



Technical Report

FINAL REPORT ON LAND RECLAMATION

by Atty. Jerry Dacayo, Jr., Land Reclamation Legal Analyst

Prepared for

Secretary Romulo L. Neri
National Economic Development Authority (NEDA)
Republic of the Philippines

Submitted for review to

USAID/Philippines OEDG

September 2005



Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE)
Unit 2003, 139 Corporate Center, 139 Valero St., Salcedo Village, Makati City 1227, Philippines
Tel. No. (632) 752 0881 Fax No. (632) 752 2225

Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

This technical report was written by Atty. Jerry Dacayo, Jr., Land Reclamation Legal Analyst, in September 2005, after six months of consultations. It was requested by National Economic Development Authority (NEDA) Director-General and Socio-economic Secretary Romulo L. Neri. The author would like to express his appreciation to all of the individuals with whom he worked on this analysis, many but not all of whom are mentioned in the report.

The views expressed and opinions contained in this publication are those of the author and are not necessarily those of USAID, the GRP, EMERGE or its parent organizations.

TABLE OF CONTENTS

I. BACKGROUND 1

II. GATHERING DATA ON RECLAMATION PROJECTS 2

III. LEGAL RESEARCH ON RECLAMATION LAWS 5

IV. OBSERVATIONS/LEGAL IMPEDIMENTS 8

V. SOLUTIONS 9

VI. OTHER TASKS 10

V. FINDINGS/REFLECTIONS 11

FINAL REPORT ON LAND RECLAMATION

By Atty. Jerry Dacayo, Jr., Land Reclamation Legal Analyst
September 25, 2005

I. BACKGROUND

NEDA Director-General and Socio-economic Secretary Romulo L. Neri requested USAID/Philippines to provide technical assistance under the EMERGE project to help improve the investment climate and realize the economic potential of land reclamation activities in the Philippines. Increasing investment and generating jobs are key objectives in the Philippine Medium Term Development Plan 2004-2010. In 2003, investments were 16.4 percent of gross domestic product and the government seeks to increase the ratio to 28 percent by the end of the Plan. The plan aims for ten million additional jobs to be generated to alleviate the unemployment problem in the country.

Land reclamation activities comprise one such strategic development area. Reclaiming submerged lands, particularly on the fringes of the country's metropolitan areas, including Metro Manila and Metro Cebu, like mining, can attract private sector investments and thus generate jobs. With reclaimed lands, urban areas can be further developed and additional wealth created. Land reclamation requires a substantial amount of investment, which faces important legal obstacles. The Supreme Court, on the case of FRANCISCO I. CHAVEZ, petitioner, vs. PUBLIC ESTATES AUTHORITY (PEA) and AMARI COASTAL BAY DEVELOPMENT CORPORATION, respondents, ruled on November 11, 2003, (G.R. No. 133250) that the PEA had seriously compromised the public interest by selling submerged lands to a private corporation, its partner in a joint venture agreement, and at a price about a third of the market value of such real estate properties.

In light of the Supreme Court decision nullifying the PEA-AMARI reclamation contracts, Secretary Neri requested a legal adviser to identify options for attracting private sector investment in land reclamation. Innovative and legally consistent strategies are needed to assure private sector investors get a fair return for their investments. This requires the evolution of appropriate type(s) of property rights to reclaimed land that are consistent with country's laws and jurisprudence but can provide private investors adequate confidence to sink their money in land reclamation activities.

The PEA, now the Philippine Reclamation Authority (PRA), is the government's central implementing agency given the mandate to undertake reclamation projects nationwide. PRA can lease or sell all reclaimed lands of the public domain. According to the Supreme Court, reclaimed foreshore lands (or submerged lands) are public lands in the same manner that these same lands would have been public lands in the hands of DENR. PRA took over from DENR the task of reclaiming submerged lands.

Under a Consulting Agreement dated February 9, 2005, the EMERGE Project engaged the services of Atty. Jerry Dacayo, Jr., as Land Reclamation Analyst for the period from February 1, 2005 to July 31, 2005. The objective was basically to provide legal assistance to the NEDA Director General, especially in improving the investment climate and realizing the economic potential of land reclamation.

The required legal assistance included doing legal research on reclamation issues (such as the problem posed by the Supreme Court decision nullifying the PEA-AMARI contract), assisting the PRA become a more effective reclamation agency of the Government, and disseminating factual and legal information on land reclamation.

II. GATHERING DATA ON RECLAMATION PROJECTS

In line with the stipulated task to disseminate information on land reclamation, the Land Reclamation Analyst first embarked on identifying significant land reclamation projects:

(1) Three Islands Project, known earlier as the AMARI Reclamation Project which, due to the Supreme Court ruling in the Public Estates Authority (PEA)-AMARI case, is being re-planned to cover a larger area of 850 hectares of mixed-use development in the southernmost part of Bay City, in preparation for re-bidding. The PEA is now the Philippine Reclamation Authority (PRA).

(2) The South Bay City Project is an 844-hectare reclamation project which, due to the same Supreme Court ruling, is also being re-planned for eventual bidding.

(3) The Rizal-Laguna Lakeshore Road Project is a 300-hectare, mixed-use reclamation project aiming to provide a road connecting Binangonan, Rizal, to C-5 (Circumferential Road No. 5). A pre-feasibility study cites, among other things, particular issues facing the project, such as environmental issues, geo-technical issues and community issues. This PRA-Laguna Lake Development Authority (LLDA) project has not gone beyond initial technical studies.

(4) The South Extension R-1 Expressway Project has been the subject of another PEA feasibility study. This project, which is to be one of ten (10) radial roads of the Metro Manila Area Road System, will link with the proposed C-6 and is expected to promote economic development in Cavite and Batangas.

(5) Maqueda Bay Reclamation Project in Catbalogan City, Samar. In an April 2, 2005, meeting with Atty. Luis P. Rivera, a former Catbalogan City Board Member and now a practicing lawyer and a consultant of the Department of Interior and Local Government (DILG), he talked about a failed reclamation project in Catbalogan City, Samar. This project, which David M. Consunji proposed in 1997, was supposed to be a 40-hectare, mixed-use reclamation of the Maqueda Bay, using fill that was to be sourced from a nearby hill owned by the Picson Family. The project did not materialize due to the opposition of the Arcales Family, the owner the Maqueda Bay Hotel, who also claim to have a foreshore lease contract with the Government over the foreshore of

Maqueda Bay. Atty. Rivera claims that the Arcales Family was demanding too a high a price for their leasehold rights, which led Mr. Consunji to abandon the idea of reclamation. But Atty. Rivera is convinced that the need to expand Catbalogan City has grown more urgent than ever and, hence, the city maintains its potential as a reclamation project site.

(6) The Polder Island Development Project, also known as the Laguna De Bay Project, is to be a 3,000-hectare, mixed-use reclamation project in which several entities have expressed interest but which has not materialized due to a reclamation ban imposed by the Laguna Lake Development Authority (LLDA). It has been subjected to a pre-feasibility study, which cites, among other things, particular issues facing the project, such as environmental issues, geo-technical issues and community issues.

On March 15, 2005, Engr. Jun Paul Mistica, officer in charge of the Special Concerns Division, and Atty. Marilou Remular, of the Legal Division, of the Laguna Lake Development Authority (LLDA) advised that a ban on reclamation in Laguna de Bay is contained in LLDA Board Resolution No. 10, Series of 1995, which resolved “to assert LLDA’s authority and exclusive jurisdiction in Laguna de bay Region and to disallow reclamation or any projects or activities in the lake that will contribute to the pollution of Laguna de bay, bring about the ecological imbalance of the region or diminish the total surface area of the lake.” LLDA Board Resolution No. 110, Series of 1999, penalizes unauthorized reclamation in Laguna de Bay. (The ban and this punitive measure is a legitimate concern to investors.) The Office of the Government Corporate Counsel (OGCC) has issued an opinion effectively upholding the LLDA right/power to reclaim in Laguna de Bay.

However, on April 5, 2005, LLDA Acting General Manager (AGM) Dolly Nepomuceno explained that LLDA does not call or consider said project to be “reclamation,” but rather the Polder Island Development Project (or the “PIDP”), which envisions the creation of four islands in Laguna de Bay with an aggregate area of 3,000 hectares. The reasons for not using the word reclamation are:

(i) The word reclamation is perceived to have a bad connotation to residents around the bay and could invite unnecessary opposition; and

(ii) The PIDP uses the polder method, a Dutch technology quite different from the usual method of filling up a portion of the sea or lake to create reclaimed land. The polder method involves the diking system, whereby a portion of a body of water is diked around after which the water inside is emptied, resulting in a waterless seabed (lakebed?), which can then be used for various purposes, like a water reservoir. Thus, instead of reclaimed land, which is above water level, the result is land below water level.

With Dutch financing, a pre-feasibility study has been completed on the PIDP. But the problem is that LLDA cannot proceed with the necessary full feasibility study due to its enormous cost. The Dutch Government was (in 2003-2004) only willing to co-finance it. Hence, the LLDA is now studying various financing options like those under the Official Development Assistance Act and the Build Operate and Transfer (BOT) Law.

Judge Salvador A. Camanian, head of the OGCC team handling LLDA, advised that he cannot find a copy of any opinion upholding LLDA's power to do land reclamation within Laguna de Bay independently of PEA/PRA. He doubts that there was really such opinion issued.

(7) The Cebu Reclamation Project (295 hectares). Director Victor S. Dato of the NEDA Project Monitoring Staff (PMS) disclosed the following information regarding the Cebu Reclamation Project and the issue between Cebu City and Talisay City:

Using a loan from Land Bank and JBIC, Cebu City reclaimed some 295 hectares of foreshore land in 2002. However, Cebu City's 2003 application for a special patent over the reclaimed land (which is supposed to serve as basis for the issuance of an original certificate of title in Cebu's name) was formally opposed by Talisay City on grounds that some 50 hectares of the reclaimed land are within Talisay's territorial jurisdiction. Talisay City filed in June 2004 a Sales Application over the disputed 50 hectares, which was never acted upon in view of the Cebu-Talisay boundary dispute.

The DENR approved in July 2004 a Land Plan (Plan SK-07000037) over the reclaimed land in the name Cebu City, but it indicates that a portion of the reclaimed land is inside Talisay City.

A Committee and a Technical Working Group created by former DENR Sec. Elisea G. Gozun found that while Cebu City's ownership over the reclaimed land is clear, a portion of the reclaimed land does lie within Talisay City. Meanwhile, Cebu City Mayor Tom Osmeña threatened not to pay Cebu's loan obligations to Land Bank and JBIC. Hoping to settle the issue, the Office of the President referred it to the Department of Justice (DOJ) for a legal opinion.

On April 30, 2005, Atty. Romeo Escandor, a former NEDA-Cebu Regional Director who still resides in Cebu, confirmed that the Cebu reclaimed land remains undeveloped to date due to the Cebu-Talisay boundary dispute. For this reason, he said, no locators or investors have applied or moved in. The delay is causing losses to Cebu, which is liable to pay off the Land Bank/JBIC loan that financed the reclamation project. In desperation, Cebu has closed the South Coastal Road traversing the reclaimed land to deny Talisay residents a convenient access to Cebu. As a result, Talisay officials have hinted on shutting down Talisay wells feeding water to Cebu.

Recently, the DOJ has issued an opinion on the dispute. Unfortunately, it does not make a clear-cut determination of the rights of the disputants, as it simply urged them to settle their dispute amicably in a joint session of their councils as required by the Local Government Code. Talisay officials appeared to welcome the DOJ opinion, as they immediately called the Department of Interior and Local Governments to convene both city councils. On the other hand, Cebu officials have mixed feelings of relief and guarded optimism since, in the absence of any amicable settlement, the same law authorizes either party to go to court. However, given how slow local judicial proceedings are, any litigation to resolve the dispute would not be in the best interest of either party, especially Cebu. Neither would this be good news to investors.

Finally, on May 16, 2005, President Gloria Macapagal-Arroyo issued a proclamation favoring Cebu in its dispute with Talisay over the South Reclamation Project, otherwise known as the Cebu reclaimed land. It is Proclamation No. 843 entitled "AMENDING PROCLAMATION NO

200-A, DATED MAY 22, 1967, WHICH RESERVED FOR NATIONAL IMPROVEMENT PURPOSES CERTAIN PARCELS OF LAND OF THE PUBLIC DOMAIN LOCATED IN SAN NICOLAS, PARDO (NOW PART OF CEBU CITY) AND TANGKE, TALISAY (NOW TALISAY CITY), PROVINCE OF CEBU, BY RESERVING A CERTAIN PORTION THEREOF AS THE CEBU SOUTH RECLAMATION PROJECT AND TRANSFERRING ITS OWNERSHIP TO THE CITY GOVERNMENT OF CEBU, AND DECLARING SUCH AREA AS ALIENABLE AND DISPOSABLE.”

Since the proclamation expressly authorized the Secretary of Environment and Natural Resources “to issue a Special Patent in the name of the City Government of Cebu,” the ownership issue appears to have been resolved. This leaves investors with only one major impediment, namely, the lack of land use development plan for the Cebu reclaimed land.

The Land Use Development Plan for the Cebu reclaimed land is still incomplete as it covers only the “blocking phase” and does not show its detailed uses. On May 28 the Cebu Investment Promotion Center (CIPC) reported that in the absence of such plan, CIPC is finding it difficult to implement its mandate to promote the Cebu reclaimed land to investors/locators. CIPC also reported that it is the Cebu Land Management Office (CLMO) that should prepare the report in tandem with the Cebu Engineering Office, but the CLMO has yet to be created.

Conclusion:

The slow pace of development in these projects may be attributable to the following problems: bureaucratic red tape, lack of focus, initiative and coordination by and among concerned parties, and lack of financing. The problems are not without solutions—novel, easy and promising solutions worth discussing with the PRA and other government agencies.

III. LEGAL RESEARCH ON RECLAMATION LAWS

The Land Reclamation Analyst conducted legal research on the local policies, laws, rules and regulations governing land reclamation. This was done not only to disseminate information on what the laws and policies are, but also to provide a legal analysis that would identify the legal impediments to investments in reclamation and the possible solutions thereto.

1. The 1987 Philippine Constitution – Under Article XII, it provides: (a) that “with the exception of agricultural lands, all other natural resources shall not be alienated” (Secs. 2 and 3); (b) that “private corporations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area” (Sec. 3); and (c) that “save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain” (Sec. 7).
2. Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act (1936) – Relevant provisions of this law provides: (a) that alienable and disposable lands of the public

domain include “lands reclaimed by the government” (Secs. 9 and 59); (b) that reclaimed lands are disposable to private parties “by lease only” (Sec. 61); and (c) that the lease of reclaimed lands shall be “for commercial, or industrial or other similar purposes” (Sec. 62).

3. Presidential Decree No. 3-A – It requires that “all reclamation shall be limited to the National Government or any person authorized by it under a proper contract”.
4. Presidential Decree No. 1084 (1977), otherwise known as the Charter of the Public Estate Authority – It declares as State policy “to provide for a coordinated, economical and efficient reclamation of lands” (Sec. 2), and authorizes the PEA to reclaim land (Sec. 4, a). It also authorizes the PEA “to contract loans ... as it shall deem appropriate for the accomplishment of its purposes” (Sec. 12), and empowers any government owned or controlled financial institutions other than the Central Bank, Government Service Insurance System and the Social Security System to guarantee loans of the PEA (Sec. 13).
5. Executive Order No. 525 (1979) – Section 1 thereof directs as follows: (a) that the PEA be “primarily responsible for integrating, directing and coordinating all reclamation projects for and on behalf of the National Government”; (b) that all reclamation projects shall be approved by the President upon recommendation of the PEA, and shall be undertaken by the PEA or through a proper contract executed by it with any person or entity; (c) that reclamation projects of any national government agency or entity authorized under its charter shall be undertaken in consultation with the PEA upon approval of the President. Section 2 authorizes the PEA to “issue such rules and regulations ... for the evaluation and sound administration of all reclamation projects”. And, Section 3 declares that “all lands reclaimed by PEA shall belong to or owned by the PEA”.
6. Executive Order No. 380 (2004) – This transformed the PEA into the Philippine Reclamation Authority (PRA), transferred its non-reclamation assets and liabilities to the Department of Finance, and separated from it the PEA-Tollway Corporation.
7. The Medium-Term Philippine Development Plan for 2004-2010 – It identifies reclamation as one of the primary sources of revenue of the Government.
8. Republic Act No. 4850, otherwise known as the Charter of the Laguna Lake Development Authority – It empowers the LLDA to reclaim portions of the Laguna Lake, and declares that lands so reclaimed shall be the property of the LLDA (Sec. 4[I]).
9. Republic Act No. 1899 (1957) – This is an old law authorizing the reclamation of foreshore lands by chartered cities and municipalities, and providing that “any and all lands reclaimed, as herein provided, shall be the property of the respective municipalities or chartered cities”.
10. The PEA/PRA Policies, Guidelines and Procedures in Undertaking Reclamation Projects – Reduced to its most salient provisions, the said Guidelines provides as follows: (a) that as a policy in general, reclamation shall be undertaken through private sector participation under a proper contract with no financial exposure nor guarantee by the government (Rule 1, 3); (b) that the PEA shall review reclamation projects with concerned government agencies such as the Department of Environment and Natural Resources, the local government unit concerned,

the Department of Public Works and Highways, the NEDA, the Philippine Ports Authority, the Department of Transportation and Communications, Department of Tourism, and other government agencies such as but not limited to the Philippine Economic Zone Authority, the Department of Energy the Housing and Land Use Regulatory Board, and the Banko Sentral ng Pilipinas(Sec.2, Rule 3; (c) that proposals for reclamation may either be solicited or unsolicited (Sec. 2.2, Rule V); (d) that solicited proposals shall be obtained through public bidding (Sec. 2.3, Rule V); (e) that unsolicited proposals shall be subject to a proposal challenge following the procedure in Sec. 5, Rule V (Sec. 2.4, Rule 5); (f) that the PEA may initiate a reclamation project using its own funds or through a private investor under a joint venture agreement (Sec. 2.5, Rule V); (g) that project proponents must meet certain criteria such as the legal, financial capability and technical capability requirements under Sec. 4, Rule V; (h) that reclamation proposals shall meet the technical, financial, socio-economic and Environmental criteria in Sec. 6, Rule V; (i) that the sharing schemes between the PEA and the project proponent shall either be in land, revenue and/or profit or combinations of land and revenue and/or profit (Sec. 7, Rule V); (j) that a reclamation project may be undertaken for the exclusive use of the proponent (Sec. 7, 3, Rule V); (k) that the proponent/developer shall post a proposal security upon filing of its proposal (Sec. 9, Rule V), a performance security upon receiving a notice of award (Sec. 11, Rule V), and a warranty bond upon issuance of a Certificate of Completion by the PEA (Sec. 3, 4, rule VI); and (l) that upon completion of the reclamation and issuance of a special patent and certificate of title over the reclaimed land to the PEA, the PEA shall assign and transfer to the parties involved portions of the reclaimed land equivalent to their respective shares as agreed upon.

11. PEA Administrative Order No. 2005-1, otherwise known as the Rules and Procedures for Special Registration of Unauthorized/Illegal Reclamation Projects – It defines “unauthorized or illegal reclamation” as a reclamation project done without the required permit from the PEA/PRA and approval of the President. It also provides for the forfeiture of such project in favor of the National Government without any reimbursement of the actual cost of reclamation and the imposition of the penalty of fine or 6 months imprisonment or both, unless the project proponent/developer registers such project with the PEA within 6 months ending August 25, 2005, in which case, the project proponent will be entitled to reimbursement of actual cost in kind (if project proponent is qualified under the Constitution) or through the sales proceeds of the reclaimed land or through lease.
12. Supreme Court Decision dated July 9, 2002 in Francisco Chavez vs. PEA, et al., now known as the “PEA-Amari Decision” – By this decision, the Supreme Court has ruled that lands reclaimed by the PEA are not private lands but rather alienable lands of the public domain which the PEA may dispose of to private corporations (like Amari) only by lease; and that the PEA may sell reclaimed lands only to Filipino citizens, subject to the ownership limitations in the 1987 Philippine Constitution and existing laws.

IV. OBSERVATIONS/LEGAL IMPEDIMENTS

Based on his analysis, the consultant identified various legal impediments to investments in reclamation:

1. The Constitution, the Public Land Act and the Supreme Court Decision in the PEA-AMARI case uniformly bar private corporations from acquiring reclaimed lands from the PEA/PRA except by lease. In light of said laws and jurisprudence, a private corporation investing in reclamation can lease but not own the reclaimed land or any portion thereof. This certainly poses a major legal impediment to investments in reclamation.
2. By allowing a sharing scheme wherein the PEA will assign a portion of the reclaimed land to the project proponent, the PEA/PRA's Policies, Guidelines and Procedure in Undertaking Reclamation Projects run counter to the aforesaid constitutional, legal and jurisprudential limitations. Having an object or purpose contrary to the constitution and the law, the said sharing scheme is null and void from the beginning" (Article 1409 of the Civil Code of the Philippines). Thus, the current sharing scheme allowed by the PEA/PRA provides no valid assurance of incentive to investors dealing with it.
3. While the PEA Charter allows the PEA to contract loans for its reclamation projects and empowers certain government owned or controlled financial institutions to guarantee such loans, the PEA/PRA Guidelines adopts the policy that "generally, reclamation shall be undertaken through private sector participation...with no financial exposure nor guarantee by the government." While it is clear that such policy is the general rule, a possible problem to investors is that the PEA/PRA Guidelines do not specify/clarify the possible exceptions to the general rule, i.e., cases where financial exposure or guarantee by the government may be allowed.
4. Republic Act No. 1899 (1957) provides that land reclaimed by a chartered city or municipalities are owned by such city or municipality. This law, however, did not help in resolving the Cebu-Talisay ownership dispute over the cebu South Reclamation Project (which was done by Cebu but lies in part within Talisay territory). This law was ignored in the resolution of said dispute due perhaps to impression that RA 1899 has been repealed by the PEA Charter, PD 3-A and Executive Order No. 525 (1979). Such impression, however, is misplaced since the PEA/PRA recognizes the existence of reclamation projects being planned/undertaken by other government agencies and entities, e.g., the LLDA Reclamation Project in Laguna de Bay. Thus, Section 1, Rule III of the PEA/PRA Guidelines provides that "reclamation projects of any National Government agency or entity authorized under its charter or existing laws shall be undertaken in consultation with the PEA". Furthermore, Section 7, 7(c) of the PEA/PRA Guidelines declares that "PEA shall have no share in all LGU (Local Government Unit) funded reclamation projects". Unfortunately, the PEA/PRA Guidelines has no express and unequivocal provision, similar to that of RA 1899, that land reclaimed by a chartered city or municipality are owned by such city or municipality. Investors (like the Land Bank of the Philippines and JBIC, whose exposure in the Cebu South Reclamation Project was almost affected by the Cebu-Talisay dispute due to threats

made by the Cebu Mayor not to pay its loans pending resolution of the dispute) would certainly appreciate having such an express and unequivocal provision of law.

5. The PEA/PRA Guidelines simply defines “unsolicited proposal” as one “submitted by a private individual or entity expressing interest to undertake a reclamation in a given site under given terms and conditions”. Based on such simplistic definition, a proposal for reclamation without public bidding is unsolicited, regardless of whether it requires direct government guarantee/subsidy or not. But under Republic Act No. 7718 or the Build-Operate-Transfer (BOT) Law, a proposal can be considered unsolicited only if it requires no direct government guarantee/subsidy. Consequently, the investor is faced with the issue of whether his proposal, which can easily qualify as unsolicited under the PEA/PRA Guidelines, may also qualify as unsolicited under the BOT Law entitled to the various investment incentives provided for therein.
6. The requirement in the PEA/PRA Guidelines for a warranty bond upon issuance of PEA/PRA’s certification of completion, on top of the proposal security required upon filing of the project proposal and a performance security upon receipt of a notice of award, seems to be superfluous and an unnecessary burden on the investor, unless the purpose of the warranty bond is to secure performance by the investor of post reclamation work like development and construction of improvements on the reclaimed land.”

V. SOLUTIONS

Vis-à-vis these legal impediments, there are these possible solutions:

1. Constitutional amendments to allow private corporations to acquire reclaimed lands from the PEA/PRA by sale. This is a very divisive issue in Philippine politics, though, which may not be resolved in the near future.
2. Pending such constitutional amendments, PEA/PRA could revise its guidelines for the following purposes:
 - (a) To provide for a sharing scheme consistent with constitutional, legal and jurisprudential limitations;
 - (b) To specify/clarify the possible exceptions to the general policy that reclamation shall be undertaken with no financial exposure or guarantee by the government;
 - (c) To clarify whether a proposal considered as unsolicited proposal under the PEA/PRA Guidelines that requires a direct government guarantee/subsidy may also qualify as unsolicited under the BOT Law entitled to the various investment incentives provided for therein;

- (d) To expressly and unequivocally provide that land reclaimed by a chartered city or municipality is owned by such city or municipality as its patrimonial or private property (as distinguished from public land); and
 - (e) To limit the application of the warranty bond requirement only to cases where the investor will embark on post-reclamation works like development and improvement of the reclaimed land.
3. Pending the needful constitutional amendments, the PEA/PRA and the investors may consider the following alternative approaches to investments:
- (a) A Joint Venture Agreement (JVA) with the PEA/PRA containing a sharing scheme on the revenue and/or profits only. This approach will require the parties to pre-agree on the following: (i) master development plan and land use; (ii) the project costs; (iii) the projected revenue; and (iv) the disposition and marketing strategies under revenue/profit sharing scheme.
 - (b) If it really wants the reclaimed land or a part thereof, the investor may form a Filipino corporation, then enter into a JVA with the PEA/PRA and a concerned LGU, expressly stipulating that: (i) investor will finance the reclamation project; (ii) PEA/PRA will own the reclaimed land; (iii) PEA/PRA will sell the reclaimed land or a part thereof to the LGU; and (iv) LGU will in turn sell the reclaimed land or a portion thereof to investor at a pre-agreed price. Note: This does not violate the constitution and the laws since, based on a sedulous reading of the PEA-Amari ruling, reclaimed land in the hands of the PEA/PRA is public land, but it ceases to be public land and becomes a patrimonial property or private land in the event the PEA/PRA sells it to an LGU.
 - (c) For the same purpose of acquiring the reclaimed land or part thereof, the investor may form a Filipino corporation and enter into a JVA directly with an LGU for a reclamation project in consultation with the PEA/PRA, expressly stipulating a land sharing scheme. Again, it is submitted that this does not violate the constitution and the laws for the same reason cited in 3 (b) above.”

PEA/PRA was furnished a copy of the report to help in its ongoing review and revision of its Policies, Guidelines and Procedures Governing Reclamation Projects.

VI. OTHER TASKS

The job of the Land Reclamation Analyst involved conferring with certain officials and personnel of government agencies involved in land reclamation. Thus, through various conferences with such staff, the Land Reclamation Analyst has established a network of sources on land reclamation. Such network became his unofficial team that helped him do his job. Through this network the Land Reclamation Analyst got the opportunity to advise and encourage the concerned agencies to focus and facilitate their respective concerns on reclamation.

V. FINDINGS/REFLECTIONS

The pace of development on the reclamation projects is quite slow, beset as they are with various problems. The PROBLEMS are bureaucratic red tape, lack of focus, initiative and coordination by and among concerned parties, and lack of financing. The good news is that there are possible solutions to said problems. One particular solution is the creation of an Inter-Agency Task Force or Committee among the PRA, LLDA, DBP, DILG and NEDA to facilitate close and active coordination in the study and resolution of any and all reclamation issues. Not only would such a committee provide the necessary focus on reclamation issues, but it would also facilitate a faster and more efficient implementation of reclamation projects. With the proper mandate and members, such a committee could even serve as an arbitration body capable of providing intelligent, speedy and binding resolutions of reclamation disputes. And it could certainly provide technical advice in connection with the necessary constitutional and legal changes. Thus, the creation of such committee alone will help improve the investment climate.

But creating such committee and making it work cohesively and effectively will need the attention and shepherding of determined and capable consultants. This is quite obvious from the fact that the PEA has not come up with its revised policies, rules and guidelines on reclamation to date. And it is also obvious from the fact that there is no on-going, focused effort to study other solutions to the problems on reclamation.