



Navigating and Learning from PPP Policy *Obstacles*

Transitioning from PPP Ordinances to PPP Law

Atty. Alberto C. Agra

*Law Professor, PPP Law, Local Government Law and Administrative Law
Advocate and Author, PPP Law-for-All and Local Government Law-for-All
Principal Author, Amicus Imperiorum Locorum (Friend of Local Governments)
President, Pilipinas Obstacle Sports Federation*

PPP Journey is a like an obstacle course.



Today



- No PPP Law
- PPP Ordinances

Tomorrow

Expected passage
of PPP Law



Snapshot of Today (Recent Past)

- **120 or so LGUs** enacted their own **PPP Ordinances** with **26+ possible schemes**
- LGUs awarded **50 or so PPP Hard & Soft Projects** (*markets, roads, bridges, reclamation, power, transportation, water, IT, socialized housing, health*)
- **JVs and Leases** are the **favorites** of LGUs
- More **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

- PPP defined (Policy and Project)
- 4th P – People/ Public Good
- General Welfare
- Inclusive Growth
- Sustainable and Integrated Development

Tomorrow

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



Policy Environment: Liveable City

Today

Tomorrow

Formula for Creating Liveable Communities



ENCOURAGE EFFECTIVE PARTNERSHIPS

Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships.

11 SUSTAINABLE CITIES AND COMMUNITIES

Make cities and human settlements inclusive, safe, resilient and sustainable.





Policy Environment: Policy-Making

Today

- Decentralization and Subsidiarity
- Superior Competence
- LGU sets the policy through an ordinance
(observe Subordinate Legislation)

Tomorrow

- Centralization and Integration
- PPP Law over LGU Superior Competence
- PPP Governing Board
 - Overall policy-making body
 - Set strategic direction
 - Guidelines, forms and templates
 - Guidelines on LGU Risk Management Fund
 - 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 ...

<i>PPP Ordinances</i>	Repealed or modified (<i>if inconsistent</i>)
<i>Existing Contracts</i>	Unchanged (<i>PPP Law supplementary application</i>)
<i>NOA ~Contract</i>	PPP Law applicable (<i>unless rights infringed</i>)
<i>Solicited Projects bidding started</i>	PPP Law applicable (<i>unless rights infringed</i>)
<i>Unsolicited Proposal S3 started</i>	PPP Law applicable (<i>unless rights infringed</i>)



Policy Environment: PPP Schemes

Today

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

Tomorrow

- Limited freedom to legislate on PPPs
- Proposed PPP Law includes:
 - FDCOM (*“BOT+”*)
 - JVs (*not alter mandate; investment; non-exclusionary*)
 - Leases (*+ ROM + WC/I; as PPP component; “straight lease” (?); Gov’t as Lessee (?)*)



Policy Environment: LGU Projects

Today

- Under BOT Law – “normally financed and undertaken by the Government”
- Under PPP Ordinances – any project (proprietary); 100 or so projects

Tomorrow

- “Typically provided by Public Sector”
- Submit lists to RDCs and PPP Center



Policy Environment: Approvals

Today

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

Tomorrow

- Pre-Project Approval confirmation by LDCs (30 day inaction)
- PPP Center for completeness
- Government Undertakings using NG funds – approval by NEDA-ICC
- Projects affecting national/ sectoral plans – endorsement of NG through RDCs
- Inter-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
- Right to Match

Tomorrow

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



Policy Environment: Devolution

Today (pre-2018)

1991 Local Gov't Code

- Share in Internal Revenues (*IRA*)
- Incomplete Devolution
- Cash and Non-Cash Contribution

Tomorrow

Mandanas-Garcia Ruling

- Share in all National Taxes (*Internal and External, NTA*)
- Full Devolution
- (*More*) Cash and Non-Cash Contribution

Policy Environment: Successor Risk (Future-Proofing)



Today

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

Tomorrow

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



Policy Environment: Regulation

Today

- P4 Regulatory Authority
 - Contract Management
 - Tariff-Setting
 - Subsidy Administration

Tomorrow

- Project Implementation per Contract
- LGU:
 - Supervision
 - Monitoring
 - Control
- Local Rate-Setting Body

Policy Environment: Contract Amendments



Today

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

Tomorrow

- Variation, 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 \Leftrightarrow 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



 www.albertocagra.com

 09175353823

 alberto agra

 alberto.c.agra@gmail.com

Let us learn-unlearn-relearn.

Thank you.