

# Restructuring of the Transport Sector – A Study\*

Nimitchai Snitbhan\*\*

## BACKGROUND

The Master Plan for State Enterprise Sector Reform, approved by the Cabinet on September 1, 1998, addresses the problems associated with overlapping responsibilities and lack of co-operation and co-ordination among agencies responsible for policy-making, regulation and operation, which often led to unclear and unco-ordinated transport policy directions. The master plan further instructs that a blueprint be prepared so that the strategies required to reorganize regulatory and operational functions in the transport, telecommunications, energy and utility water sectors, be undertaken.

The consultant for the transport sector, the Arthur Andersen Consulting Co., Ltd., was assigned to study and prepare the Transport Sector Reform Plan. The study would provide a framework to reorganize the transport sector's policies, regulations and operational functions. Besides overall guidelines for the transport sector, the consultant, would also delineate reform plans for specific modes of transportation namely: land, water and air transport. Additionally, the Transportation Reform Subcommittee was also created by the State Enterprise Policy Commission (SEPC) to review the Transport Sector Reform Plan. The subcommittee, chaired by the Minister of Transport and Communications, and composed of representatives from concerned government bodies would review the Transport Sector Reform Plan submitted by the Arthur Andersen. The subcommittee would also ensure that the proposed plans be efficiently implemented to the benefit of all the concerned parties.

The reform is indeed a sensitive issue as it involves restructuring and reorganizing many agencies both inside and outside the Ministry of Transport and Communications (MOTC). As a result, the Transportation Reform Subcommittee passed a resolution to establish four Working Groups to study the reform in each mode of transportation in greater details. These include the Integrated Transport Working Group, the Land Transport Working Group, the Air Transport

Working Group and the Water Transport Working Group.

Moreover, the Committee Reviewing the Roles and Duties of the MOTC, chaired by the Permanent Secretary of the MOTC, has outlined the reform agenda for the transport sector. Policy, regulatory and operational roles and duties are to be clearly separated. The Ministry will be responsible for policy-making. Departments or independent organizations will perform the regulatory tasks, while the execution of policies or regulatory rules may fall upon state-owned enterprises (SOE), independent agencies, local administrative body, or the private sector, depending on the environment.

It is thus seen that the framework for transport sector reform and the framework for modifying roles and duties of the MOTC, share common principles, but lack details on steps and duration of the restructuring process. Moreover, as these two frameworks are to be implemented in parallel, their timing has to be consistent with each other. Thus, to ensure that the transport reform and the modification of roles and duties are in congruency, the Thailand Development Research Institute Foundation (TDRI) was hired to work out these two frameworks in further details.

TDRI has conducted the study and produced a "Final Report," which comprises six major components. They are:

- Assessment of the current transport sector management and identification of key problems associated therewith.
- Review of relevant documents including the resolutions of sub-committees and working groups.
- Proposing appropriate and feasible transport sector reform guidelines.
- Provision of guidelines on future roles and duties of the MOTC in accordance with the transport sector reform guidelines.
- Review of key legislation relevant to the reform guidelines.
- Proposing the "Action Plan" for the transport sector reform.

\* An excerpt of the executive summary submitted to the Office of the State Enterprise and Government Securities, Ministry of Finance in June 2001. All recommendations proposed by TDRI are not necessarily regulated as the Government's policy.

\*\* Dr. Nimitchai is Advisor to TDRI.

## LAND TRANSPORT SUBSECTOR REFORM

According to the Thailand Transportation Sector Framework for Reform conducted by the Arthur Andersen and accepted by the Transportation Reform Subcommittee, TDRI agrees in principle the separation of the existing authority into three bodies; they will be responsible for policy and planning, regulation, and operation. The proposal from TDRI may be different from others in some respects such as who should conduct policy and planning, regulation, and operation (see Figure 1).

Policy making and planning should be conducted by a sole agency under the *Ministry of Transport...*. This new agency, may be called "Office of Transport Policy," can be established by modifying the structure and operation of the existing Transport and Communication Policy and Planning Bureau. Its main responsibility is to produce both economic and safety regulations, and they can be classified as follows:

- Land Transport Bureau
  - Railways
  - Public Transit
  - Motorways and Expressways
- Water Transport Bureau
- Air Transport Bureau
- Information Services Bureau

Since land transportation involves several forms of transport, and each is equally important, a "policy and planning transportation committee" at the ministry level should be founded to co-ordinate all land transport sectors; the establishment of a transport network promotes efficiency.

The Land Transport Bureau may require specialists from existing agencies, such as railway specialists from the State Railway of Thailand (SRT) and the Metropolitan Rapid Transit Authority (MRTA), transit specialists from the Department of Land Transport (DLT), the Expressway and Rapid Transit Authority of Thailand (ETA), and motorways and expressways specialists from the Department of Highways (DOH).

Land Transport Regulatory Agency, an independent agency, is mainly responsible for ensuring transportation services does not become monopolized. It should also promote a real competitiveness in the market, regulate conditions that will foster competitiveness, and set and enforce economic and safety standards.

Overall, there will be only one regulatory body responsible for all modes of transportation. Regulatory functions can be divided into economic regulations and safety regulations. Both types are arranged by the central Land Transport Regulatory Agency.

The Land Transport Regulatory Agency will consist of three parts, railways, transit, and motorways and expressways, and will be run by SRT, MRTA, DOH, ETA, the Transport Company Ltd. (TCL), the Bangkok Mass Transit Authority (BMTA), the Express

Transportation Organization of Thailand (ETO), etc. Specialists from these organizations should be transferred to the Land Transport Regulatory Agency (Economic Regulation).

Safety Regulation is the main task of the DLT, which already has the personnel to fulfill the tasks. However, it is TDRI's view that the tasks related to providing safety regulations on commercially-oriented public services may be given to the Economic Regulatory, but that the noncommercially-oriented safety regulations should be reserved for the DLT or the DOH.

### Operation and Service (Regulation Rules)

All services can be classified as either commercial or public services (non-tolled). Since there are charges for commercial services, they should be operated by agents from the private sector. Public and social services, which charge fees below cost, can be operated by either the government or the private sector with a subsidy for losses.

In principle, operations may be provided by three bodies: Public Transport Authority, transformed SOE and private organizations.

### State Railway of Thailand (SRT)

The SRT receives economic and safety regulations from the Land Transport Bureau-Railways and the Railways Regulator. Those regulations must conform with Cabinet policies.

Regulations should aim to standardize the basic services. Further, economic regulations should promote fair competition and pricing, while losses incurred by public operations should be subsidized; however, the process of subsidization must be transparent.

The SRT Structure adopts the specifications of operational safety standards from the Railways Regulator. An Authority may be established to oversee this function. The SRT expects to form three companies—SRT Transport, SRT Train-wheel Repair, and SRT Asset Management—in order to provide better transportation services to customers. SRT employees should be engaged in the four primary activities already listed, but some may be transferred to either Railways Policy or Planning Division within the Land Transport Bureau-Railways, or the Railways Regulator.

### Metropolitan Rapid Transit Authority (MRTA)

In the near future, MRTA should continue as an SOE under the control of the Office of Prime Minister. MRTA may be effectively separated into two bodies, similar to the case of SRT. An Authority should also be founded to oversee assets such as railways, stations, signals, etc. A Mass Rapid Transit Asset Management should be created to rent assets from the Authority and a Mass Rapid Transit Company should also be established in order to promote investments from the private sector. Most of the MRTA staff should remain in its

employment, or in the employment of the Public Transport Authority. In the long run, MRTA should be transferred to the *Ministry of Transport...* and the Bangkok Metropolitan Administration (BMA) respectively.

### Expressway and Rapid Transit Authority of Thailand (ETA)

The ETA is currently an SOE under the Ministry of Interior. Within the first two years, it should continue to operate under the Ministry of Interior, while making preparation for restructuring and transferring to the *Ministry of Transport...* At the same time, a feasibility study should be conducted to determine the most effective means of transferring from the Ministry of Interior to the local Bangkok administration. That may be done by increasing the role of the private sector and reducing the government's share.

### The Transport Company, Ltd. (TCL)

The structure of state-owned TCL has already undergone some transformations. The TCL has been assigned the authority to grant private transportation routes section 2 (Bangkok-province route) and section 3 (province-province not including Bangkok route). Under the transformation, the government's share in the TCL should be continually reduced until the TCL becomes a private organization providing bus services. Most of the staff should stay with this private organization, but technicians and maintenance staff may be transferred to a profit center, an organization seeking profits in the bus-maintenance business. The TCL may establish an Authority to oversee assets such as land, stations, and so on. There may be additional employment for station administration as well.

### Bangkok Mass Transit Authority (BMTA)

The BMTA, whose deficits are among the highest of any SOE, has a duty to provide public transportation. It is expected to be controlled by the local Bangkok administration in the near future. Though its main service should still be the public transportation within the greater Bangkok region, the participation from the private sector should be greatly increased.

### The Express Transportation Organization of Thailand (ETO)

The ETO is an SOE that offers transportation for commodities and parcels, organizes the loading stations, arranges truck transportation within Thailand and between countries, and provides marine transportation services. In preparation for the privatization, regulatory tasks should be transferred to the Public Transit Regulator. Some staff should stay with the Authority (ETO SoE), whose function is to supervise transit

stations and loading stations. At the same time, a feasibility study concerning transferral of the ETO to the local authority should also be conducted.

### Department of Highways (DOH)

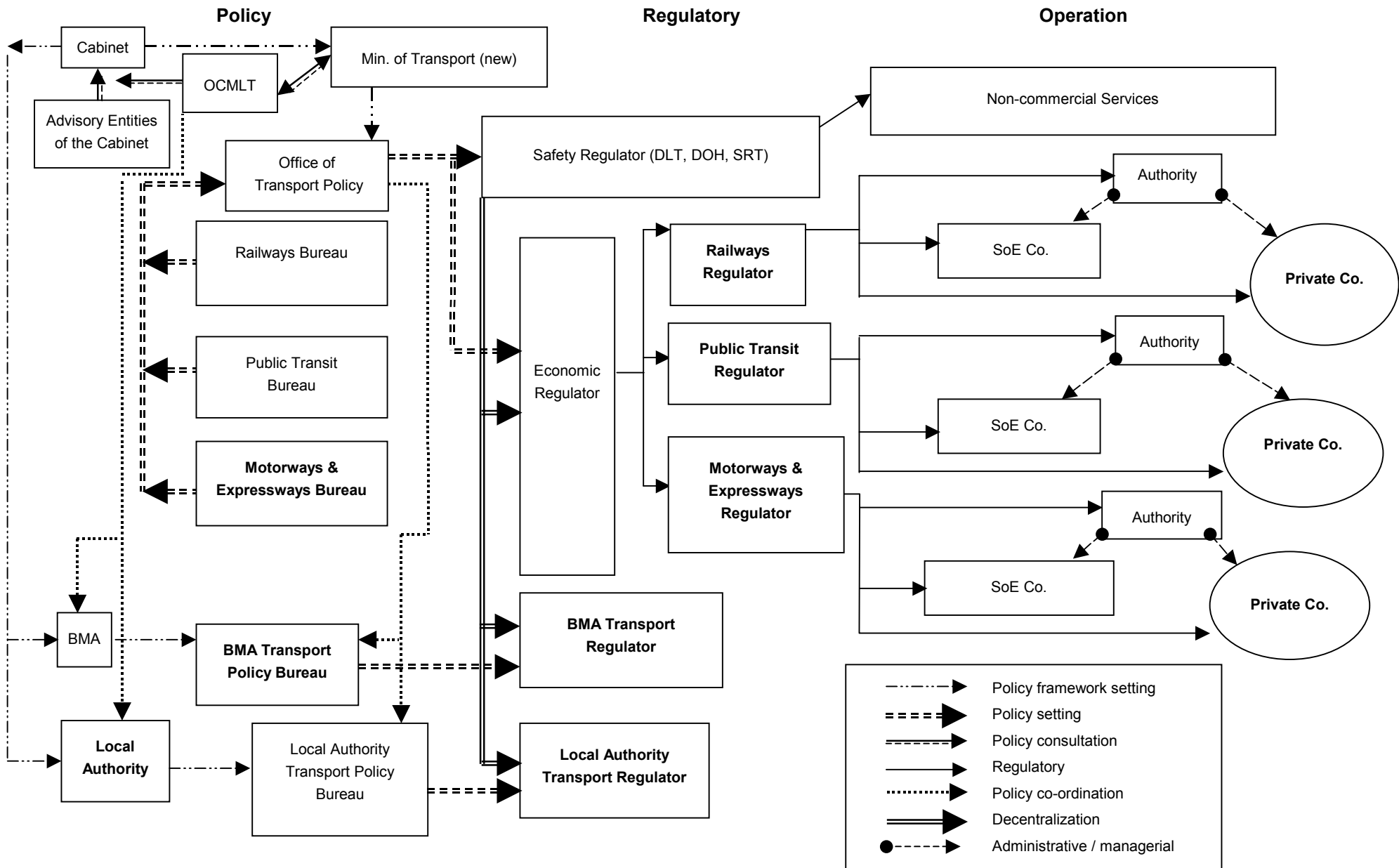
The Department of Highways should become an agency under the new *Ministry of Transport...* and maintain its current functions, until the Land Transport Bureau-Motorways and Expressways is established. Thereafter, policy and planning specialists should be transferred to this new bureau, while staff in areas related to technical standard specifications and road/highway safety should be shifted to the Motorways and Expressways Regulator. Remaining employees should continue their regular tasks in areas where the private sector is not involved. Examples are road construction and bridge maintenance (non-toll activities). A new authority might be founded to take care of all remaining toll activities related to highways and expressways. In principle, this new authority should supervise the operation according to regulations set by the Motorways and Expressways Regulator.

### Legislation

Several legislations related to the land transport sub-sector need to be revised. They are:

- *The National Transport Act 1979*: Transfer policy and planning duties to the Office of Transport Policy, *Ministry of Transport...*
- *The Highway Act 1992 and the Concessive Highway Act 1999*: Revise definitions of highway, road, etc., and legislative powers of the Minister of Interior and DOH's Director General in accordance with the Transport Sector Reform Plan and the duties of the new Economic Regulator.
- *The Motor Vehicle Act 1935*: Abandon the Act.
- *The Land Transport Act 1979 and the Automobile Act 1979*: Revise duties of DLT, DOH, and other relevant state enterprises in accordance with the safety and economic regulatory frameworks and the roles of the Economic Regulator.
- *The State Enterprise Acts (SRT Act 1951, MRTA Act 2000, ETA Act 1972) and the Public Works Department (PWD) Act 1994*: Revise duties, legislative powers, etc., as stipulated in the Acts to be in accordance with the Transport Sector Reform Plan and the responsibilities of the Economic Regulator.

Figure 1 Proposed Future Structure of Land Transport Subsector



## WATER TRANSPORT SUBSECTOR REFORM

### Present Issues and Structure

The present water transport sector has six relevant government organizations, most of which are under the MOTC:

1. Harbour Department
2. The Office of the Maritime Promotion Commission (OMPC)
3. Port Authority of Thailand (PAT)
4. Thai Maritime Navigation Co., Ltd. (TMNC)
5. Bangkok Dock Co., Ltd. (under the Ministry of Defence)
6. Industrial Estate Authority of Thailand (IEAT, operating the Mab Ta Pud Port)

The sector currently functions with complex interactions among government departments, ministries, SOE, and the private sector that adversely affect policy formulation, regulatory development, infrastructure planning, project implementation processes, as well as the provision of efficient, reliable, integrated, and high-quality services. This has led to inefficient use of both public and private capital and conflicting arrangements for private sector participation. There is certainly a need for substantial structural and organizational improvements.

So far there are three groups which have studied and made proposals for reform:

1. The Joint Committee on the Roles and Missions of MOTC
2. Arthur Andersen Consulting Co., Ltd.
3. The Working Group on the Water Transport Sector

The three groups are unanimous in recommending the basic principle of separating and clarifying the three following functions:

1. Policy and planning
2. Regulating
3. Operating (or service provision)

However, their proposals differ in some details, and some are only preliminary.

### Key Recommendations

Based on the findings of the three groups, we have carried out further analysis through extensive interviews and discussions. The following is a summary of our recommendations (see Figure 2).

#### Policy Formulation and Planning

We recommend an establishment of “the Transport Policy Committee,” chaired by the *Minister of*

*Transport...*, and responsible for the nation’s overall transport policy and planning. An “Office of Transport Policy” is to be set up in MOTC to provide secretarial support to the Committee. Organizationally, OMPC can be converted into the Office of Transport Policy by transferring current staff members with policy and planning experience from the Policy and Planning Bureau of MOTC, the Harbour Department, and PAT to this new department-level office.

#### Economic Regulation

Currently the regulatory functions in the sector are the responsibilities of various government agencies, including some service-providing SOE. The government should establish a framework within which an independent economic regulatory body can perform these regulatory functions for all three transport modes (land, water and air). By separating regulatory functions from policy responsibilities exercised by line departments and from service provision by SOE, potential conflicts of interest will be reduced and regulation will foster developmental objectives. Economic regulations should cover commercial activities which have some degree of monopoly. The objectives of economic regulations are to promote free and fair competition among operators, to protect consumer interest, and to collect and disseminate information useful for private operation and public policy and planning. It is recommended that the present officials with experience in economic regulation from OMPC, the Harbour Department, and PAT are good candidates for personnel in this new regulatory body.

#### Safety Regulation

The Harbour Department should continue to perform the role of a safety regulator in the water transport sector, both for freight and passengers. Its responsibility in safety should include both standards setting and safety standard enforcement.

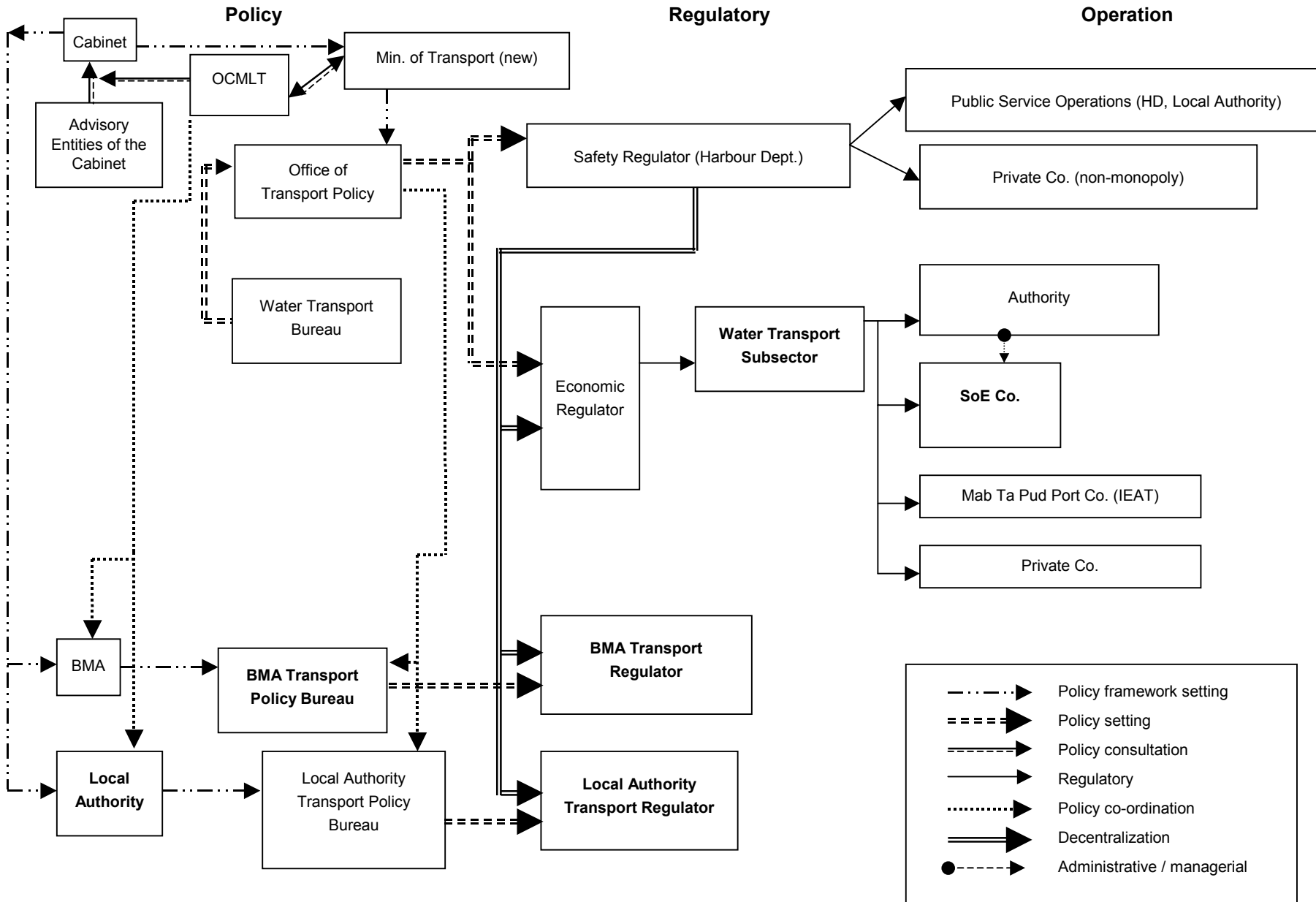
#### Commercial Service Provision

In the sector, the following commercial services are provided by SOE:

- The Bangkok Port and the Laem Chabang Port by PAT
- The Mab Ta Pud Port by IEAT
- Ocean shipping by TMNC
- Ship building and repairing by Bangkok Dock Co., Ltd.

To be consistent with the State-Owned Enterprise Privatization Master Plan, we suggest that these activities be privatized, and be subject to independent economic regulation. Any self-regulations, that exist in some cases, should be avoided.

**Figure 2 Proposed Future Structure of Water Transport Subsector**



We propose that PAT after port privatization should retain its SOE status, but change its role into a “Transport Authority” (TA). In its new role, PAT will become the landlord leasing land, both at the Bangkok Port and the Laem Chabang Port, to port operators, and managing port-related concessions on behalf of the transport regulator. The government should also establish a holding company which holds stocks both in the Bangkok Port Company and the Laem Chabang Port Company. The two companies will rent the land from PAT and operate the two ports, either by themselves or giving concessions to private operators. In the future the two companies should eventually be privatized.

For the Mab Ta Pud Port, it is recommended that IEAT should act as the landlord and allow more private participation. The other two deep-sea ports in Songkhla and Phuket should also have an SOE transport authority looking after the land and other assets, and manage concessions held by private operators, as in the case of the Laem Chabang Port. It is more feasible to designate only one port with TA responsibilities for all major ports in the country. For large local ports (e.g., Ta Tong in Surat Thani), it is advisable to transfer the TA responsibility to those local government organizations which have adequate managerial resources and capabilities.

In the case of TMNC, we agree with the Cabinet Resolution in October 2000 that TMNC be dissolved if it cannot raise equity funds to allow for 70 percent private sector stockholding within a certain time limit. Similarly, we do not find any justifications for the present operation of the Bangkok Dock Co., Ltd., hence our suggestion that it either be privatized or it be dissolved.

### Local Decentralization

As regards safety regulations, we find that certain regulatory activities could be more effectively and stringently performed by large local authorities. It is recommended that the Harbour Department transfer regulatory powers to strong local governments in regulating some activities which are mainly locality-specific in nature, such as registration of small vessels, water environment protection, permits for certain types of construction in water ways, and small-scale dredging. In future, local government units should be allowed to increase their capacity to assume these regulatory roles.

Decentralization, one of the suggested economic regulatory reforms, is possible only in large metropolitan areas, such as Bangkok, where local governments tend to be administratively and financially ready for taking over some of the responsibility from the national regulator.

### Legislation

Most water transport laws are rather dated and need substantial overhauling. They include the four main pieces of legislation:

- *The Thai Ships Act 1938*
- *The Port Authority of Thailand Act 1951*
- *The Maritime Promotion Act 1978*

Along with the suggested institutional reforms, the following legal amendments need to be simultaneously included in future work.

*Harbour Department:* Deletion of certain economic regulatory duties specified in the laws, these include: permit issuance for public passenger water transport and for piloting.

*Port Authority of Thailand:* Deletion of certain clauses in the PAT Act which empower PAT to regulate charges on port-related services.

*Office of the Maritime Promotion Commission:* Repealing or modifying the Maritime Promotion Act; the duties currently performed by the OMPC be transferred to the new Transport Policy Office, and the Economic Regulator.

## AIR TRANSPORT SUBSECTOR REFORM

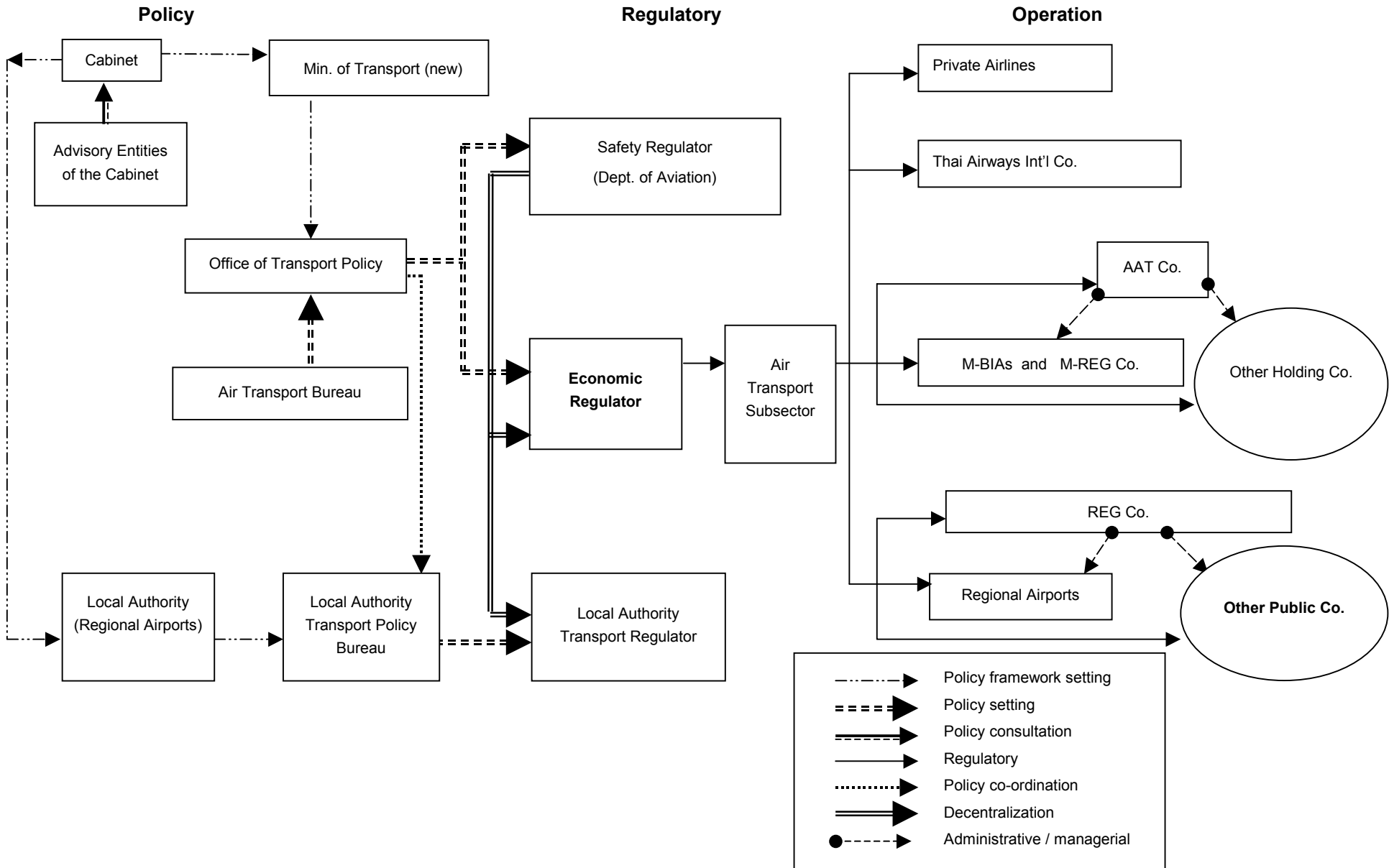
Organizational reform in the air transport sector (see Figure 3) mirrors those found in the water and land transport. That is, air transport policy formulation will be responsible by the Civil Aviation Division, which will be a part of the Office of Transport Policy. The Office itself will be a unit within the future *Ministry of Transport*.... This would imply that personnel involved in policy work who are currently working at the Department of Aviation will have to be transferred to the Office of Transport Policy.

Regulatory responsibilities can be divided into two parts: safety regulation and economic regulation. The Department of Aviation will continue to be responsible for safety regulations, while its mandate as regards to economic regulations will be transferred to an independent regulatory body that is to be established in the future. This particular regulatory body will be responsible for economic regulatory work of all modes of transportation in order to promote better consistency and coordination in transport regulations and in order to economize the very much limited personnel that is qualified to perform these tasks.

The main idea with regard to the provision of air transport services is to promote greater private participation beginning with the sale of government's share in Thai Airways Public Company Limited. The recommendation here is consistent with the Cabinet Resolution taken in 2000 which states that the Ministry of Finance should lower its equity share in the company to 70 percent during the first phase, and to further lower its share to below 50 percent during the second phase. This recommendation was to have taken into effect from the year 2000.

- *The Shipping in Thai Waters Act 1913*

Figure 3 Proposed Future Structure of Air Transport Subsector



As for airports, TDRI recommends a clear separation between the management of airport infrastructure and the operation of airport services. The Airports Authority of Thailand, which has five airports under its jurisdiction, is to become a limited company called the Airports Authority of Thailand Company (AAT Co.) whose mandate is to manage land and buildings that belong to the Ministry of Finance, and they cannot be sold to the private sector. Its airport service operation shall be transferred to two companies that are to be set up, namely the Management Company for BIA and NBIA (M-BIAs Co.) and the Regional Airports Company (REG Co.). The first company is to manage the two Bangkok airports, the Bangkok International Airport (BIA) and the New Bangkok International Airport Co., Ltd. (NBIA), and the second is to operate the four regional airports namely Chiang Mai, Chiang Rai, Hat Yai and Phuket. A strategic partner will be selected to hold a minority share in each of the company in the short run, while the AAT Co. holds a majority share. In order to introduce commercial management into airport operations, the AAT Co. may also consider signing a management contract with its strategic partners. Within a period of five years, the AAT Co. is to relinquish all its equity share in order to phase out its involvement in the operation of airport services.

With regard to the 29 provincial airports, their ownership and operation will be transferred from the Department of Aviation, which will become a full-fledged air transport safety regulator, to a newly created SoE Co. called "The Provincial Airport Authority Company Ltd." The Company's mandate is similar to that of the AAT Co. which is to manage airport assets that belong to the Ministry of Finance.

Once provincial airport businesses are clearly separated from regulatory functions, the next step is to introduce private participation in the operation of airports. There are two methods in which the government may transfer the operation of airports to the private sector. The first is to negotiate a "management contract" with a professional private airport operators. In order to provide proper incentives, the level of compensation may be designed to vary in part with the performance. The second method is to "lease" the entire airport to a private company for, say, 10-15 years. To maximize the amount of rent that the government may generate, the lease should be auctioned.

It should be noted that there is a fundamental difference between the two methods. The option to lease is somewhat different from the option of management contract in that the private sector assumes all the business risks in the case of leasing. This is because the private company that won the auction would have to pay the total amount of the bid regardless what the actual performance down the road will be. On the contrary, under the management contract, the private contractor is provided with a fixed fee or a fee that may vary in a small part with performance, but the government bears the profits and losses.

The transfer of the operation of provincial airports to the private sector is unlikely to face serious personnel problems. This is because according to a survey by the Price Waterhouse Coopers in 2000, there are only 109 civil servants stationed at provincial airports nationwide. This averages to less than five persons per airport.

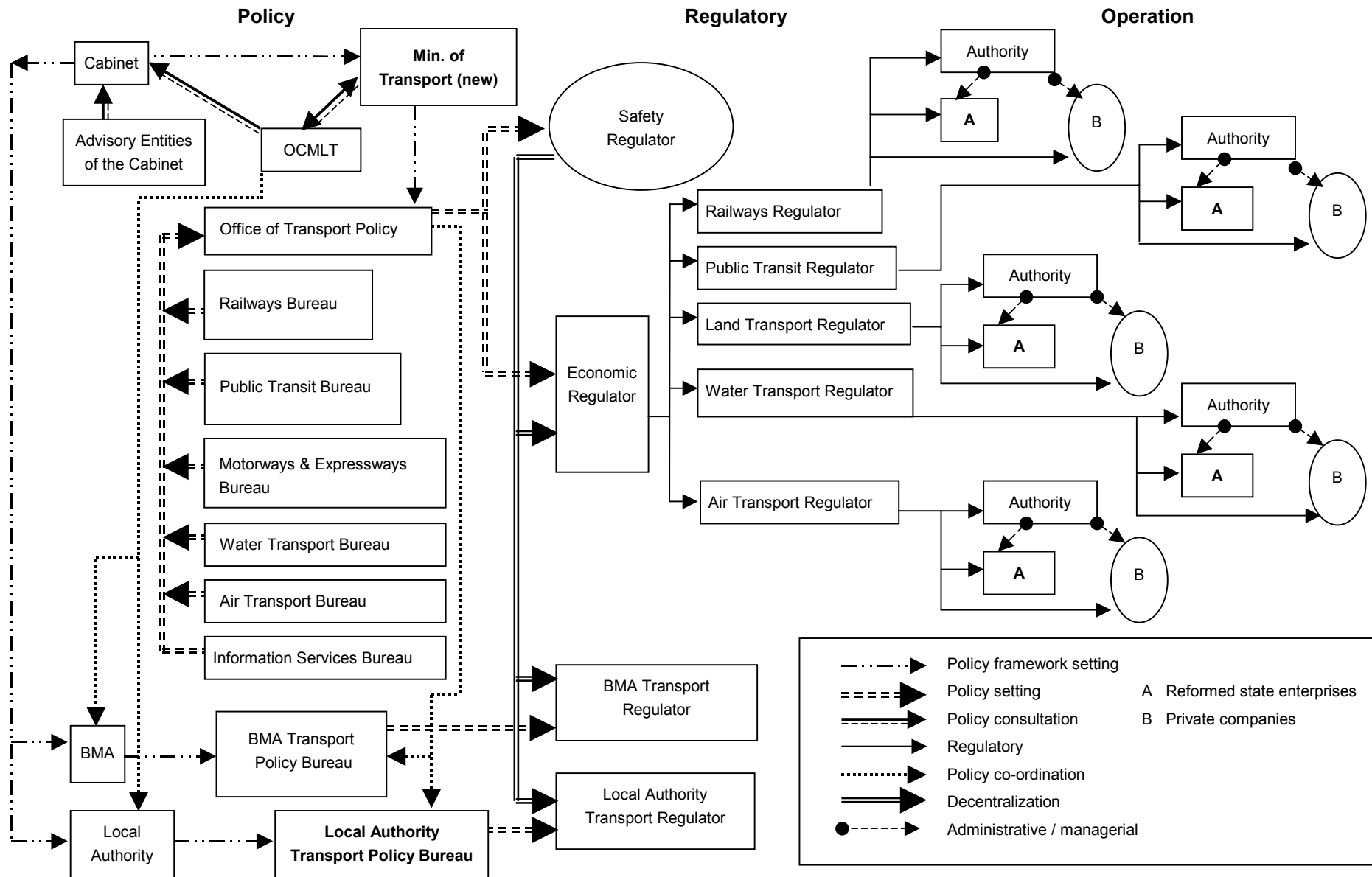
The issue that is likely to pose problems is the chronic loss recorded by most of these airports, which render them commercially unattractive to the private sector. The report proposed five ways to deal with this particular problem. First is to opt for the management contract that will leave the state responsible for the losses but to have the management fee closely tied to the ability to reduce operational losses of these airports. Second, the government may prefer to lease the entire airport in order not to be involved in the operational work altogether. In this case, the government must be ready to provide subsidies to the private lessee. However, auction will ensure that the most efficient operator – i.e., the bidder that requires the smallest amount of subsidy – will be selected to manage the airport. Third, the government may continue to operate the airports that do not have commercial potentials. Fourth, the government may "bundle" these loss-making airports with those that are profitable. Although this option may allow the government to auction off loss-making airports, it may give rise to other problems such as cross subsidization and concentration of market power that can damage the competitive environment.

The final option, which is the one recommended by TDRI, is to examine ways and means by which the revenue of these airports can be boosted. This will include a revision of landing fees and other airport fees, as well as the current fee exemptions provided for military aircrafts and other government non-commercial aircrafts.

Additional recommendations that TDRI suggests are as follows:

- (i) **Other air transport-related services:** The state should lower its equity share in Aerothai Company, the sole operator of the air traffic management business, to 51 percent. This will allow airlines, who are users of Aerothai's services, to hold larger stakes and thus oversee the quality of the service and the efficiency of the operation.
- (ii) **Civil Aviation Training Center:** The Center should become a public organization so that it is relieved from restrictive government procurement and compensation rules and regulations that have crippled the Training Center. However, to ensure the transformation of the Center from a state-owned organization to a public organization, the Center should safeguard its interests so that no additional financial burden is placed upon it. The Center should have clear and concrete plans to increase its revenue from the sale of its services.

Figure 4 Proposed Future Structure of Transport Sector



(iii) **Department of Meteorology:** No organizational or structural changes must be made in the Department of Meteorology. Because of the nature of its services, discussions are being conducted of bringing the Department under the umbrella of another Ministry such as the Ministry of Science, Technology and Environment or the Ministry of Agriculture and Cooperatives. However, air and sea transport service sectors are among the large users of the department's weather forecast services. Thus, its place in the MOTC is not without reason. There have also been discussions whether the department should become a public organization, much like the Civil Aviation Training Center. While TDRI does not rule out this possibility, it does not see any rationale for the move at this time until clear plans of generating new sources of revenues are well defined.

(iv) **Decentralization:** It is recommended that the ownership and the management of all provincial airports be transferred to the provincial or local authorities. It should be noted, however, that the transfer should only

take place when the provincial/local authorities have sufficient institutional, human and financial support to undertake the responsibilities. Once these authorities are ready to assume the financial burden associated with these airports, the airport policy (construction, leasing and management of airport) and economic regulation (landing fees and other airport usage fees) should also be decentralized accordingly. Air transportation policy (airline competition), regulation (airfare regulations) and safety regulations will not be centralized, however.

(v) **Legislation:** The *Air Navigation Act 1954* needs to be modified by keeping the safety regulations related to the air navigation and all airports with the Department of Aviation. Other duties of the Department of Aviation should be transferred to the Economic Regulator. New legislation is also required to create AAT Co. and the new Airport Authority.

In summary, the future structure of the transport sector (land, water, and air) is illustrated in Figure 4.

