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ADB – JAPAN FUNDS WEEK

27 JUNE – 1 JULY 2022

**TOWARDS A PROSPEROUS AND
RESILIENT ASIA AND THE PACIFIC**



**From
the People of Japan**

Public Finance Management

**Session 3: ADB–Japan Scholarship Program Symposium
Knowledge for Development**

 **ADB–JAPAN FUNDS WEEK**
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TOWARDS A PROSPEROUS AND RESILIENT ASIA AND THE PACIFIC



JFPR
Japan Fund for Prosperous and
Resilient Asia and the Pacific



From
the People of Japan

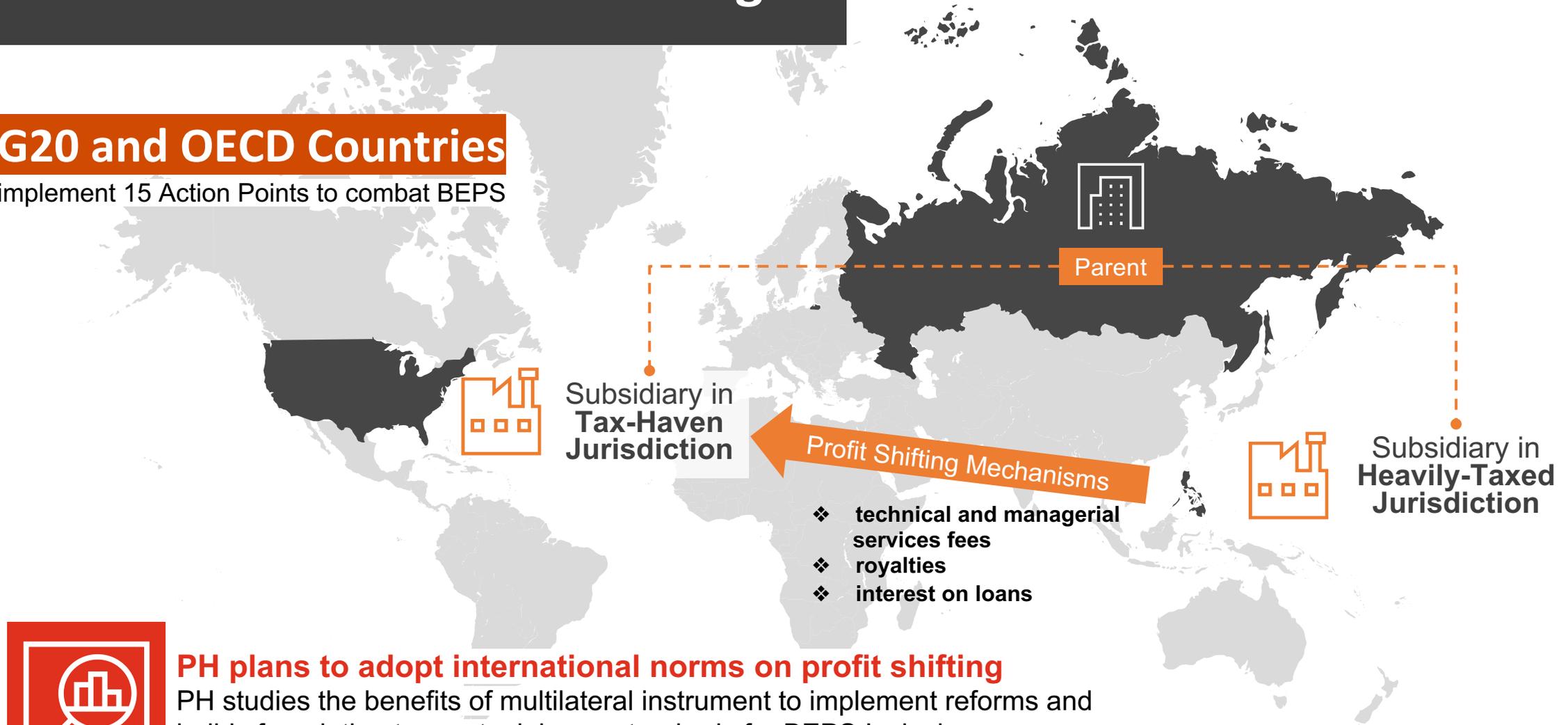
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Base Erosion and Profit Shifting

G20 and OECD Countries

implement 15 Action Points to combat BEPS



PH plans to adopt international norms on profit shifting

PH studies the benefits of multilateral instrument to implement reforms and builds foundation to meet minimum standards for BEPS Inclusive Framework

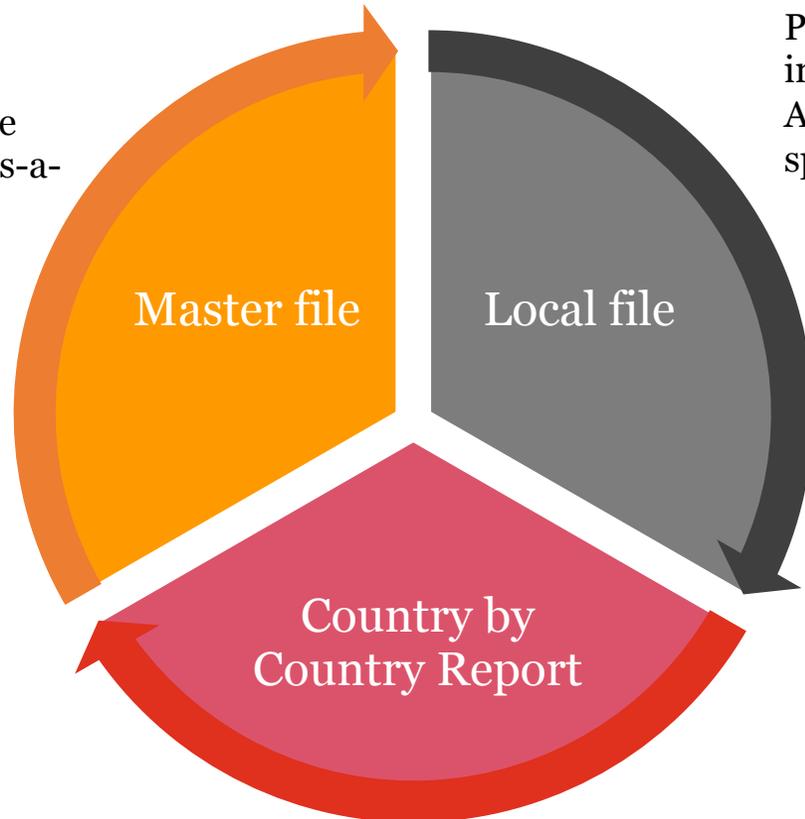
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Actions Plans of the BEPS package

No.	Action Plans
1	Address the tax challenges of the digital economy
2	Neutralise the effects of hybrid mismatch arrangements
3	Designing effective Controlled Foreign Corporations (CFCs) rules
4	Limit base erosion involving interest deductions and other financial payments
5	Counter harmful tax practices more effectively, taking into account transparency and substance
6	Preventing the granting of treaty benefits in inappropriate circumstances
7	Prevent the artificial avoidance of Permanent Establishment (PE) status
8	Aligning transfer pricing outcomes line with value creation: intangibles
9	Aligning transfer pricing outcomes line with value creation: risks and capital
10	Aligning transfer pricing outcomes line with value creation: other high-risk transactions
11	Measuring and monitoring BEPS
12	Mandatory disclosure rules
13	Transfer pricing documentation and Country-by-Country Reporting
14	Make dispute resolution mechanisms more effective
15	Develop a multilateral Instrument to modify bilateral tax treaties

BEPS 8 to 10 in relation to BEPS 13 - Three-Tier Documentation

The overview of the MNE's Business vis-a-vis its global economic, legal, financial and tax context.



Provides more detailed information relating to specific intercompany transactions; assure compliance with the ALP in material transfer pricing positions impacting a specific jurisdiction

A CbCR provides information relating to the global allocation of income, taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE Group operates.

Local File can be used as a TP Documentation* in the Philippines

Minimum Contents of a TP Documentation

- Industry Analysis
- Business Overview
- Description of Intercompany Transactions
- Functions, Assets, and Risk Analysis
- Economic Analysis

**required for taxpayers upon meeting certain thresholds and criteria*

Three-Tier Documentation - Adoption Status in Asia Pacific Region

		Masterfile	Local File	CbCR
1	Australia	✓	✓	✓
2	Bangladesh	X	X	X
3	Cambodia	X	X	X
4	China	✓	✓	✓
5	Hong Kong	✓	✓	✓
6	India	✓	✓	✓
7	Indonesia	✓	✓	✓

✓ Rules are enacted X No announcement

Three-Tier Documentation - Adoption Status in Asia Pacific Region

		Masterfile	Local File	CbCR
8	Japan	✓	✓	✓
9	Korea	✓	✓	✓
10	Malaysia	✓	X	✓
11	Philippines	X	X	X
12	Singapore	✓	✓	✓
13	Taiwan	✓	✓	✓
14	Thailand	X	✓	✓

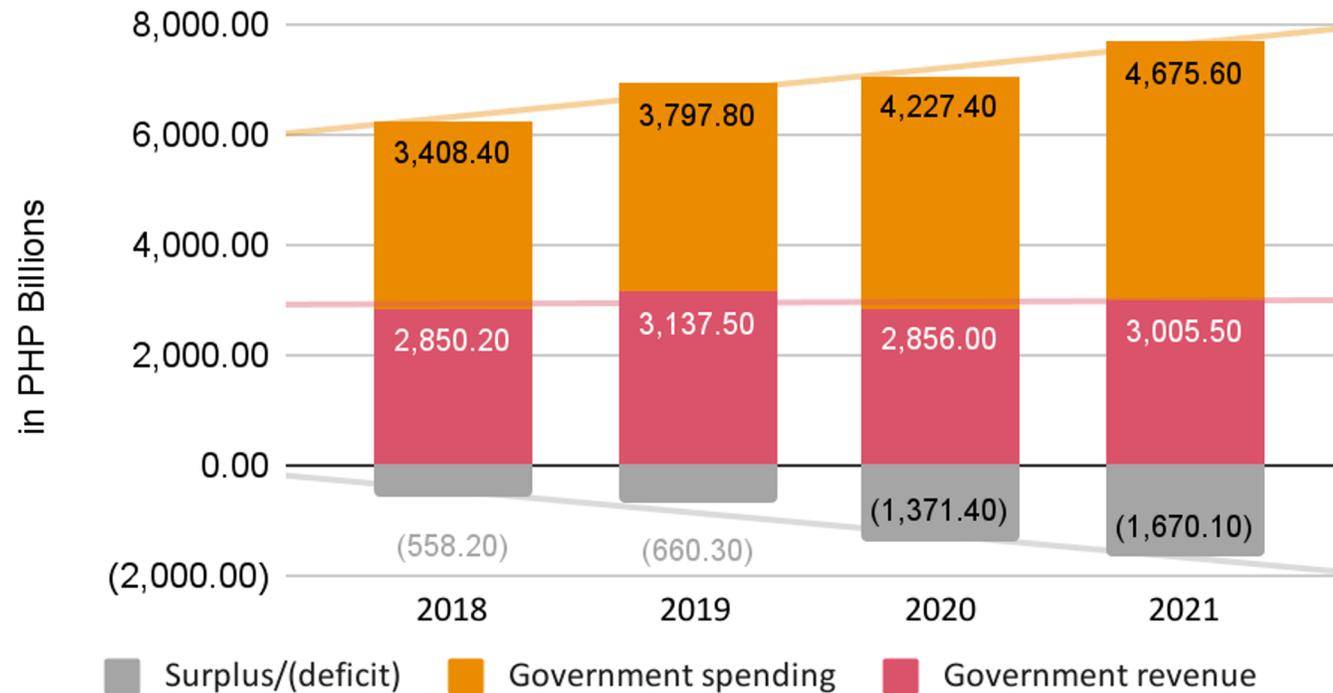
✓ Rules are enacted X No announcement

OECD List of Harmful Tax Regimes

The *elimination* of the *preferential tax rates* given to *ROHQs* of MNCs has *cleared* the way to the PH's removal from international list of “*harmful*” *tax regimes* by *January 2022*

PH Government spends way above what it can raise

Historical Government Revenue and Expenditure

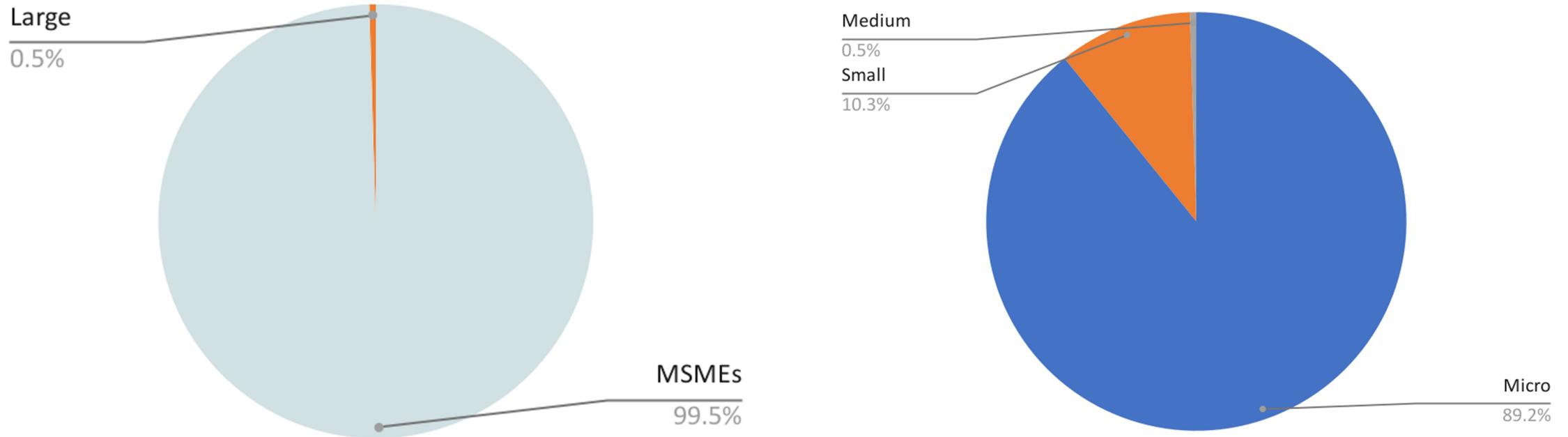


Government revenues from collection of taxes and other revenue streams are not enough to cover the government expenses and interest payments

Data Source: Bureau of Treasury
Graphical representation of PwC Philippines

MSMEs contribute more than 1/3 of the GDP (to tax or not the MSMEs)

In terms of number of business entities

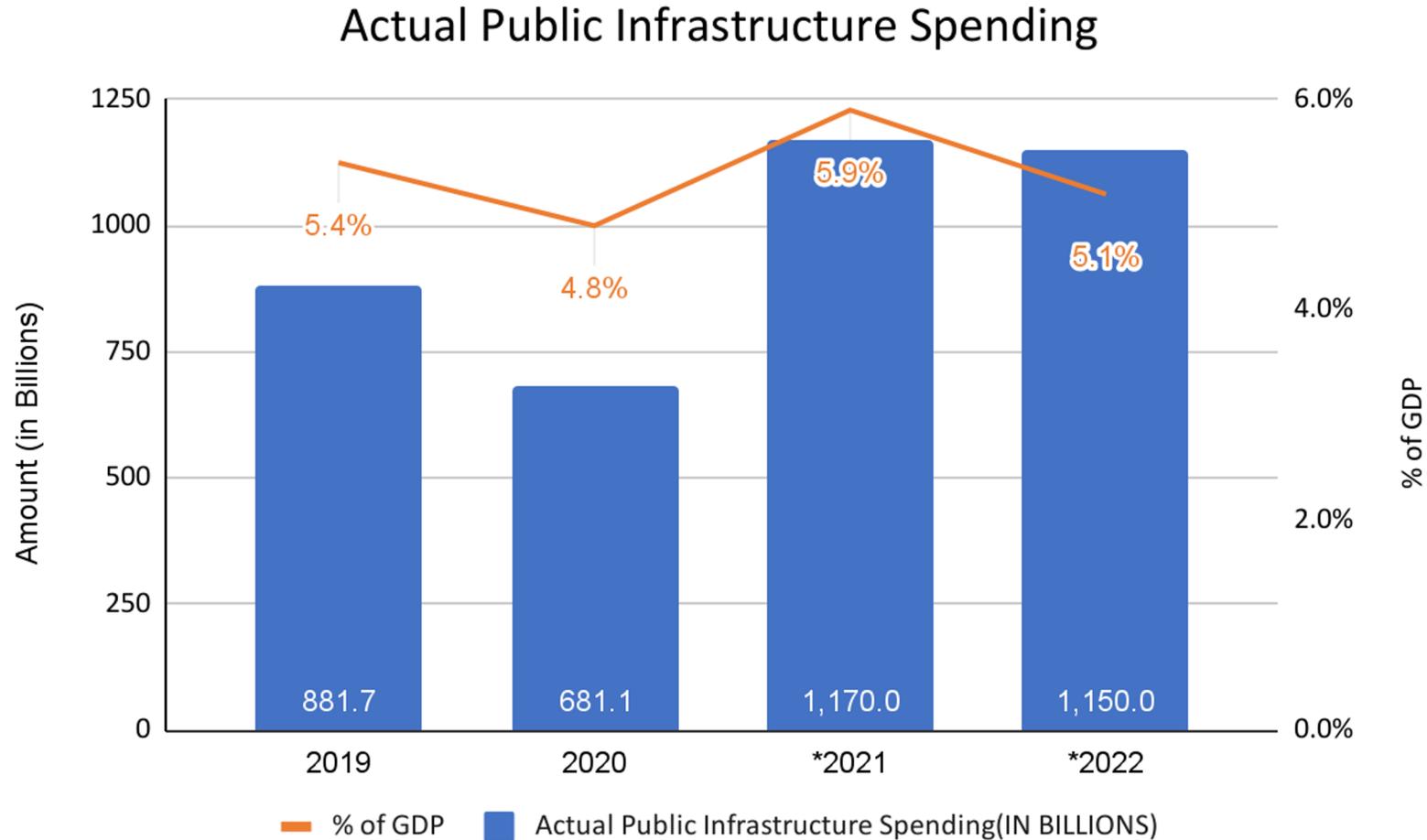


Data Source: DTI 2020 MSME Statistics

In 2018, MSMEs contributed 35.7% of the total value-added or gross domestic product

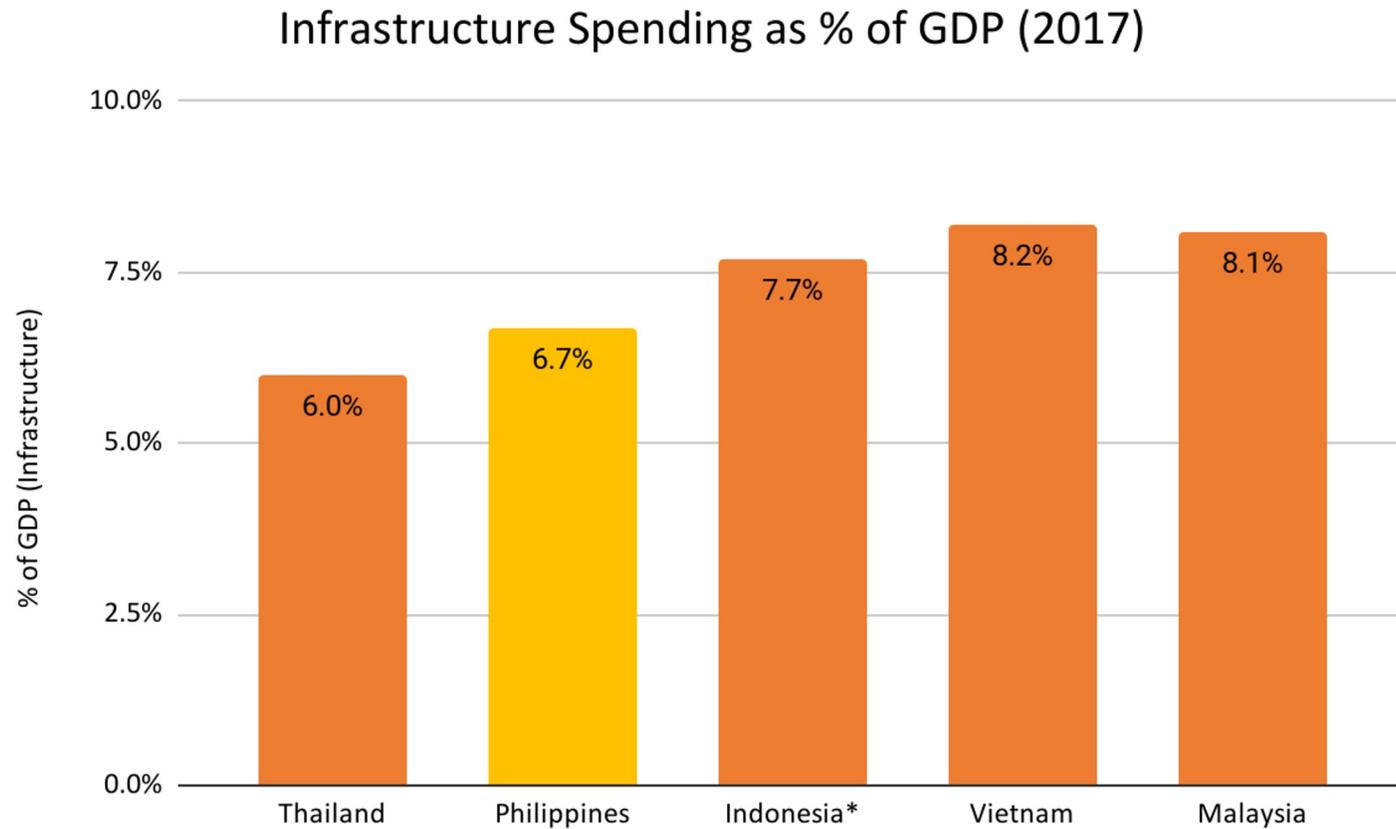
Data Source: Congressional Policy and Budget Research Department House of Representatives June 2020 (No.19)

PH Public Infrastructure Spending is rising...



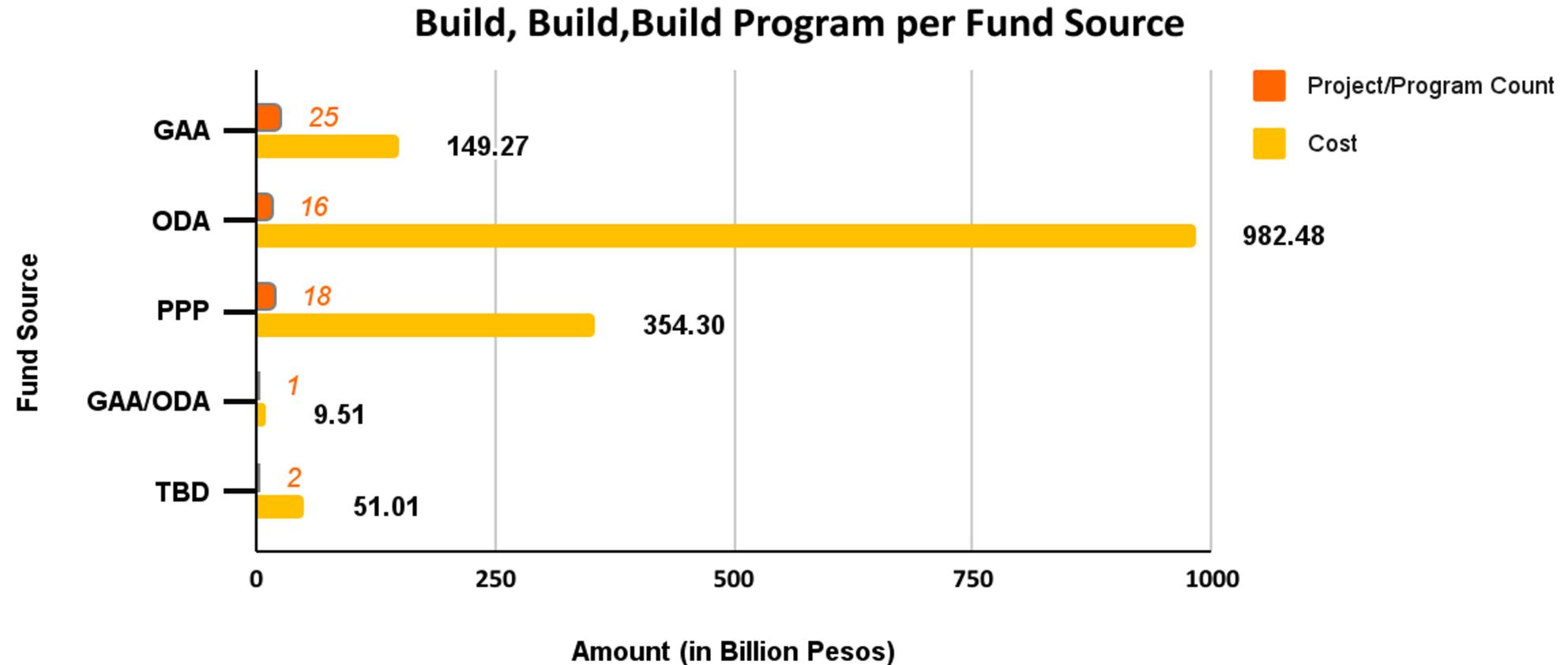
Data Source: Congressional Policy and Budget Research Department House of Representatives May 2021 (No. 30)

... but still has to catch up with its neighbors



Data Source: Congressional Policy and Budget Research Department House of Representatives May 2021 (No. 30)
<https://www.pwc.com/id/en/cpi/asset/new-version/building-indonesia-future-unblocking-the-pipeline-of-infrastructure-projects.pdf>

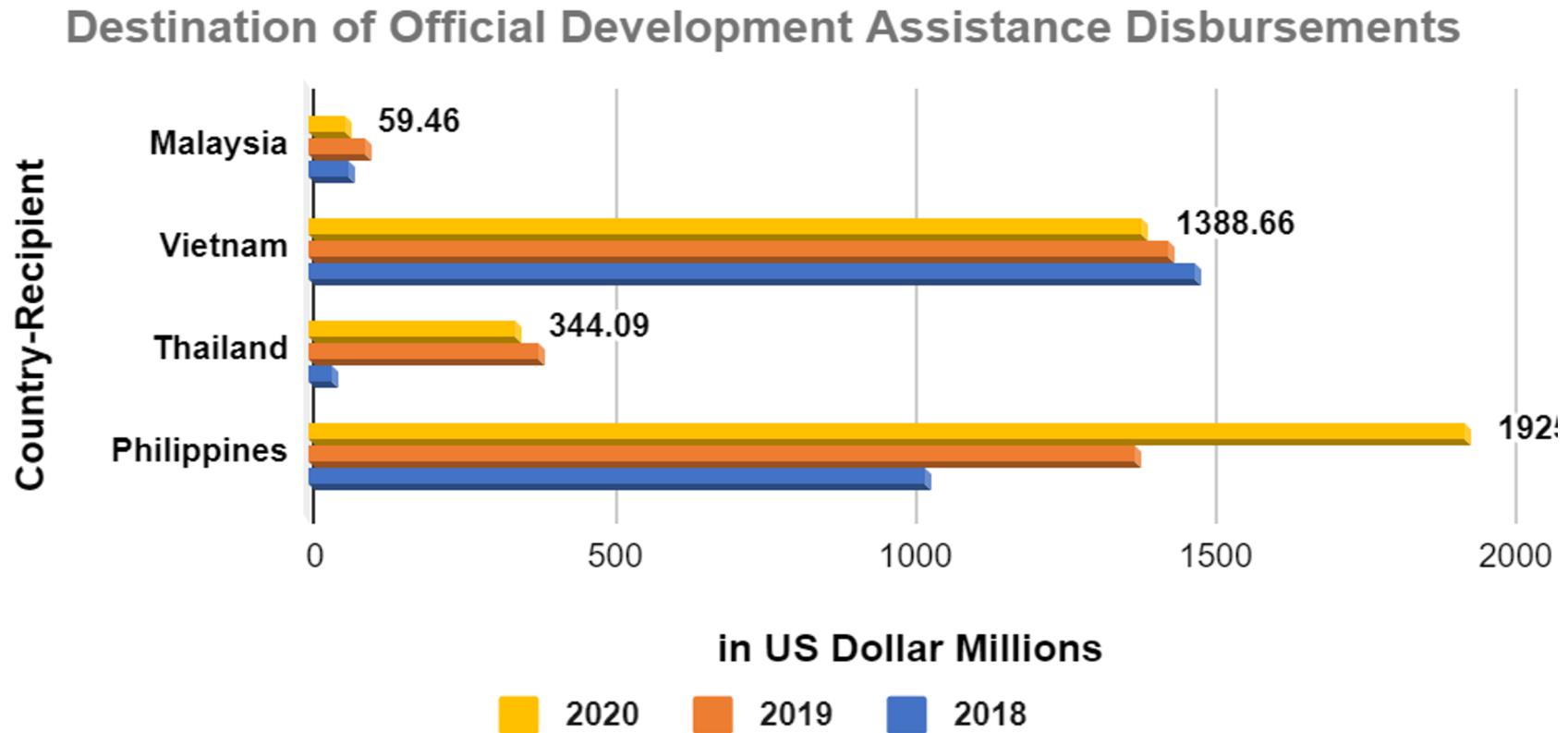
Build, Build, Build Program is largely funded by ODA



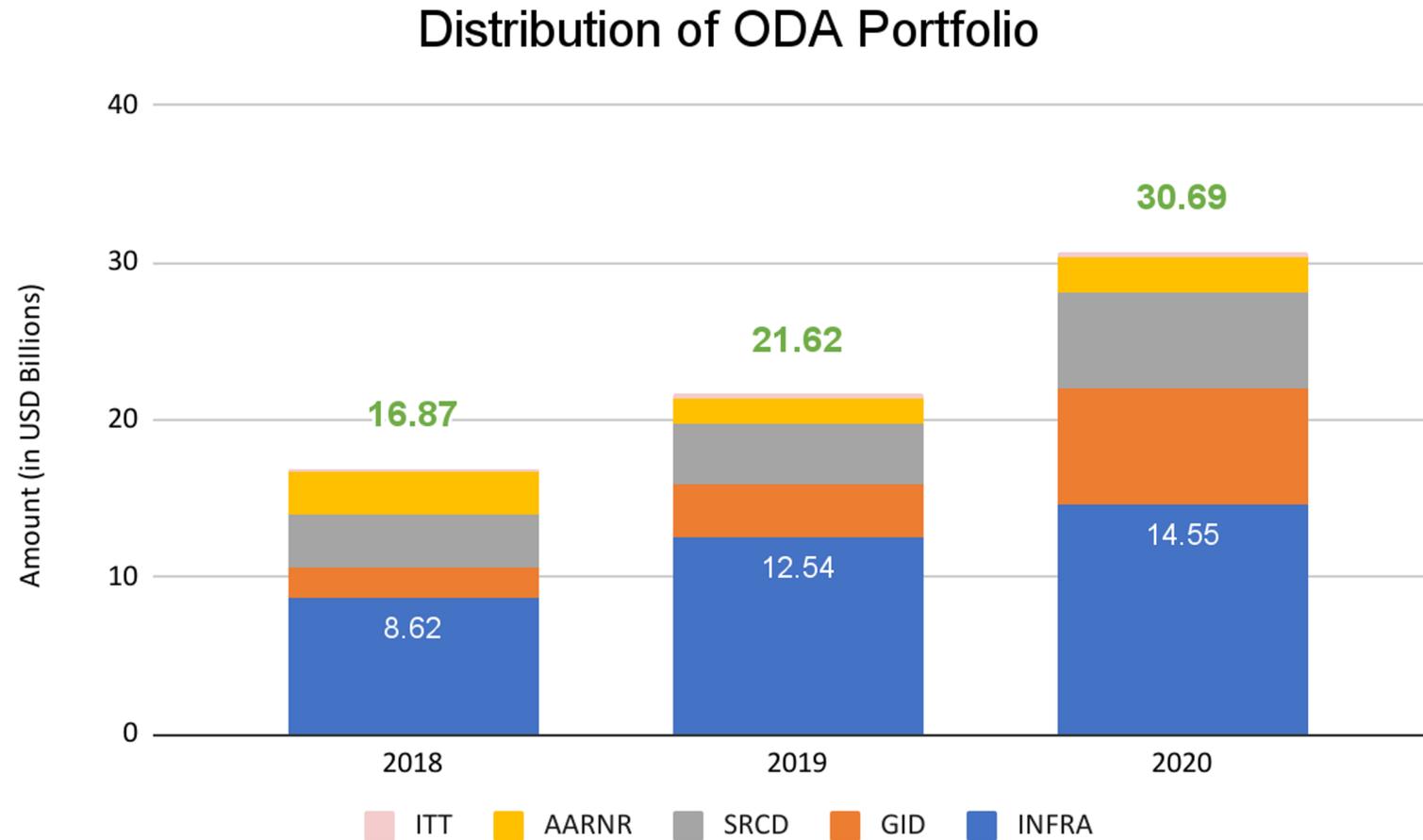
Data Source: <http://build.gov.ph/Home/Projects>

Multiyear project list covering the period as early as 1996 (TPLEX Project). The latest project end date is by 2031

PH remains to be among the top ODA recipients across the region



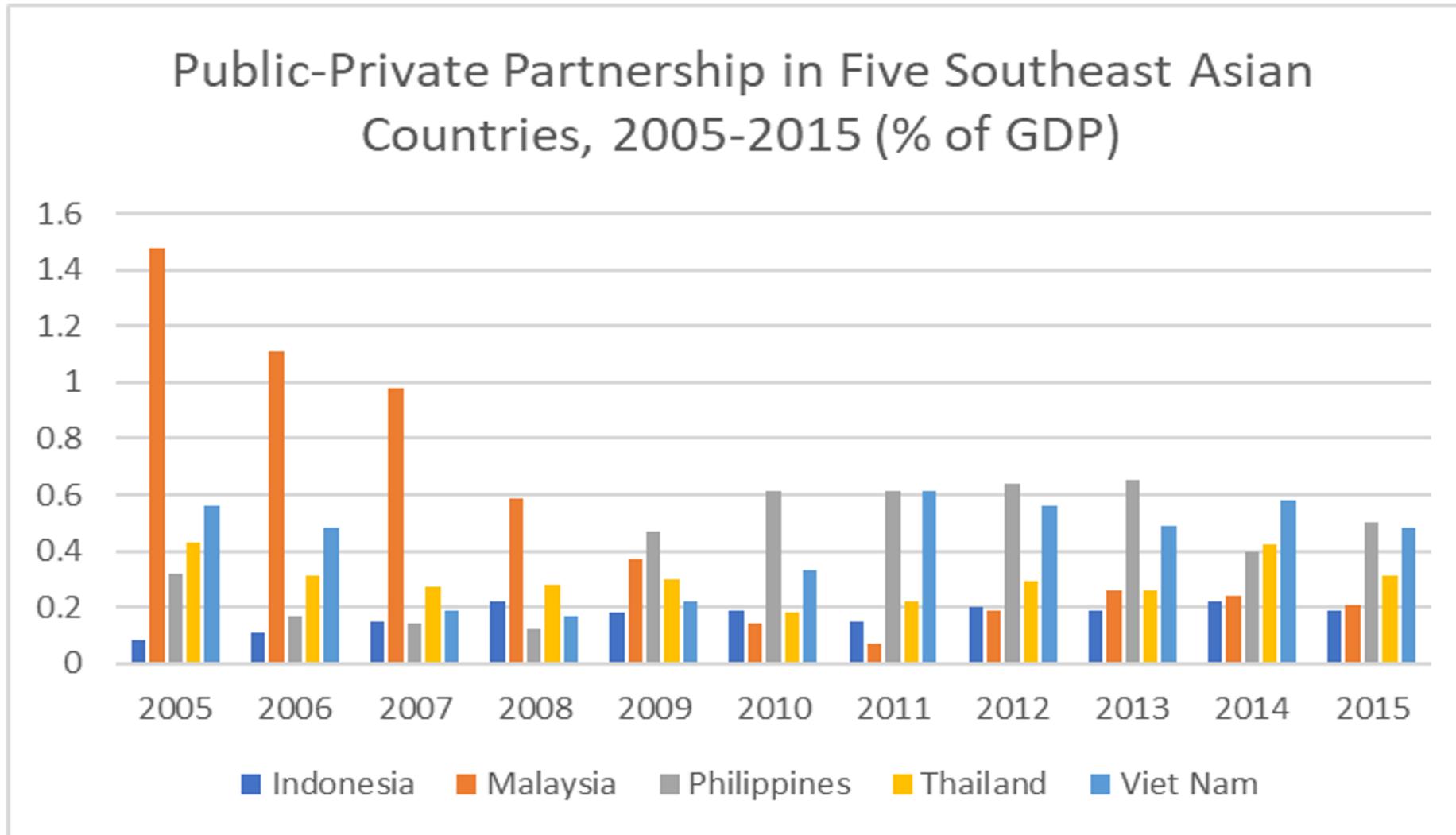
PH Infra Sector gets the Lion's share of the Total ODA Portfolio



Total ODA

Data Source: NEDA Official Development Assistance (ODA) Portfolio Review Reports for CY 2018 to CY 2020

Regionally, the role of PPP is still negligible...



However, PH is still ahead of the pack in terms of the robustness of its PPP framework



"PPPs are hard, there is no doubt about that. Bidding for PPP actually cost a lot of money. The Philippine government has awarded over 10 PPP projects and have another 14 in the pipeline, that's a magnificent achievement. Show me any other ASEAN neighbor who has done that. There is none.

So the Philippines in the region is viewed as sort of best in class in traversing their PPP agenda and this current government is very supportive of that and will continue to be."

Mr. Anthony Weymouth
Minister-Counsellor and Senior Trade Commissioner
Australian Embassy in the Philippines
Philippine Star, January 26, 2016

PHILIPPINES: Most Improved Country in Asia-Pacific for PPP readiness

"The Philippines moves up to join the developed group of countries in this study (it was classified as an emerging country in the 2011 study). By finishing in seventh position, it is among those which have improved the most. It recorded the most-improved regulatory and institutional frameworks and is one of the leading countries in the study for improved investment climate and financial facilities. It has used its increased capacity and transactional experience in recent years to promote capacity-building in emerging PPP markets within the region."

- The Economist Intelligence Unit
"Evaluating the environment for public-private partnerships in Asia-Pacific" report
The 2014 Infrascope | Published April 2015



Meanwhile, the BOT-IRR amendments may need to be revisited...

THE revised implementing rules and regulations (IRR) of the Build-Operate-Transfer (BOT) Law will compel private proponents to shoulder more risk, possibly giving them pause before entering into future private-public partnerships, an economist said.

"The revised IRR places a lot more risk on the private sector by absolving the government of any project delays and increased costs," Ateneo de Manila University Economics Professor Leonardo A. Lanzona said in a Viber message.

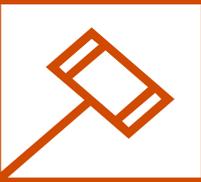
While FEF agreed that that the existing BOT law would need refinement to factor in lessons learned in the last 20 years as well as global best practices, it said the proposed revisions would be "regressive" and the general tenor "anti-market".

"The proposed amendments ignore the essence of 'partnership' and treats the 'private' as untrustworthy. To recover from the pandemic and the aftermath of Russia's invasion of Ukraine, the Philippines will need more investments – public and private. Instead, these changes will discourage investments and negate recent and laudable reforms such as the amendments to the Foreign Investments Act and the Public Service Act," it said.

Source: <https://business.inquirer.net/344453/antimarket-provisions-in-new-bot-rules-bucked>

Source: <https://www.bworldonline.com/economy/2022/05/03/446270/bot-irr-seen-forcing-private-partners-to-take-on-more-risk/>

"Regressive" and "anti-market"



It provides that acts and decisions or regulators shall not be subject to arbitration, and that the venue of any default shall be the Philippines



MAGA provisions not only exclude judicial and legislative action, but also adverse acts of regulators

Need to refocus on PPP



If structured correctly, PPP can be optimized as an alternative means of financing infrastructure projects with minimal fiscal impact to government

However:

- 1. Government contingent liabilities on PPP contracts need to be properly provided for and spent, where needed; and*
- 2. Government must abide by the sanctity of contracts (case of LRT 1 arbitration)*



Hybrid PPP financing (not hybrid procurement) - government utilizes ODA to finance its contributions in a PPP project



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