranking 90th for 2015-2016. It is worth noting that in 2013-2014, inadequate supply of infrastructure was adjudged by the survey respondents as the top constraint to doing business in the country. In the two succeeding editions, infrastructure was the second most problematic factor.

Key Indicators	2010-2011 (out of 139)	2011-2012 (out of 142)	2012-2013 (out of 144)	2013-2014 (out of 148)	2014-2015 (out of 144)	2015-2016 (out of 140)
Quality of overall infrastructure	113	113	98	98	95	106
Quality of roads	114	100	87	87	87	97
Quality of railroad infrastructure	97	101	94	89	80	84
Quality of port infrastructure	131	123	120	116	101	103
Quality of air transport infrastructure	112	115	112	113	108	98
Quality of electricity supply	101	104	98	93	87	89

To improve overall competitiveness, with particular focus on infrastructure, as well as to complement the Administration's push for the PPP program, the government has outlined infrastructure support initiatives, particularly through the national budget. In fact, the proposed infrastructure spending of P766.3 billion for 2016 has already hit the target global standard of having 5% of GDP devoted to infrastructure investments. Significantly, actual allocation to infrastructure outlays has cumulatively grown by 245.4% from 2010 to 2015.

Infrastructure Outlays, 2010-2015



P165.0 B	P175.4 B	P215.7 B	P306.9 B	P442.3 B	P569.9 B	P766.3 B
1.8% of GDP	1.8% of GDP	2.0% of GDP	2.7% of GDP	3.4% of GDP	4.0% of GDP	5.0% of GDP

Source: DBM

Of the P287.8 billion allocated for transport infrastructure in the 2015 budget, P219 billion goes to the DPWH's National Roads and Bridges Program. The program aims to have paved 97% (2,231 km) of all national arterial and secondary roads, and make permanent 99.5% (5,231 m) of national bridges by end-2015. In the proposed 2016 national budget, P203 billion will be set aside to complete paving all national roads and making bridges permanent.

DOTC, meanwhile, was allocated P13.9 billion to develop new and rehabilitate existing airports, while P5.2 billion was to construct, develop, repair and rehabilitate seaports, as well as to improve maritime safety. P3.6 billion was set aside to decongest traffic in Metro Manila and Metro Cebu through integrated transport and bus rapid transit systems. Some P9.4 billion will be allocated for 2016 to improve airport facilities, while P4.8 billion is proposed to fund DOTC projects aimed at decongesting roads.

The controversial MRT-3 was given a P2.57 billion budget for rehabilitation and capacity expansion plus P4.66 billion in subsidy in 2015. For 2016, LRT-1 and 2 will be funded with P8 billion for extension and rehabilitation, while P3.64 billion will allocated to subsidize MRT-3. This, however, seems barely enough to remedy the problem. Everyday, over 500,000 passengers use the MRT which is designed to accommodate only 350,000. This already dismal situation is worsened by the fact that only seven of the usual 20 trains are in operation. Recently, the Office of the Ombudsman has ordered the filing of graft charges against former General Manager Al Vitangcol and several others over the alleged anomalous grant of MRT maintenance contract.

With the additional investments in infrastructure, as well as policy improvements aimed at encouraging greater mobility within the Philippines, and between the Philippines and other countries, the inclusive growth agenda is seen to be accomplished at a much faster pace. Recognizing the potential contributions of infrastructure to this effort, the Philippine Business Groups and Joint Foreign Chambers (PBG-JFC) has called for, among others, more intensified efforts to implement with little delay critical infrastructure projects that will reduce ground transportation, airport, and seaport congestion. The PBG-JFC is pushing for the enactment of the PPP Act and the amendments to the Right-of-Way Act (RA 8974), which the group believes will help further strengthen and institutionalize the public-private partnership framework.

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Project Coordinator
Patrick D.P. Chua

Editor
Paolo B. Monteiro

Design & Layout
Robi F. Del Rosario

MBC
MAKATI BUSINESS CLUB
THE FORUM FOR CONSTRUCTIVE IDEAS