

LGU Joint Ventures

Alberto C. Agra

Certified PPP Specialist™

Certified Regulation Specialist™

PPP Consultant and Practitioner

PPP Law and Local Government Law Professor, and Political Law Bar
Reviewer, Ateneo Law School

Adviser to DILG on PPP

President, Forensic Solutions

Columnist, PPP Lead, BusinessMirror

PhD Candidate, Leadership Studies major in Public Management,
Ateneo School of Government

Former Acting Secretary of Justice, Acting Solicitor General and
Government Corporate Counsel

Which of these are possible?

1. LGUs entering into JVs
2. No NEDA approval regardless of project cost
3. Award in 3 months
4. No open bidding, only unsolicited proposals
5. LGU has greater share than what it contributes
6. Market with commercial space, pay parking, transport terminal
7. No national funding support
8. Non-cash contribution of LGUs
9. Unincorporated JVs
10. JVs with Disposition/ Divestment

LGU JV Enabling Law

1991 Local Government Code (R.A. 7160) and IRR

Sec. 35. *Linkages with People's and Non-governmental Organizations.* — **Local government units may enter into joint ventures** and such other cooperative arrangements with people's and non-governmental organizations (or the **private sector**) to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

Affirmation

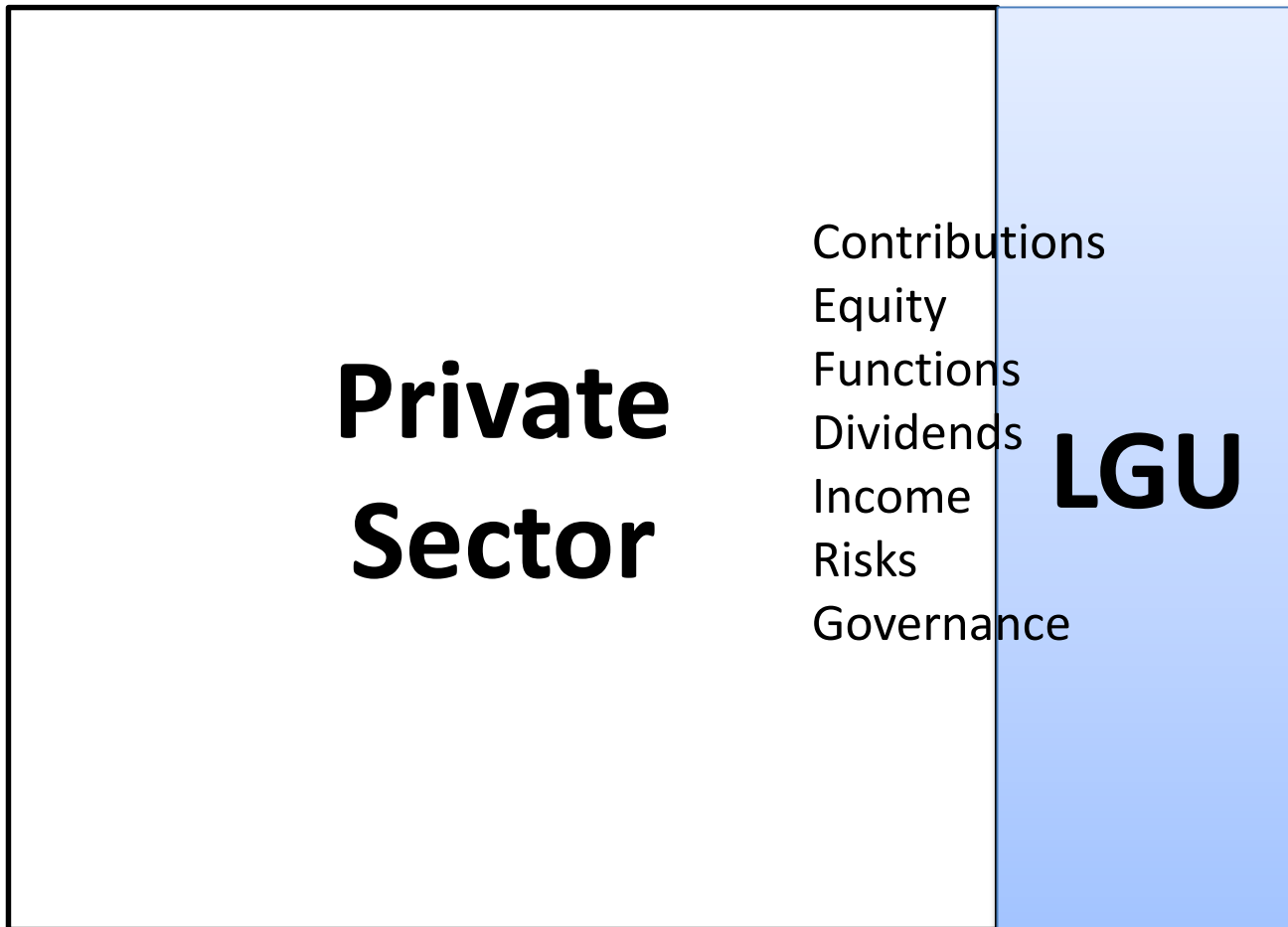
Agencies

- Executive Order 78 (07.04.12)
- Department of Justice
 - Opinion No. 18 (04.03.12)
- Department of Interior and Local Governments
 - Opinion No. 11 (04.08.14)
 - Opinion No. 10 (04.08.14)
 - Opinion No. 8 (03.06.14)
 - Opinion No. 47 (07.13.12)
- Office of the Executive Secretary
 - Letter (10.25.11)

Policies/ Opinions

1. No specific statute on PPP
2. No national guidelines on LGU JVs
3. LGUs may:
 - a) enact own PPP Codes/ JV Ordinances
 - b) adopt NEDA JV Guidelines, use BOT Law
 - c) refer to “Agra PPP Code”
4. JV contracts must be respected

Concept



Definition

A JV, a **PPP modality**, is a **contractual arrangement** between the City and a JV PSP or a group of private sector entities as **co-venturers** involving a **community or pooling of interests** in the performance of the **service, function, business, activity or components** of the JV project, with each party having a **right to direct and govern the policy** in connection therewith, and with a view **of sharing income, dividends, revenues, profits, risks and losses**, subject to the JVA.

JV not BOT Law Variant

Differences

- Community/ Pooling of Resources, not purely private
- Proportionality, not distinct assumption of benefits and obligations
- LGU contributes, unlike BOT Law where LGU not contribute as a rule
- JV Company by Parties, not just by Private Sector

Inapplicable Provisions in BOT Law

- Only for Projects traditionally provided by LGU
- Approval Processes
- Debt-Equity Ratio
- Maximum Rate of Return
- Restrictions on Unsolicited Proposals
 - Priority Projects
 - New Technology
 - Guarantee, Subsidy or Equity

10 SONA-STATE POSSIBLE PPP PROJECTS



ROADS



BRIDGES



AIRPORTS



TOURISM



HARVEST FACILITIES



PUBLIC HEALTH



IRRIGATION



RAIL



FERRY SYSTEM





PUBLIC WI-FI

My Own 10

1. Waste-to-Energy/
Renewable Energy
2. Water Supply
3. Septage/ Sewerage
4. Reclamation
5. Rehabilitation Centers
6. Monorail
7. Bridges
8. Mixed-Use Land Dev't
9. Markets and Terminals
10. Smart Cities




HARD

INFRASTRUCTURE ASSETS

- | | |
|---|--|
|  Road |  Terminal |
|  Water |  Government Buildings |
|  Power |  Parks |
|  Ports |  Information Technology |
|  Reclamation |  Cemetery |
|  Sports Complex |  Solid Waste Management |
|  Markets |  Bridges |
|  Transport Systems |  Malls |

SOFT

SOCIAL ASSETS AND SERVICES

- | | |
|---|---|
|  Classroom |  Housing |
|  Hospital |  Evacuation Center |
|  Agriculture |  Prisons |

BUNDLED

- | | |
|--|--|
|  + 
Hard and Hard |  + 
Soft and Soft |
|  + 
Hard and Hard |  +  + 
Hard, Soft and Soft |
|  + 
Hard and Hard |  +  + 
Hard, Hard and Soft |

Notes on JV Projects

1. Infrastructure, development, revenue-raising or social service-related projects (which are traditionally or not traditionally provided or supplied by the LGU)
2. Projects listed in Development Plan
3. Single Use or Multiple Use
4. Public Good-Driven
5. Facilitative of Private Sector Initiative

Notes on JV Projects

6. Transfer of Ownership to Private Sector possible
7. Automatic grant of franchise or concession
8. Maximum of 50 years
9. Procurement
 - By LGU using LGU funds – follow GPRA
 - By Private Sector – Internal Rules or GPRA
10. Audit
 - LGU funds and contributions – COA
 - Private funds and contributions – Private Internal Audit

LGU Contributions

Money and Capital

- Regular and Special Funds, IRA, RPT, SEF, Share in National Wealth, Calamity Fund, Development Fund, Loan Proceeds, Grants, Bonds, Securities, Subsidy, Equity, Cost-Sharing, Viability Gap Funding, Cost Avoidance or Savings (*actual/ current or future/ monetized*)

Non-Cash (Anything of Value)

- Services, Personnel, Intellectual Property, Usufruct, Land (own or expropriated), Minimum Revenue Guarantee, Right-of-Way, Goodwill, Franchise, Concession, Credit Enhancement, Tax Incentives/ Holidays, Police Power

4 NO MONEY-OUT BENEFITS



FISCAL SPACE



LESS DEPENDENCY

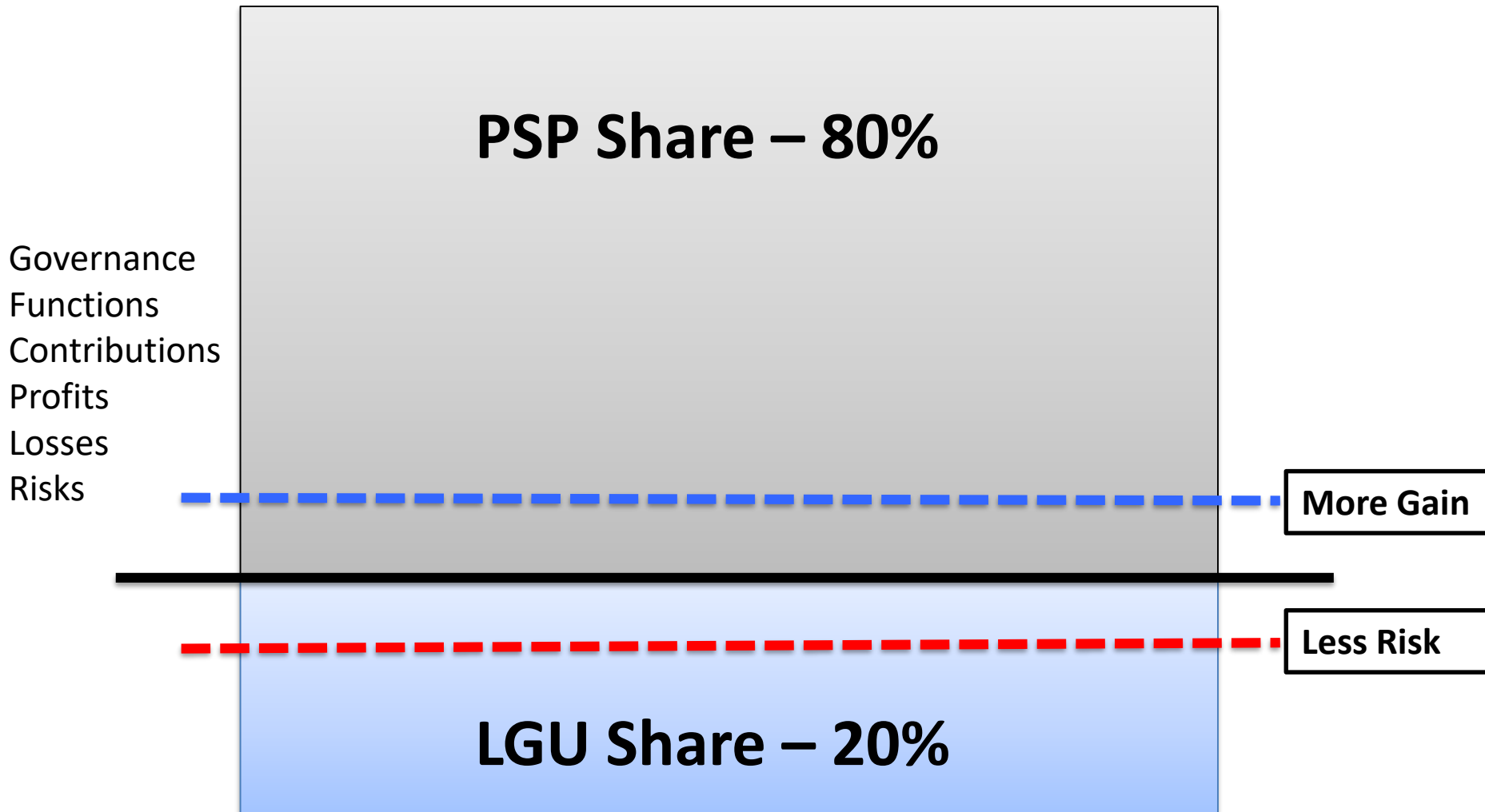


FEWER CASES



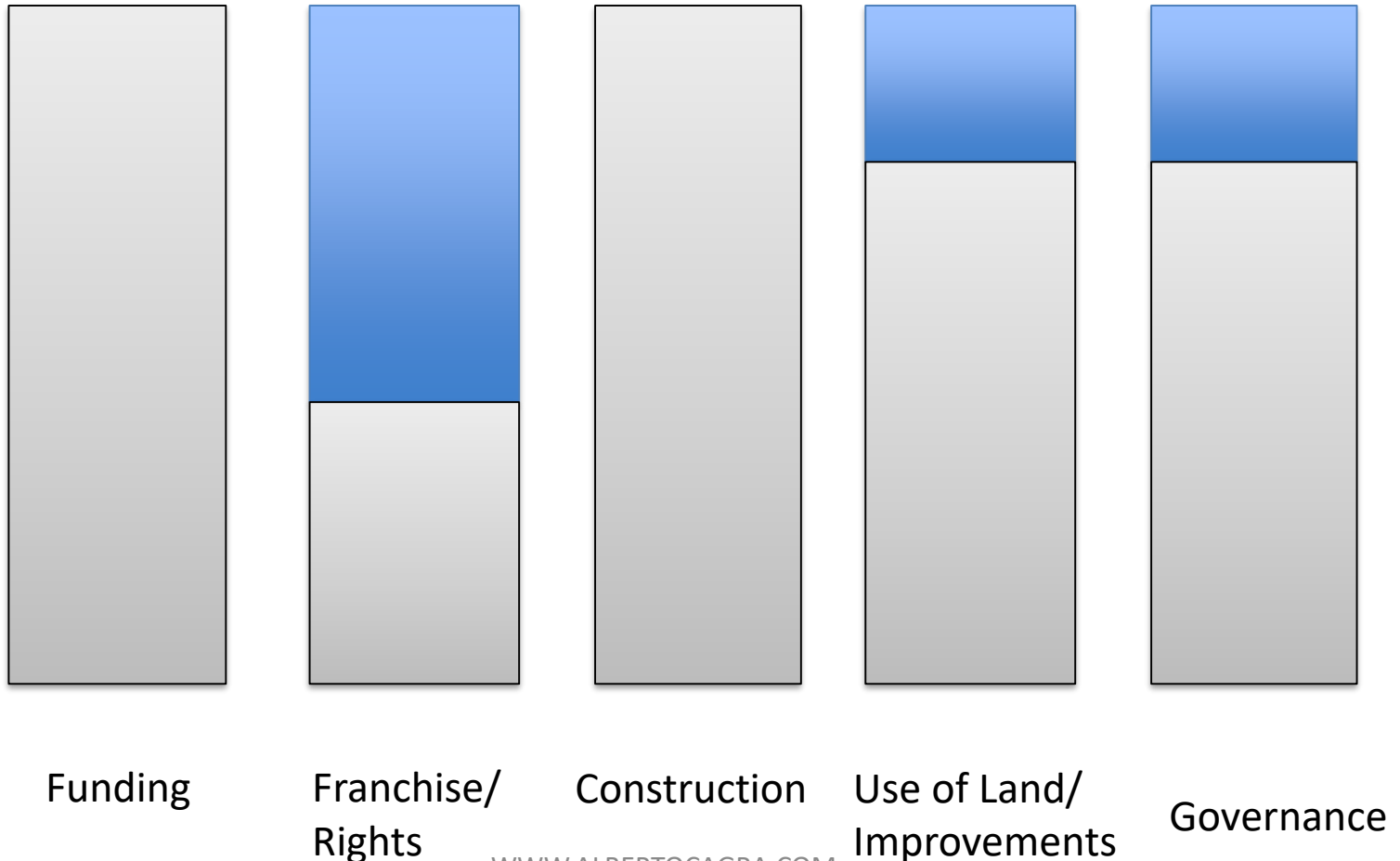
**FEWER
DISALLOWANCES**

Sharing in Profits, Losses and Risks



Proportionate Sharing:

Alternative Scheme on 20%-80%



Notes on LGU Contributions

1. Contributions/ Shareholdings determine **minimum** share/ participation of LGU (% of gross or net income or revenues)
2. General Rule: LGU **minority** share, Private Sector majority share (can be 50-50)
3. Proportionate Sharing: dividends, profits, income, revenues (unless by agreement, LGU greater share – minimum or **floor**); and risks, losses and obligations (unless by agreement, lower risks – maximum or **ceiling**)

Notes on LGU Contributions

4. Sharing: (1) **overall** or across the board or (2) **specific** assignment/ apportionment, provided, joint governance
5. Private Sector **cannot sell** interest without consent of LGU
6. Private Sector can **advance** share/ equity of LGU (set-off from future revenues)
7. Subject to **3rd party valuation** (GFI or Private Sector)
8. No fixed **debt to equity ratio** (reasonableness)
9. Cost avoidance or **substantial savings** factored in sharing.

JV Vehicle: 2 Options

**JV Company or
Corporate JV**

1

**Unincorporated
JV or
Contractual JV**

2

Considerations for Contractual JV

1. Audit: Audit by Private Audit Firm (not by COA)
2. Procurement: Adherence to Internal Rules (not GPRA)
3. Labor: Compliance with Labor Code (not Civil Service Law)
4. Compensation Scheme: Based on Labor Code (not Salary Standardization Law)

JV Company

SEC-
Registered

Stock
Corporation

Nationality
Requirements

LGU in Board
(\geq Share)

Income
(\geq Share)

50-Year Term

JV Agreement

1. Identification of the JV parties
2. JV Name
3. Principal place of business
4. JVA effectivity date
5. JV purpose/s and objective/s
6. JV vehicle (incorporated or unincorporated)
7. Total cost of JV activity
8. JV Term
9. Project specifications and features
10. Management role of JV parties
11. Statement that parties are co-venturers
12. Establishment of JV Fund
13. Amount and Contributions of each party

JV Agreement

14. Creation of special bank account
15. Provision on infusion of additional capital
16. Percentages and sharing of profits and losses
17. Termination/ Liquidation of JV
18. Buy-out provisions
19. Transfer of ownership of assets
20. Creation of Management Committee or designation of General Manager
21. Implementation milestones
22. Provision for the acquisition of licenses
23. Type of insurance
24. Confidentiality of trade information
25. Ownership or retention of patents

JV Agreement

26. Performance security requirements
27. Undivided pro-rata interests held by the co-venturers on all assets of the JV
28. Restriction regarding assignment of private sector participant's undivided pro-rata interests
29. Cost recovery scheme
30. Indemnification and liquidated damages
31. Performance and warranty bonds
32. Payout of funds
33. Minimum insurance coverage
34. Acceptance tests and procedures
35. Dispute Settlement and Alternative Dispute Resolution
36. Warranty against corruption
37. Compliance with law
38. Government exit provision

Notes on JV Agreements

1. JVA signed by Representatives of each party
2. Prior authorization (or ratification) from local legislative council
3. JVA Beneficiary: Constituents
4. No award/ JVA if material deviations/ disadvantageous provisions/ prejudice other bidders
5. Amendments possible (if fair and not violate competition)

Notes on JV Agreements

6. Non-impairment of JVAs
7. JVA binding on Successor Administration
8. Judicial, Executive or Administrative Confirmation of JVA
9. Exclusivity of JV Project

THANK YOU.