

APPENDIXES

EXAMPLES OF PRIVATE SECTOR PARTICIPATION AT COMMERCIAL AIRPORTS WORLDWIDE

A. Full Privatization

The private sector entity is responsible for the ownership, investment, management and operation of airport infrastructure. Privatization is implemented mainly through flotation or trade sales.

Table A1.1: Examples of Full Privatization Schemes Worldwide

Country	Plans or actions for airport privatization
Australia	17 airports sold on long-term leases of 50 years, with an option for additional 49 years.
Bahamas	Transferred ownership of Freeport International Airport to a private entity.
Dominican Republic	Transferred ownership of Puta Cana International Airport to a private entity.
New Zealand	Implementing trade sale of Auckland and Wellington International Airports.
Slovakia	Plans to sell Bratislava Airport to a private entity.
United Kingdom	Share offering in British Airport Authority responsible for the operation of seven airports. Local government sold Belfast International Airport to a private company formed by employees. UK regional governments have sold East Midlands International airport to a private entity and are planning to sell shares in Birmingham Airport.

B. Partial Privatization

1. Concession or BOT Schemes

Under a concession or build-own-transfer (BOT) contract, a private entity finances, builds or modernizes a facility before operating the facility and gaining revenue from the operation. After a certain period, ownership of the facility transfers to the government. There is often some overlap between BOT schemes and long term management contracts as in both cases investment is required from the private entity.

Table A1.2: Examples of BOT/Concession Schemes Worldwide

Country	Plans or actions for airport privatization
Algeria	Plans to construct and operate new international terminal at Houari Boumediene Airport near Algiers.
Argentina	Long term concession agreement implemented for operation and development of 33 of the country's airports.
Bolivia	25-year master concession offered for running of the major three airports in Bolivia. Assets remain with the government throughout.
Bulgaria	Plans a 30-year BOT scheme to upgrade Sofia International Airport.
Brazil	Plans a contract with a private entity to rehabilitate the terminal at Guarapes International Airport in Recife.
Cambodia	25-year BOT contract for upgrading of Pochetong Airport in Phnom Penh. Plans for a 15-year BOT contract for projects at Sihanoukville Airport on Naga Island.
Cameroon	Plans for a long-term lease to build and operate a terminal at Yaound Airport.

Table A1.2: Examples of BOT/Concession Schemes World Wide (continued)

Country	Plans or actions for airport privatization
Canada	Private entity implemented to build and operate a third terminal at Pearson International Airport in Toronto on a long-term lease basis.
Chile	Plans a 15-year BOT contract with a private entity for a second terminal at Arturo Merino Benitez International Airport in Santiago.
People's Republic of China	Planning to contract with private entities to develop and operate eight airports.
Columbia	Awarded a BOT contract to private entity to build second runway and operate both runways at El Dorado International Airport, Bogota.
Côte d'Ivoire	15-year concession granted for Abidjan Airport.
Costa Rica	Plans a BOT contract with private entity for new airport in San Jose.
Ecuador	Plans to combine BOT contracts for two new airports in Quito and Guayaquil with operation of existing two airports in same cities.
Egypt	Plans BOT project for new airport near Cairo.
Gabon	30-year concession granted for Libreville Airport.
Germany	Considering contracts with private entities to develop and lease airports, including a major Berlin Airport.
Greece	Implementing a 30-year BOT contract for a new airport near Athens.
India	Considering contracting with private entity for construction and operation of new airport in Bangalore.
Malaysia	Implemented a BOT contract for a new terminal and a lease-develop-operate contract for non-aeronautical portions of new international airport in Sepang.
Mexico	Considering long term leasing of 58 airports to private entities, following national legislature passing a bill to allow these leases.
Myanmar	Plans BOT contract for the new Hanathawaddy Airport near Rangoon. Panama Plans a 10-year contract to expand and maintain passenger and cargo facilities at Tocumen International airport near Panama City.
Pakistan	Plans BOT scheme for a new terminal at Lahore International Airport.
Peru	Implemented a lease to build and operate a terminal and runway at Jorge Chavez International Airport in Lima.
Philippines	Has agreed long-term BOT agreement with a private entity for a new terminal at Ninoy Aquino International Airport in Manila.
Qatar	Plans a BOT contract for new international airport in Doha.
Russia	Implementation of private concessionaire to design, finance, construct, own and operate a new international terminal at Pulkova Airport in St. Petersburg, with initial 49-year lease period.
Trinidad and Tobago	Implementing BOT contract for a new terminal at Piarco International Airport.
Turkey	Implemented BOT contract with 3 year 9 month operational period for new terminal at Ataturk International Airport near Istanbul.
Venezuela	Plans long-term contract to build, operate and manage a new airport between Bolivar City and Guayana City in Eastern Venezuela.
Viet Nam	Plans BOT contract for new international passenger terminal at Tan Son Nhat International Airport in Ho Chi Minh City.
Uruguay	Plans a 20-year contract with a private entity to expand the terminal, build a new runway and make other improvements at Laguna del Sauce International Airport near Maldonado.

2. Strategic Partners/Partial Divestiture

A private entity or investors may have majority or minority holdings in an airports company, act as a partner in a joint venture to provide extra investment capital for infrastructure development or act as a strategic partner to increase the efficiency of existing operations.

Table A1.3: Examples of Strategic Partner/Partial Divestiture Schemes Worldwide

Country	Plans or actions for airport privatization
Austria	Shares sold in Vienna Airport; 47 percent of total shares are privately held.
People's Republic of China	Implementing a joint agreement to build and operate a new airport in Haikou.
Denmark	Shares sold in Copenhagen International Airport.
Hong Kong, China	Implementing a joint development agreement with a private entity for the new Chek Lap Kok Airport on Lantau Island.
Hungary	Implementing a joint development agreement with a private entity for a new international terminal at Ferighey Airport in Budapest.
Indonesia	Plans a joint development agreement with a private entity for a new airport in Medan.
Italy	National Government owned airlines are divesting their shares in Rome and Milan Airports.
Jamaica	Plans a joint partnership at Sangster International Airport in Montego Bay.
Macau, China	Implemented a joint development agreement with a private entity to develop and manage a new international airport.
South Africa	A private company was sold a 20 percent stake in the South African Airports company to become a strategic equity partner to improve the company's performance prior to privatization.
Switzerland	Sold 50 percent of shares in Zurich International Airport to private holdings. A private firm operates the airport.
Thailand	A strategic partner is being sought to participate in the development and operation of a second international airport at Bangkok and in a regional airports company.

3. Management Contracts

Ownership and investment is maintained by the state and management and operation is carried out through a private sector body. This may be in the form of a management contract, a service concession, a multiple concession or a contracting out strategy.

Table A1.4: Examples of Management Contract Schemes Worldwide

Country	Plans or actions for airport privatization
Albania	Contracted with a private entity to modernize and expand Tirana Airport.
Chile	Implemented a contract for a private entity to operate the passenger terminal at Arturo Merino Benitez International Airport in Santiago.
Italy	Plans to contract with a private entity to manage Naples Airport.
Hong Kong, China	Private company awarded management contract of Kai Tak Airport.

SPECIFIC COUNTRY CASE STUDIES

A. Australia¹

1. Policy Background

Following a policy review in 1993, the Australian Federal Government decided to implement a radical airports privatization program. Key features of the privatization policy were as follows:

- In order to ensure that airports continued to be operated as airports, it was decided to sell very long term leases (50 years with an option to renew for a further 49 years) rather than to sell the airport freeholds.
- Airports were offered for sale individually, with cross-ownership restrictions imposed on a limited number of airports, between which it was believed there was some scope for competition.
- In order to encourage competition in downstream (airline) markets, airline ownership of airports was restricted and, in fact, none of the airports offered for sale is airline controlled. Airport operations have also been made subject to economy wide access provisions in order to encourage new airline entrants.
- Airport charges at core airports were regulated via a price cap mechanism. However, non-aeronautical charges will not be regulated.

2. The Privatization Process

The privatization of 17 of the 22 airports took place in two phases in 1997 and 1998.

a. Phase One

The first phase involved the sale of the major international gateway airports at Melbourne, Brisbane and Perth, which was initiated in April 1996, and completed with the granting of licenses on 1 July 1997. The tender process took place within a relatively short time period — expressions of interest were invited by 10 October 1996. After short listing, nine consortia submitted offers by 30 January 1997. Six consortia were then asked to present revised bids by 10 April 1997. The three successful consortia were announced on 7 May 1997. The three successful bids totaled A\$3.31 billion, far in excess of the A\$2.2 billion estimated at the time the sale was announced.

b. Phase Two

Following the success of the first sale, a further 15 airports were offered for sale individually on 1 October 1997. Sydney airport, the country's largest, was excluded from the process due to problems caused by environmental restrictions, such as a government-imposed traffic cap and a night-time curfew. The second phase sales were completed by 30 June 1998, although no satisfactory bids were received for one airport, which was withdrawn from sale.

¹ This section has benefited greatly from detailed comments by Mr Robin Renwick, Senior Director, Office of Asset Sales and IT Outsourcing, Australia, a discussant at an Asian Development Bank (ADB) workshop.

Twenty six consortia were on the original shortlist. The Phase Two airports were divided into two groups — 10 Regular Public Transport airports and five General Aviation airports.

As a result of the Phase One and Two sales program, the industry structure was radically transformed, with ownership divided between ten private sector consortia.

3. Investment Structure

As part of their bid, each lessee company provided an airport masterplan, in which they committed to include major development plans as well as satisfying various building requirements. For Melbourne and Brisbane, these involved new runways, focusing on freight and using airport land to build new hotels and business facilities.

4. Regulation

The main features of the economic regulation framework applied to the core privatized airports are as follows:

- Application of airport specific price caps to aeronautical charges for an initial five-year period. The value of X varied between airports according to an assessment by the regulatory agency, the Australian Competition and Consumer Council (ACCC) of the scope for productivity improvements at individual airports. There is also scope for individual price caps to be varied at the initiative of the operator and subject to the consent of the ACCC and users to accommodate increases in costs as major new investments are brought on stream.
- A quinquennial review of the existing framework, when airport operators will be given the opportunity to come forward with their own proposals for future regulation.
- Monitoring of service quality against pre-determined performance indicators (service quality standards are not mandated).
- Monitoring of lessee investment programs against airport masterplan commitments.
- An emphasis on transparency, with financial reporting requirements imposed on lessees in order to facilitate inter-airport comparisons of performance.
- Airport operations to be made subject to economy wide conditions on access to essential facilities.

B. Colombia²

1. Introduction

Following deregulation of the Colombian air transport market in 1990, domestic passenger traffic had doubled and international traffic had increased 2.5 times by 1996. As a result, the single runway at El Dorado International Airport in Santa Fe de Bogota, responsible for 65 percent of Colombia's total air traffic, reached its technical capacity in 1993. In 1993, the Government of Colombia also separated airport operations from air navigation activities through the corporatization of the Civil Aviation Authority, Aerocivil. At the same time, it undertook the

² We acknowledge the assistance of Justin Anstee (Deutsche Bank, London) in preparing this case study.

development of a second runway, urgently needed to cope with an annual growth of eight percent in international traffic and 12 percent in domestic traffic, utilizing a BOT scheme with an opening date of September 1998.

2. The Process

a. The Concessionaire

The consortium Compañía de Desarrollo Aeropuerto El Dorado S.A. (CODAD), owned by Dragados y Construcciones S.A. of Spain (66 percent), Ogden Corporation of the US (19 percent) and Concreto Ingenieros Civiles S.A. of Colombia (15 percent), won the 20-year concession following a competitive bidding process initiated by Unidad Administrativa Especial de Aeronautica Civil (Aerocivil), the Colombian Government agency responsible for the regulation and operation of airports. Once bidders had fulfilled the technical requirements, bids were evaluated on the basis of the net present value of the minimum landing fee revenue that the bidder would require throughout the concession period and the weighted average landing fee in US dollars.

b. Project Details

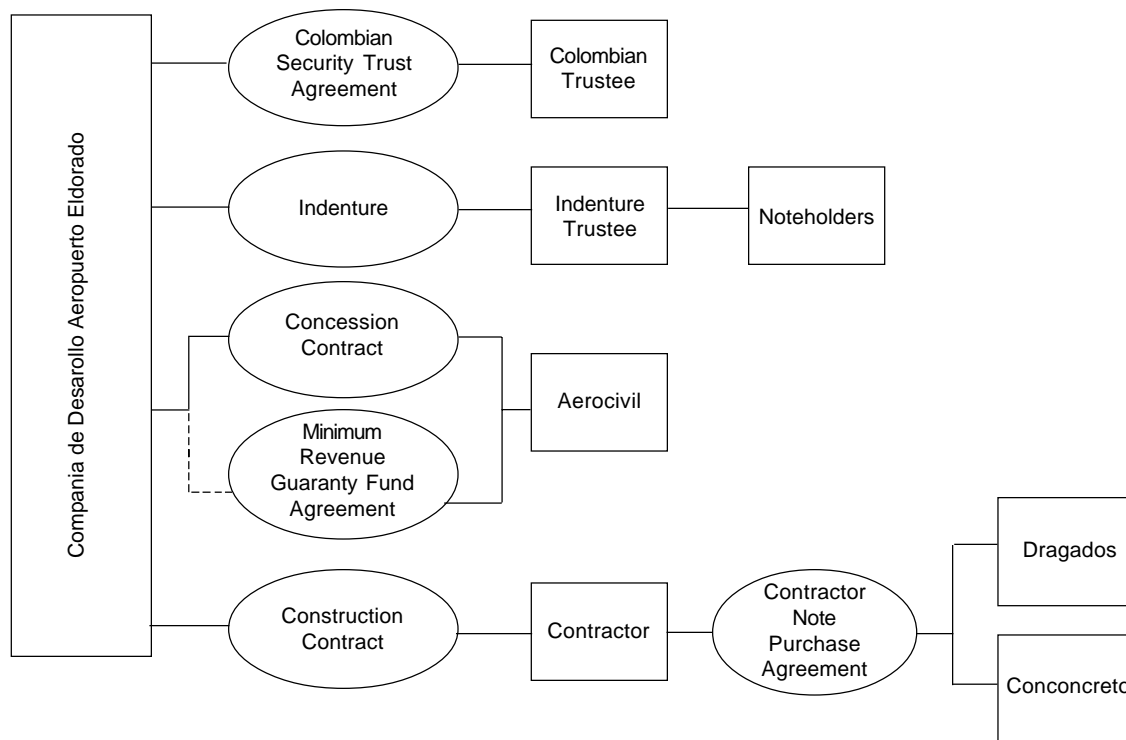
The project has a BOT structure, under the terms of which CODAD will build a second runway and maintain both runways from the time that operation commences for the 20-year duration of the concession contract. The project involved building

- a runway 3,800m long by 45m wide;
- a parallel taxiway 30m wide;
- three 90° exits and one high speed exit;
- taxiways to connect the old and new runways;
- installation of lighting, visual guidance equipment, radio-navigation aids and meteorological sensors;
- re-routing of 2,600m of the Bogota river.

3. Contractual Structure and Remuneration

Following construction, CODAD will be responsible for any investment that is needed in the maintenance of the new runway, and, in return, will have the right to commercial aircraft landing fees generated at El Dorado airport. Following the completion of the second runway, the concessionaire may immediately increase its charges by double the 1997 tariffs for the original Bogota runway (following a 20-30 percent increase in tariffs between 1996-1997). The scheme has a high guaranteed minimum return on its investment such that if the landing fee structure or traffic volume (or both) cannot support the required revenue stream the Government would compensate the concessionaire from a trust fund equivalent to 30 percent of the annual landing fee revenue. The concessionaire will receive a 20 percent equity stake in the facility.

Figure A1.1: Contractual Structure



Using private sector capital to relieve the capacity constraint at El Dorado airport is expected to allow Aerocivil to focus investment on increasing the level of airside operations and improve the safety of flight operations.

4. Financial Structure

Access to private capital has been provided through a US\$116 million CODAD offering of senior secured notes with a BBB/BBB rating and a due date of 2011 (15 year final maturity). The initial financing offered a spread of 340 bps over a 10-year treasury bond with a coupon of 10.1 percent, while in secondary trading this tightened to 330 bps. The proceeds from this issuance and sale of notes to the consortium will be used to fund the development, construction and financing costs of the new runway estimated at US\$100.3 million. The offering was successful, being substantially oversubscribed and attracting a number of first time project finance buyers.³

The CODAD financing structure set a number of benchmarks for Colombia as it represented the first investment grade rated cross-border transportation project, the longest maturity cross-border transportation project and the first example of non-energy project financing in the country.

³ Deutsche Bank, 1997

5. Regulatory Structure

Aerocivil acts as the regulatory body. Aerocivil is not an independent regulator, such as the UK Civil Aviation Authority, but is a part of government, which allows the concessionaire more freedom in their charging behavior. The initial generous ceiling on landing charges has been outlined above.

C. Philippines

1. Introduction

Under the provisions of the Philippine BOT law, as amended in 1994, unsolicited bids can be made to carry out financially viable public sector projects on a BOT basis. Proposals were put forward in 1996 by the Asian Dragons Consortium (ADC), a group of Filipino businesses, to construct and operate a third passenger terminal at Ninoy Aquino International Airport (NAIA) to handle international traffic. The airport, a two-runway facility, currently handles around 12.3 million passengers per annum (mppa) (7.8 mppa international, 4.6 mppa domestic) and is owned and operated by Manila International Airport Authority (MIAA), a state-owned corporation created following the separation of airport operations from the Philippine Air Transport Organization, an agency of the Department of Transportation and Communications (DOTC). The Philippine Air Transport Organization had previously owned and operated airport and air traffic control (ATC) assets throughout the Philippines.

2. The BOT Project

The ADC proposal envisaged the construction and operation of the new international terminal alongside the MIAA's existing airport operations. The BOT entity would be entitled to receive passenger charges, as agreed between MIAA and DOTC for passengers using the terminal. These charges would increase in line with domestic inflation. It would also receive revenues from commercial activities (retailing, car parking, office rentals) carried on in the terminal for a period of 25 years from the commencement of the concession.

Use of the existing international terminal would be discontinued and all international traffic will be transferred to the new terminal upon its completion. The concession agreement would also commit the Government not to authorize any development of new facilities for international traffic in the region (for example, at Clark Airbase), until international traffic at NAIA had exceeded 10 mppa for three consecutive years. On current projections, made before the onset of the economic and financial crisis, this would not occur until around 2005-2010.

The concessionaire would pay MIAA a two part (fixed plus variable) concession fee; the variable element would be expressed as a proportion of total revenue generated by the terminal. The concession contract committed the concessionaire to maintain certain service quality standards and to provide specified peak passenger handling capacity through the terminal.

3. A Competitive Bid

Under Section 4-A of the BOT law,⁴ the government is obliged to seek competitive proposals for unsolicited projects, once financial terms have been negotiated with the bidder. In this case, a competitive bid was received from a consortium including Lufthansa as well as

⁴ See Appendix 3.

indigenous Filipino organizations. The competitive bid offered significantly better financial terms than the ADC proposal, with a higher fixed fee and a larger proportion of revenue. Had ADC felt able to match these terms, the project would have been awarded to them; however, they did not, and the competitive bid was accepted.

ADC subsequently challenged the award of the contract in the Philippine courts.

D. Thailand⁵

1. Introduction

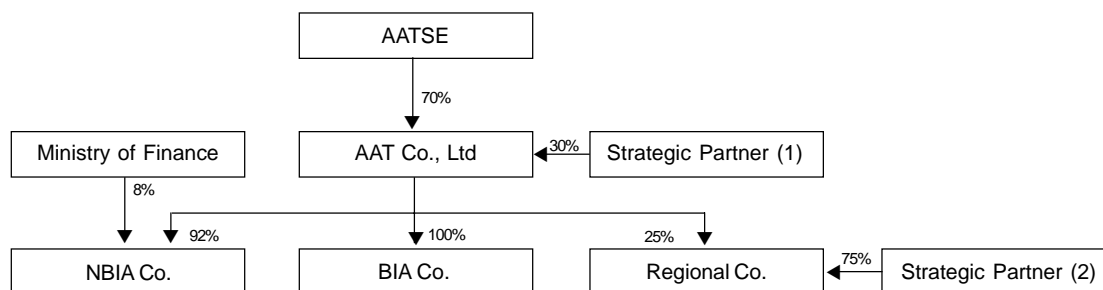
The major international gateway airport in Thailand (Don Muang) has experienced very rapid traffic growth (11 percent per annum in the period 1990-95), and is likely to become increasingly congested. The Thai Government has plans to construct a second international airport for Bangkok at Nung Ngu Mao (the so-called Cobra Swamp). Proposals for the new airport, published in 1996, envisaged that the first stage of the new airport would open around 2000. In September 1996, the Japanese government agreed to provide a 25-year soft loan to Thailand, including US\$280 million towards the construction of the new airport.

The five major airports in Thailand - Bangkok, Ohiangmai, Ohiengrai, Phaket and Hadyai — are currently owned and operated by the Airports Authority of Thailand (AAT). Twenty five smaller airports are owned and operated by the Thai Department of Aviation. AAT was responsible for developing plans for the new airport. However, the Thai Government has been examining options for attracting private financing to the airports sector. To facilitate this, and to minimize the risk of more bureaucratic delays to the project, it has created a new state corporation, the New Bangkok International Airport Corporation (NBIAC), jointly owned by the AAT and the Finance Ministry, to be responsible for the new airport project, if possible with some private sector funding. A Government committee examining privatization options has also recommended that the four principal regional airports at Phuket, Chiangmai, Ohiengrai and Hadyai, which are perceived to be potentially attractive to private investors, as a single package.

2. Restructuring and Strategic Partnership Proposals

Options for restructuring AAT and privatization are constrained by conditions attached to the Overseas Economic Cooperation Fund loan, a key element of the financing package for the new airport. The loan is a government to government facility and can only be made available to a state-controlled entity within Thailand. To satisfy this constraint, whilst at the same time creating a role for private sector participation (PSP), the Thai Government's financial advisers have proposed a complex re-structuring package, involving two strategic partnerships with the private sector, as shown in Figure A1.2.

⁵ The case study of Thailand has benefited from the constructive comments of Sirote Duangratana, of the New Bangkok International Airport Corporation, a discussant at ADB workshop.

Figure A1.2: Thai Airport Restructuring Proposals

At the heart of the restructuring, is the creation of two joint venture companies, Airport Authority of Thailand Co. Ltd. (AATCo), which would be 70 percent owned by a state holding company, Airport Authority of Thailand State Enterprise (AATSE), and 30 percent by a private sector strategic partner, and the Regional Airports Co. Ltd, which would be 25 percent owned by AATCo, and 75 percent owned by a strategic partner, which might be the same organization as the strategic partner in AAT. AAT would wholly own BIA, the operator of the existing Bangkok International Airport, and would own 92 percent of NBIA Co., with a small residual holding being retained by the Finance Ministry.

This structure thus allows the injection of private finance through both the minority AAT holding and through the majority stake in the regional airports company.

It is recognized that although this structure offers a private partner effective control over the regional airports entity, the minority holding in AAT may be unattractive. Also, whilst operation of the regional airports might be relatively profitable, initial returns on the investment in AAT may be modest, given the need for major investment in the new airport. To remedy this, the strategic partner may be offered a management contract and exclusive rights to commercial revenues in some of the more lucrative lines of business at the two Bangkok airports.

The Thai Government is promoting a corporatization Bill, to facilitate the establishment of the new AATCo entity and to enable AATCo to benefit from soft loan funding. The Bill is expected to become law by the end of 1998. It is now expected that the selection of a strategic partner and full implementation of the proposed new structure will be completed by early 2000.

3. Regulation of Charges

Increases in airport charges sought by AAT are subject to Government approval. No definite proposals have so far been made regarding future arrangements for determining airport charges under the new ownership structure, either at the Bangkok airports or at the regional airports.

E. Argentina

1. Introduction

The concessionaire for the large scale privatization of 33 of Argentina's airports in a single package was chosen in February 1998. Previously an arm of the Argentine Air Force owned, administered, operated and regulated the Argentine airport infrastructure, in a relatively unique combination which would have influenced the decision to attempt a large scale

privatization scheme. However, because of opposition from some shareholding provincial governments, only 33 of the originally intended 59 airports in Argentina were involved in the 1997/98 process, although this proportion still gave the private operator a monopoly in airport service.

2. The Process

a. The Concessionaire

In its invitations for bidding, the Government stipulated that the operator must have a minimum 10 percent share within a bidding consortium, recorded passenger flows of 10 million, and relevant construction experience of US\$150 million over the past five years. The Government's insistence that the airport operator had to hold equity left many potential bidders out of the process, although four major consortia prequalified.

In February 1998, the consortium Aeropuertas Argentina 2000 (AA2000) won the 30-year contract to manage 33 of Argentina's state-owned airports, with an option for 10 additional years. Argentina 2000 is 30 percent owned by Milan airport operator (SEA), 28 percent owned by Ogden, a US ground-handling company, and 35 percent owned by a local company, Corporacion America Sudamericana. In May 1998 the consortium commenced management of Ezeiza International Airport, the largest Argentine international airport. The two other main airports, Aeroparque de Buenos Aires and Paja Blancas in Cordoba, were to be transferred to the consortium within 90 days of the agreement, whilst the other 30 transfer within a year. The consortium will employ and supervise airport personnel and subcontractors though it will not be responsible for the maintenance and operation of ATO or landing systems and security, which will be handled by the Air force and the government.

There are large variations in traffic volume between different airports with Ezeiza and Aeroparque in Buenos Aires capturing two-thirds of total terminal volume, with annual turnover of 5.5 million and 6 million people respectively. Estimates that only a maximum of eight airports are profitable indicate the need for cross subsidies to improve and develop inadequate existing facilities at many airports. As a result, a sole-party concession was deemed necessary but has also led to fears of higher charges at larger airports.

3. Investment Structure

The consortium offered the Argentine Government a US\$2.2 billion capital investment program over the 30 year concession period in addition to a US\$171 million annual license fee. No additional funding will be provided by the government for these investments. The bulk of this total investment (US\$1,346 million) will go to Buenos Aires airports. Approximately US\$859 million will be invested in the first five years of the concession (1998-2002). A large amount of which would be invested in a proposed expansion of Ezeiza airport, which will be merged with the operations of Buenos Aires' domestic airport, Aeroparque, to create a single domestic and international airport at the current location of Ezeiza by 2001. Following this initial five year period there is a declining financial commitment for the remainder of the 30-year concession, from a peak of US\$180 million total throughout the system in 2000 to approximately US\$10 million in 2027.

An environmental study for each airport, identifying existing problems has provided the operator with a list of remedial work to be carried out, the cost of which will be deducted from

their license payments due to the Government. Operator accountability will begin when problems arise beyond this original study.

4. Remuneration

The consortium will collect and retain all airport revenues from air and land side activities, except where existing contracts have not expired. Airport land may also be utilized for its commercial value, making low passenger volume airports located in Industrial Free Zones more attractive. New tariff levels will be announced to be effective from 22 June when the concessionaire takes over the airports. It is expected that landing charges will stay constant and passenger charges will increase by up to 50 percent, alongside increases in other charges, such as real estate rents. By year six the consortium anticipates making an 18 percent return on capital, and profits are anticipated to average seven percent of revenue. Having been given a free hand to exploit commercial opportunities, the consortium expects revenues to approach US\$20 billion over the life of the concession. The US\$2.2 billion for capital improvements is expected to be funded from system cash flows and non-recourse project finance.

Duty free, ground handling and warehousing services are not included in the concession where pre-privatization contracts will not expire until 2010, unless the operator and current franchisees agree on other arrangements. The concessionaires will get some revenues from these contracts up until that point, though these amounts are expected to be lower than international standards, and may lead to an increase in charges on airlines or passengers.

5. Regulation

Post privatization, roles will be divided between the existing airport manager (ORA) and the concessionaire. A regulatory body under the Ministry of Economy, the Organismo Regulador del Sistema Nacional de Aeropuertos, will exist to resolve conflicts between the two parties, and if conflicts involve the regulatory body itself, the Argentine judicial system will intervene.

F. Côte d'Ivoire

1. Background

Until July 1996 all airports in Côte d'Ivoire and ATO services at airports other than the major international airport at Abidjan⁶ were owned and operated by Agence Nationale de l'Aviation civile et de la Meteorologie (National Agency for Civil Aviation and Meteorology (ANAM)), which also acted as a national regulatory agency for air transport. Under legislation passed in 1996, however, responsibility for the operation and development of Abidjan airport was transferred through a 15-year concession agreement to AERIA, a special purpose company controlled by Société d'Exploitation et de Gestion Aéroportuaire (SEGAP), a jointly owned subsidiary of the French based Service Group and the Marseilles Chamber of Commerce and Industry (MCCI). MCCI operates Marseilles airport, and SEGAP also operates Libreville (Gabon) airport under a concession agreement signed in 1988. AERIA took over responsibility for operating Abidjan airport on 1st July 1996. The concession agreement contains provisions for the Ivorian state to hold up to 20 percent of AERIA's share capital.

⁶ ATC services at Abidjan are owned and operated by ASECNA (Agence pour la Sécurité de la Navigation aérienne en Afrique et a Madagascar), a multinational agency jointly owned by a group of fourteen Francophone African States, charged with providing en-route air navigation services on behalf of the member states.

2. The Award of the Concession

Following a decision in 1994 to seek PSP in upgrading and extending the facilities at Abidjan airport, the Côte d'Ivoire authorities issued a call for expressions of interest containing outline terms of reference for the project. Respondents were invited to put forward proposals covering:

- The form of PSP, and the relationship between the private sector party and the state.
- An investment program to upgrade and extend the airport infrastructure over the period 1996 - 2000 to the extent necessary to consolidate Abidjan's position as the major hub airport in Francophone, West Africa. The authorities also anticipated that the concessionaire would undertake significant commercial development on the airport and in areas adjacent to the airport.
- Indicative financial terms.

In response, the authority received outline proposals based on the concessions model of PSP from SEGAP and from a consortium led by Aéroports de Paris, and entered negotiations with both parties in 1995.

SEGAP was identified as the preferred bidder primarily on the basis of the quality and depth of its proposals, in particular, concerning the investment program during the early years of the concession period. Negotiations were concluded early in 1996, and a special purpose company, AERIA was established as concessionaire.

3. Principal Features of the Concession Agreement

Under the terms of the concession agreement, AERIA gains title to aeronautical⁷ and other commercial revenues (such as rents and car parking fees) arising from airport operations at Abidjan which previously accrued to ANAM. From these revenues, AERIA is committed to operating and maintaining airport assets over the 15 year concession and to undertaking and financing a specified program of investments covering the first four years of the concession period. AERIA also commits to pay around 20 percent of total turnover (net of VAT) in concession fees to the concessioning authority. Approximately a half of the fee is described as a usage charge. The remainder is identified as a subsidy to cover deficits at interior airports.

AERIA must also set aeronautical tariffs on the basis of principles established by the International Civil Aviation Organization (ICAO). Any proposed adjustments to aeronautical tariffs (though not commercial charges) must be approved by the concessioning authority. In assessing AERIA's proposals for tariff adjustments, the concession agreement requires the concessioning authority to ensure the "financial equilibrium" of the concessionaire. This is described simply in terms of revenues from aeronautical charges and other sources covering the concessionaire's costs, including the concession fee paid to the government.

As an aspect of financial equilibrium, the concession agreement recognizes AERIA's right to recover the full costs of the contractually committed investments over the life of the concession. However, the agreement also recognizes, and attempts to address, the issue of

⁷ Aeronautical charges are levied on airlines and include landing charges (based on aircraft weight), aircraft parking charges (also aircraft weight based) and passenger handling and freight handling fees.

unanticipated investment undertaken later in the concession which would be “stranded” if the concession was terminated after 15 years. It does so by providing for the concessionaire to receive compensation from the conceding authority in respect of unamortised investments on the basis of a valuation undertaken by an independent expert or experts. Although not explicitly stated, it is expected that in the event of a failure to agree on such a valuation, the issue would be covered by the general arbitration provisions in the concession agreement. The agreement also provides for the modification of detailed aspects of the investment programs in the light of technical etc., changes and the emerging needs of the airport business.

In order to enable the concessioning authority or its agent to carry out its responsibilities for technical and financial oversight of the concessionaire, the agreement requires the concessionaire to provide to the concessioning authority annual budgets and financial accounting data, and to report on the progress of the agreed investment program, and on the state of inherited assets.

The concession agreement provides for the termination or suspension of the concession in the event of serious failure to perform, for example, in respect of severe interruption to airport services other than for reasons beyond the control of the concessionaire. Apart from relatively extreme circumstances of this kind, there are no specific terms in the agreement covering AERIA's obligations in respect of service quality, nor are there provisions requiring the concessionaire to provide specific types of information on service quality outcomes.

Finally, the concession agreement allows the concessionaire to propose an extension to the concession period. However, any such proposal can only be considered within the last two years of the concession, and renewal can only be formally approved by the concessioning authority in the final year of the concession.

A 15-year concession term is significantly shorter than the norm for concession or BOT contracts elsewhere in the airport sector; SEGAP's response to the call for expressions of interest suggested a 25-year concession period, in line with international experience.

4. Regulatory Agencies

Following the winding-up of ANAM, that agency's regulatory and policy development responsibilities for the aviation sector were transferred to the Agence Nationale pour l'Aviation Civile (National Civil Aviation Agency (ANAC)). ANAC also retained certain of ANAM's operational responsibilities for providing airport terminal security (passenger and baggage screening) at Abidjan H-B.

ANAC's responsibilities have recently been reviewed by the Ivorian Government, partly to achieve an even clearer separation of regulatory and operational responsibilities between ANAC and le Service Météorologique National de la Côte d'Ivoire (National Meteorological Service of the Ivory Coast (SODEXAM)).

Proposals for modifying the existing arrangements were made in a communication from a government working group in October 1998, and these were subsequently ratified by the Council of Ministers. The measures cover the re-definition of the responsibilities of ANAC, SODEXAM and AERIA, and the creation of a new government committee to co-ordinate policy for the airport sector.

ANAC's role as the regulatory agency for the aviation sector is confirmed. However, operational responsibility for airport security at Abidjan H-B is to be transferred to AERIA, under a new concession agreement, with ANAC acting as the concessioning authority. The new structure will presumably require provisions for sharing security charges levied at Abidjan between SODEXAM and AERIA, although this is not specifically addressed in the government's proposals. ANAC does not appear to have any locus in "regulating" AERIA's concession agreement. This function remains with SODEXAM as the conceding authority.

SODEXAM's existing operational responsibilities are confirmed, and it is identified as the conceding authority for all airport infrastructure (including Abidjan). As such, SODEXAM (not ANAC) must approve AERIA's proposals for varying airport tariffs and SODEXAM also "vets" AERIA's investment program. There is no obligation on SODEXAM to publish its decisions on AERIA's tariffs or other aspects of the concession contract. The government working group's communication expressed the hope that SODEXAM's responsibilities for operating interior airports might eventually be transferred to private sector agencies within a concession framework.

The inter-ministerial committee is given wide-ranging responsibilities for initiating and coordinating policies affecting the development of the airports sector. In the short-term, the primary focus of its work will be to implement the new arrangements for airport security and to review current provisions for financing and staffing ANAC and SODEXAM.

EXTRACTS FROM THE PHILIPPINE REPUBLIC BOT LAW

The following extracts from the Philippine Republic Build-Operate-Transfer (BOT) law cover key aspects of public procurement in respect of BOT projects.

A. Section 4-A: Unsolicited Proposals

Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated basis: Provided, That, all of the following conditions are met: (1) such projects involve a new concept or technology and/or are not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication, for three weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days: Provided, further, that in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty (30) working days.

B. Section 5: Public Bidding of Projects

Upon approval of the projects mentioned in Section 4 of this Act, the head of the infrastructure agency or local government unit concerned shall forthwith cause to be published, once every week for three consecutive weeks, in at least two newspapers of general circulation and in at least one local newspaper which is circulated in the region, province, city or municipality in which the project is to be constructed, a notice inviting all prospective infrastructure or development project proponents to participate in a competitive public bidding for the projects so approved.

In the case of a build-operate-and-transfer arrangement, the contract shall be awarded to the bidder who, having satisfied the minimum financial, technical, organizational and legal standards required by this Act, has submitted the lowest bid and most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. For this purpose, the winning project proponent shall be automatically granted by the appropriate agency the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges in accordance with Section 5 hereof.

In the case of a build-and-transfer or build-lease-and-transfer arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications: Provided, however, that a Filipino contractor who submits an equally advantageous bid with exactly the same price and technical specifications as those of a foreign contractor shall be given preference.

In all cases, a consortium that participates in a bid must present proof that the members of the consortium have bound themselves jointly and severally to assume responsibility for any project. The withdrawal of any member of the consortium prior to the implementation of the project could be a ground for the cancellation of the contract.

The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second envelope to contain the financial

proposal. The procedures for this system shall be outlined in the implementing rules and regulations of this Act.

A copy of each contract involving a project entered into under this Act shall forthwith be submitted to Congress for its information.

C. Section 5-A: Direct Negotiation of Contracts

Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

- If, after advertisement, more than one contractor applied for prequalification and it meets the prequalification requirements, after which it is required to submit a bid/proposal which is subsequently found by the agency/local government unit (LGU) to be complying.
- If, after advertisement, more than one contractor applied for prequalification but only one meets the prequalification requirements, after which it submits a bid/proposal which is found by the agency/LGU to be complying.
- If, after prequalification of more than one contractor, only one submits a bid which is found by the agency/LGU to be complying.
- If, after prequalification, more than once contractor submit bids but only one is found by the agency/LGU to be complying: Provided, That, any of the disqualification Bids and Awards Committee within 15 working days to the head of the agency, in case of national projects or to the Department of the Interior and Local Government, in case of local projects from the date of the disqualification was made known to the disqualified bidder. Provided, furthermore, That the implementing agency/LGUs concerned should act on the appeal within 45 working days from receipt thereof.