

Navigating and Learning from PPP Policy *Obstacles*

Transitioning from PPP Ordinances to PPP Law

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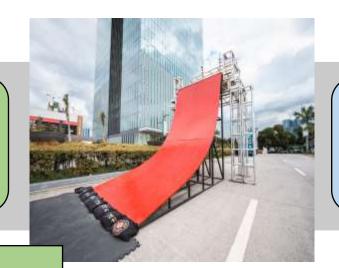
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PPP Journey is a like an obstacle course.



Today



Tomorrow

- o No PPP Law
- PPP Ordinances

Expected passage of PPP Law

Snapshot of Today (Recent Past)



- o120 or so LGUs enacted their own PPP Ordinances with 26+ possible schemes
- oLGUs awarded **50 or so PPP Hard & Soft Projects** (markets, roads, bridges, reclamation, power, transportation, water, IT, socialized housing, health)
- oJVs and Leases are the favorites of LGUs oMore UPs (with no Challengers) than Solicited

Policy Environment: 10 Areas



- 1. Stated Purposes (Liveable City)
- 2. Policy-Making
- 3. PPP Schemes
- 4. LGU Projects
- 5. Approvals

- 6. Unsolicited Proposals
- 7. Devolution
- 8. Successor Risk (Future-Proofing)
- 9. Regulation
- 10. Contract Amendments

Policy Environment: Stated Purposes



Today

- OPPP defined (Policy and Project)
- ○4th P People/ Public Good
- oGeneral Welfare
- oInclusive Growth
- Sustainable and Integrated Development

- oPPP not defined
 (possibly in IRR)
- Public Interest
- OBetter quality PPPs
- Local Autonomy and Self-Reliance

Policy Environment: Liveable City



Today

Tomorrow



SUSTAINABLE CITIES
AND COMMUNITIES

Make cities and human settlements
inclusive, safe, resilient and

Policy Environment: Policy-Making



Today

- Decentralization and Subsidiarity
- SuperiorCompetence
- oLGU sets the policy through an ordinance (observe Subordinate Legislation)

- Centralization and Integration
- oPPP Law over LGU Superior Competence
- PPP Governing Board
 - Overall policy-making body
 - Set strategic direction
 - o Guidelines, forms and templates
 - o Guidelines on LGU Risk Management Fund
 - o IRR Committee
- NEDA-ICC Guidelines on Gov't Undertakings using NG Funds
- Draft Contract Review
 - Statutory Counsel
 - DOF (if with Gov't Undertaking)

Policy Environment: Policy-Making



When proposed PPP Law becomes law	
PPP Ordinances	Repealed or modified (if inconsistent)
Existing Contracts	Unchanged (PPP Law suppletory application)
NOA ~Contract	PPP Law applicable (unless rights infringed)
Solicited Projects bidding started	PPP Law applicable (unless rights infringed)
Unsolicited Proposal S3 started	PPP Law applicable (unless rights infringed)

Policy Environment: PPP Schemes



Today

- Greater freedom to legislate on PPP Schemes
- OBOT Law is only PPP National Law
- 026+ Schemes (JVs, Public Leases, Concessions, etc.)

- Limited freedom to legislate on PPPs
- •Proposed PPP Law includes:
 - oFDCOM ("BOT+")
 - oJVs (not alter mandate; investment; non-exclusionary)
 - oLeases (+ ROM + WC/I; as PPP component; "straight lease" (?); Gov't as Lessee (?))

Policy Environment: LGU Projects



Today

- OUnder BOT Law "normally financed and undertaken by the Government"
- OUnder PPPPOrdinances any project (proprietary);100 or so projects

- o"Typically provided by Public Sector"
- Submit lists to RDCs and PPP Center

Policy Environment: Approvals



Today

- oFor BOT Law, P20M, P50M and P200M thresholds
- For JVs and Leases, no NEDA, LDCs and PPP Center

- Pre-Project Approval confirmation by LDCs (30 day inaction)
- oPPP Center for completeness
- Government Undertakings using NG funds approval by NEDA-ICC
- OProjects affecting national/ sectoral plans– endorsement of NG through RDCs
- olnter-LGU by NG, higher LGU or by LGUs

Policy Environment: Unsolicited Proposals



Today

- Completeness check by LGU
- BOT Law not allowed for priority projects
- Multiple Proposals
 - BOT Law 1st-in-time approach
 - PPP Ordinance most advantageous
- OPS upon acceptance
- ORight to Match

- Completeness check by PPP Center
- Priority projects allowed for UP
- oLGU acceptance through inaction
- Prohibited Government Undertakings
- Multiple proposals most advantageous
- OPS upon successful negotiations
- ORight to Match

Policy Environment: Devolution



- Today (pre-2018)

 1991 Local Gov't Code
- Share in Internal Revenues (IRA)
- Olncomplete Devolution
- Cash and Non-CashContribution

- Mandanas-Garcia Ruling
- Share in all National Taxes (Internal and External, NTA)
- oFull Devolution
- o(More) Cash and Non-Cash Contribution

Policy Environment: Successor Risk (Future-Proofing)



Today

- o "Neither party shall unilaterally **rescind** or amend a P4 Contract."
- o "Gist of the P4 Contract shall be **annotated** at the back of the title ..."
- OA P4 Contract ... may be the subject of a plebiscite funded by local funds pursuant to a referendum ..."
- o "Any amendment or revision to this Ordinance by the next Administration shall not in any way prejudice vested and contractual **rights** ..."

Tomorrow

OMAGA as

 Contingent Liability
 covered by LGU Risk
 Management Fund
 (or National RMF if LGU contributes)

Policy Environment: Regulation



Today

- OP4 Regulatory Authority OProject Implementation
 - Contract Management
 - Tariff-Setting
 - Subsidy Administration

- Project Implementation per Contract
- oLGU:
 - Supervision
 - OMonitoring
 - •Control
- Local Rate-Setting Body

Policy Environment: Contract Amendments

Today

- Consensual
- Stated in contract
- No material deviation
- Right to amend accorded to all

- OVariation, expansion and extension (changes in schedule and tolls, decrease in LGU revenues, change in project scope, contract extension and increase in government financial liabilities)
- Approved by Approving Body per recommendation of LGU

"Advertunities"



- 1. No choice but follow PPP Law
- 2. Local Autonomy ≒ Fiscal Autonomy
- 3. Innovative and Responsive Projects
- 4. Liberal View (vs. Centralist) of Local Autonomy
- 5. LGU PPP Capability-Building
- 6. Inter-LGU PPP
- 7. Future-Proofing LGU PPP Projects
- 8. Crafting the IRR



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Let us learn-unlearn-relearn. Thank you.