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Economic Cooperation**

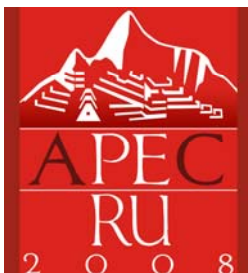
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**2008/SOM3/EC/SEM/003**

Agenda Item: 4

## **Transport Infrastructure Regulation: The Experience of Thailand**

Submitted by: Thailand



**Seminar on Best Practices in Regulation and  
Promotion of Efficiency in Transport  
Infrastructure Facilities  
Lima, Peru  
15-16 August 2008**

## **Transport Infrastructure Regulation: The Experience of Thailand**

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### **I. Introduction**

A fairly large and well-intentioned series of institutional reforms, carried out by the government of Thailand in September of 2002, made significant strides in improving a relatively inefficient institutional hierarchy for regulating the transport sector in Thailand. Despite these reforms, the system still operates under the influence of major institutional flaws, and overall, ranks below the international best-practices standard. As Thailand continues to expand, both physically (in the case of its cities) and economically, the economic and social problems derived from inefficiencies in transport infrastructure delivery and services will compound and severely limit Bangkok's considerable development potential – especially versus its established and emerging regional rivals, countries like Singapore, Vietnam, and China.

As such it is immediately necessary and timely to discuss the current regulatory framework, its weaknesses, and identify key reforms to increase the efficiency and competitiveness of Thailand's transport sector, and by extension, Thailand.

### **II. Main Characteristics of the Regulatory Framework in Transport Infrastructure for Thailand**

The regulatory framework for transport infrastructure in Thailand is based on a three-level system, much the same as many other national-level framework systems in competitive countries around the world. Those three levels are: policy generation, regulatory bodies, and operating agencies, be they state-owned enterprises (SOEs) or private companies through a concession.

Formal policy proposals are reviewed and approved at the national government level. The process is as follows: proposed acts are submitted for legal review by the department that manages a particular sector within the government of Thailand (in this case, the Ministry of Transport). Upon successful legal review, the governing department then submits the act before Thailand's House of Representatives. If an act is approved here, it is then submitted to the nation's Senate for final review and passage. These political bodies utilize the strategic advice of government policy-review bodies like the National Economic and Social Development Board.

The regulatory hierarchy for transport sector infrastructure delivery in Thailand officially exists as follows: the Ministry of Transport (MOT) is the regulatory body that reports to the Cabinet at the national government level. It is one of many ministries that compose the Thai government system (e.g., Ministry of Interior, Ministry of Foreign Affairs, etc.). Below the MOT are 6 departments, divided by sector: the Department of Land Transport (DLT), the Department of Civil Aviation (DCA), the Marine Department (MD), the Department of Highways (DOH), the Department of Rural Roads

(DRR), and the Office of Transport and Traffic Policy and Planning (OTP). Contained within these departments are bureaus and agencies and which have been formulated for more specific roles (e.g., the Bureau of Bridges Construction, within the DRR, or the Bureau of Motorway Development, within the DOH).

The operational institutions within this framework exist as either SOEs or private companies that have been granted a concession. These institutions are sorted accordingly within the Thai government as Land, Air, or Maritime institutions. Examples include the Mass Rapid Transit Authority (MRTA), which manages the underground rail MRT line, or the Ports Authority of Thailand (PAT), which oversees the national deep-sea ports, and are both SOEs. Both of these SOEs, as examples, also have delegated much of their operational capacities through private concessions and / or facility lease agreements.

The capital city of Bangkok's transport sector framework is also served by the Bangkok Metropolitan Administration (BMA), a special local administrative agency. Often, however, this leads to inefficiency in practice, as political and jurisdictional conflicts slow development and implementation of transport sector infrastructure. Additionally, the BMA exercises its local authority to grant and manage concessions to private sector firms which should be the authority of the national departments (i.e. MOT, Ministry of Finance, etc.).

This is a microcosm of the major current problem of the Thai regulatory framework for the transport sector - the separation of regulatory and operational duties (i.e. creating and enforcing laws, and granting and managing concessions) is not clearly defined in the national legal framework. This situation will be addressed in more detail later in this document as a key weakness and area for improvement within the regulatory framework of Thailand's transport sector.

### **III. Main Regulatory Tools Applied in Transport Sector**

There are two main applications of regulatory tools relevant in the recent-era development of Thailand's transport sector. They are committees, created within the MOT by the national government to regulate pricing and safety practices, and regulatory acts, most notably the Act on Private Participation in State Undertakings B.E. 2535 (1992).

There are 3 total regulatory committees within the Ministry of Transport, and their organization is in three categories: Air, Land, and Maritime. The committee serves to regulate safety standards and regulations, as well as concerns of physical development, which consists of licensing issues and pricing regulation. These committees, in addition to ensuring that the above standards are up-to-date and functional, play a key role in determining budget allotments within the MOT and Ministry of Finance (MOF) when major financing decisions are made.

Secondly, the other primary regulatory tool applied by the Thai government has been the enacting of several key acts that establish the legal mechanisms through which development in the transport sector is regulated. The most influential of these acts was the Act on Private Participation in State Undertakings, passed in B.E. 2535 (1992).

The original purpose of this act was to ensure transparency in the development process of large public-private-partnership (PPP) projects, valued at over 1 billion baht. As such, the act primary

focuses on describing internal processes of the government (Susangarn 2007); however, as part of this, the act does provide at least a basic government framework for PPP projects, and that has made the development climate for these projects favorable since its enactment.

Additionally, more specific regulatory acts are formulated by the six agencies within the MOT. These acts outline financial matters like tolls and taxes levied within the constraints of the different agencies, e.g. taxes on new vehicles under the Motor Vehicle Act and Land Transport Act, managed and collected by the DLT, or tolls, managed and collected by the ETA and its concessionaires within the DOH.

#### **IV. Lessons Learned in Regulatory Experience – Weaknesses Identified**

Thailand's experience in regulating its transport sector has exposed some institutional and regulatory weaknesses that will be addressed below.

##### *Lack of Legal Framework for Clear Separation of Regulatory and Operational Capacities within the Institutional Hierarchy Governing the Transport Sector*

Most primarily, the separation between the regulatory arm and the operating arm of the transport sector's regulation is not clearly defined in the national legal framework, as mentioned above. This is a serious institutional problem that lowers the efficiency level of transport service and infrastructure delivery in Thailand on a number of different levels.

The primary problem that arises out of this gap in the legal structure is that regulatory bodies have not retained the sole authority of regulation within the transport sector. When operating agencies or SEOs within the MOT grant concessions to the private sector, they have been assuming the regulatory roles in managing those concessionaires – rather than the assuming the regulatory structures of the departments to which they belong for managing their concessions. In order to prevent the great inconsistencies that this creates across the different agencies within the transport sector, it must be made legally clear that regulatory bodies serve exclusively as regulatory bodies and operators as operators, i.e., that there is a distinction in the institutional and regulatory hierarchy between the two in the delivery system.

The problems on the ground that result from this failed separation between regulators and operators are mainly problems of consistency across the different agencies that plan and deliver transport infrastructure and services. There is significant overlap in the delivery of roads, highways, rail MRT, and bus networks, each with their own host of inconsistencies, e.g. incongruent fare structures for the same services (e.g. bus transport), inter-modal connectivity issues, access concerns, area coverage overlapping or shortcomings.

These problems are exacerbated by the heavy politicization of the different stakeholders in their respective operational capacities, i.e., the political “sides” taken when the inevitable jurisdiction conflicts arise as a result of the lack of a clear legal framework. This is especially true when politicians' public livelihoods depend on the success of their campaign initiatives to improve service deliveries; great conflicts between those who have politically attached themselves to one project

versus those who are attached to another spur political wrangling and competition that prevents productive development taking place for either project. A key example of this is the national government's (through the MRTA / MOT) underground rail MRT, the Blue Line, versus the local government's (through the BTS / BMA) elevated rail MRT, the Green Line. Politicians on opposing sides of the national and local political divisions have politically attached themselves to extensions of these lines, which has caused internal political backlog and prevented real, productive development for either project (the separate management and regulation of which has already contributed to a poor linkages and overall service delivery on the ground).

These examples highlight the absolute necessity of political concord about the institutional and regulatory structure that governs Thailand's transport sector – especially about the separation between regulatory and operational capacities in transport agencies.

### ***Other Weaknesses***

The institutional hierarchy that governs Thailand's transport sector does not have three distinct bodies for the oversight of the three main modes of transport (Land, Maritime, Air), as most developed countries around the world currently employ. Instead, the head institutional body is the MOT, and from there are the different departmental bodies (DLT, DOH, etc.). This is not favorable as there is often significant overlap between the jurisdiction of the different departments, e.g., Thailand's roads are managed by the DOH, DRR, OTP, etc. and each operates through its own master plan.

Another noted weakness in the transport sector framework is the lack of private sector participation in the committees within the departments of the MOT. In the interest of keeping the highest quality and most up-to-date technology and innovation as part of the standards review process for these committees, private sector representation is necessary as it is the private sector that often leads the way in these areas of industry and service delivery. The input of the private sector is vital if the committees are to remain useful as a regulatory tool.

The last significant weakness to be denoted here is the need for an update to the Act on Private Participation in State Undertakings, or the legal framework for PPP projects.

As noted above, the Act on Private Participation in State Undertakings was originally devised as a legal framework for ensuring transparency in the undertaking of large-scale PPP projects, valued at over 1 billion baht – and as such, mostly consisted of outlining the internal processes of the government to prevent corruption. The framework it established created laws for governing certain types of PPP projects, namely Build-Operate-Transfer (BOT) and Build-Transfer-Operate (BTO) projects but left others outside the scope of the legal framework, specifically Build-Own-Operate (BOO) and turnkey projects – the reason for this being that the latter two project types do not involve the rights to operate or use of state properties (Susangarn 2007). Additionally, the act does not prescribe the methodology for project valuation or procurement methods, or (importantly) risk sharing mechanisms (Susangarn 2007).

As such, the PPP projects that have been developed and implemented since 1992 have been able to use several different interpretations of the law as the legal framework for their projects, with varying

results. Clearly, the legal framework for PPP projects in Thailand requires either significant reform or a new act altogether for modernization.

## **V. Recommendations**

The proposals here directly address the key weaknesses in the institutional and regulatory framework of Thailand's transport sector identified above.

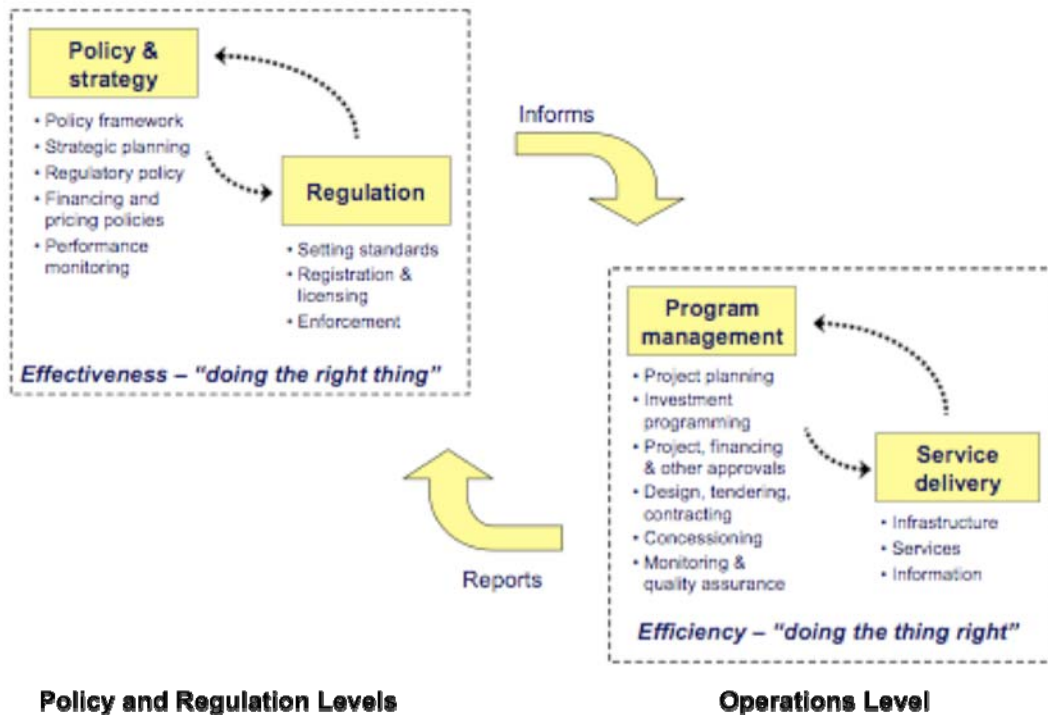
### *Comprehensive New Act for Installing / Updating Legal Framework that Governs the Transport Sector's Regulatory and Institutional Framework*

If Thailand is to remain economically competitive, especially in the context of increasing regional competition from countries and cities whose legal frameworks and regulatory structures for transport are more sustainable (e.g. Singapore, Shanghai), it must adopt a new act to modernize and stabilize its transport sector framework.

The primary goal of this new legislation would be to stabilize the hierarchy of the transport sector's governing framework, especially the functioning and coordination of the three tiers: the policy level, below which lies the regulatory level, below which lies the operational level.

This would be most immediately accomplished by officially signing into national law the clear distinction of regulatory and operational bodies in the framework of the transport sector. As identified as a key issue above, the current legal framework governing this distinction is essentially non-existent, and its update through the proposed act would quickly bring the Thai system up to best-international standards. See Figure 1 for a graphical depiction of the ideal outcome for the Thai transport sector that would be best served by the implementation of the proposed comprehensive transportation act.

**Figure 1: Ideal Outcome for Thailand's Three-Level Institutional Setup for Transport**



Source: World Bank, 2007

Additionally, the proposed act would establish three new government bodies for the management of the three main transport sectors (Land, Maritime, and Air). Such agencies would be responsible for master plans for their respective sectors, which would operate under a larger and comprehensive master plan created by the MOT. This would force inter-agency coordination by preventing the many transport agencies that currently exist under the different departments of the MOT from operating under their own individual master plans.

A major and comprehensive new transport act, as proposed here, could also address another of the above-identified weaknesses: the legal framework for PPP projects in Thailand. The current legal framework, often loosely interpreted and derived from the Act on Private Participation in State Undertakings passed in 1992, is incomplete and outdated. Since 1992, many new hybrid models of PPP project arrangements have emerged, most of which are not covered by the legal underpinnings of the act, due to either simply being too outdated or because the act was not originally passed implicitly for structuring the legal framework for PPP. In any case, a legal framework review and updating are overdue in Thailand, and PPP should be included as a part of a comprehensive new transportation act.

In order to service these reforms, Thailand must be able to address the rising human resources development needs and costs, as well as the general costs for implementation, that extensive reform via this new act will require.

- On the human capital side, this includes a need for additional highly skilled labor, such as engineers, planners, technology specialists, etc., and the educational investment necessary to harbor their development from within Thailand.
- From a financial standpoint, a comprehensive set of reforms will require funds for the institutional adjustments the reforms may call for.

A plan for generating the necessary funds to do so should be included as an amendment to the proposed act, and submitted to the MOF for review.

Lastly, and perhaps most importantly, it is vital that the new transportation sector act be accommodating on a political basis to all of the different departments, agencies, and government bodies that it will affect. This will ensure that the politicians, whose approval will be necessary to get the act passed (including representatives from competing parties) cooperate with each other to get the act signed into national law, at which point the reforms stand to tremendously benefit the common good. Political approval is often what stands in the way of good policy (such as the proposed transportation act) both in Thailand and internationally, which further emphasizes the importance of careful consideration of political involvement in authoring a new act.

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**Abbreviations and Acronyms:**

BMA	Bangkok Metropolitan Administration
DCA	Department of Civil Aviation
DLT	Department of Land Transport
DOH	Department of Highways
DRR	Department of Rural Roads
ETA	Expressway and Rapid Transit Authority
SOE	State Owned Enterprise
MD	Marine Department
MOF	Ministry of Finance
MOT	Ministry of Transport
MRT	Mass Rapid Transit
MRTA	Mass Rapid Transit Authority
OTP	Office of Transport and Traffic Policy and Planning
PAT	Ports Authority of Thailand
PPP	Public Private Partnerships

**References:**

“Strategic Urban Transport Policy Directions for Bangkok,” World Bank report, June 2007

“Public Private Partnership in Thailand: Past Experiences and Future Prospects,” speech given by Mr. Chalongphob Susangarn, Ministry of Finance, Thailand to the Asia-Pacific Ministerial Conference on PPPs in Infrastructure on 4 October 2007 in Seoul, South Korea

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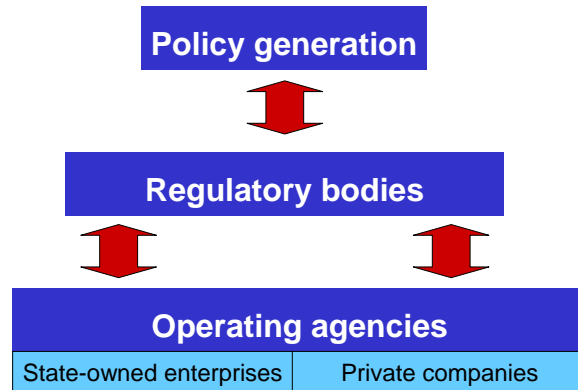
## Introduction



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## The Regulatory Framework in Transport Infrastructure



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## Main Regulatory Tools in Transport Sector



**The Act on Private Participation in State Undertakings B.E. 2535 (1992)**

**Air, Land, and Maritime committee**

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## Lessons Learned in Regulatory Experience



Lack of Legal Framework for Clear Separation of Regulatory and Operational Capacities within the Institutional Hierarchy Governing the Transport Sector

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## Recommendations



Comprehensive New Act for Installing / Updating Legal Framework that Governs the Transport Sector's Regulatory and Institutional Framework

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