



# **Navigating and Learning from PPP Policy *Obstacles***

*Transitioning from PPP Ordinances to PPP Law*

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# 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 Challenger, 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)
- 4<sup>th</sup> 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



**TARGET 17.H**



### 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 ...

<b><i>PPP Ordinances</i></b>	Repealed or modified ( <i>if inconsistent</i> )
<b><i>Existing Contracts</i></b>	Unchanged ( <i>PPP Law suppletory application</i> )
<b><i>NOA ~Contract</i></b>	PPP Law applicable ( <i>unless rights infringed</i> )
<b><i>Solicited Projects bidding started</i></b>	PPP Law applicable ( <i>unless rights infringed</i> )
<b><i>Unsolicited Proposal S3 started</i></b>	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 Ordinance – 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 – 1<sup>st</sup>-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 Amendment



## 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



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Let us learn-unlearn-relearn.

Thank you.