

Harnessing the Corporate Powers of Local Government Units (LGUs) for Local Economic Development

BACKGROUND

The Local Government Code has declared it a policy to grant local governments the power to create and broaden their sources of revenue to enable them to discharge their powers and effectively carry out their functions under the law. Thus, LGUs are constantly finding ways to generate additional income and find other resources to be able to respond to the growing demand for more and better services from constituents and to improve their operations.

Empirical data shows that LGU owned and operated Local Economic Enterprises (LEEs) are heavily dependent on the general fund of the local government unit for their continued existence and operation. The continued provision of subsidy by the LGU to LEEs deprives the LGU with the means to pursue its more salient developmental undertakings and provide the necessary social services to its constituents. Certain LGUs however, have defied conventional practices in the operation and management of these LEEs by risking political fortunes to adopt corporate governance as a norm in operating and managing these enterprises. These new breed of local executives and local elective officials are now in the forefront of what is a promising effort to achieve genuine local autonomy envisioned by the Constitution. On the other hand, there is obviously a need to ensure that practices fall within the bounds of law and in accord with the standards of transparency and accountability. Since the issuance of the Local Government Code of 1991, LGUs have ventured into various modes in the exercise of their corporate powers such as the following: alliance or clustering mechanisms, build-operate and transfer scheme, joint venture, bonds, loans and credit, securing grants and forming corporations.

It is the policy of DILG to promote and support exemplary corporate practices among local government units. The Department encourages the LGUs to fully harness their corporate powers solidly anchored on the provisions of our statute, and the requirements for transparency and accountability. In particular, the Department aims to provide the enabling policy for LGUs to harness their corporate powers in the pursuit and/or implementation of projects and programs that will redound to the economic development of their respective communities and enhance the welfare of their constituents.



LEGAL BASIS

The Local Government Code of 1991 (RA 7160), particularly Section 15 thereof, defines an LGU “created or recognized under this Code as a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory.”

Specifically, Section 22 of RA 7160 vests on every LGU as a corporation the power to “exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws”. In addition, the same section states that LGUs shall “enjoy full autonomy in the exercise of their proprietary functions, subject to the limitations provided in this Code and other applicable laws”.

Finally, and consistent with the local autonomy granted by the Constitution, LGUs “shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities”. (Section 18, RA 7160)

GENERAL GUIDELINES OF REPUBLIC ACT 7160

1. Section 22

Every local government unit, as a corporation, shall have the following powers:

- To have continuous succession in its corporate name;
- To sue and be sued;
- To have and use a corporate seal;
- To acquire and convey real or personal property;
- To enter into contracts; and
- To exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws;

Local government units shall enjoy full autonomy in the exercise of their proprietary functions subject to the limitations provided in RA 7160 and other applicable laws;

2. Section 18

Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues; to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals;

3. Section 33

Local government units may, through appropriate ordinances, group themselves, consolidate, or coordinate their efforts, services, and resources for purposes commonly beneficial to them. In support of such undertakings, the local government units involved may, upon approval by the Sanggunian concerned after a public hearing conducted for the purpose, contribute funds, real estate, equipment, and other kinds of property and appoint or assign personnel under such terms and conditions as may be agreed upon by the participating local units through Memoranda of Agreement;

4. Section 35

Local government units may enter into joint ventures and such other cooperative arrangements with 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. Provided that in the absence of any guidelines government joint venture between an LGU and a private sector entity, the NEDA Guidelines governing Joint Venture can be utilized as reference;

5. Section 299

Subject to the rules and regulations of the Central Bank and the Securities and Exchange Commission, provinces, cities, and municipalities are authorized to issue bonds, debentures, securities, collaterals, notes and other obligations to finance self-liquidating, income-producing development or livelihood projects pursuant to the priorities established in the approved local development plan or the public investment program. The Sanggunian concerned shall, through an ordinance approved by a majority of all its members, declare and state the terms and conditions of the bonds and the purpose for which the proposed indebtedness is to be incurred;

6. Section 300

Provinces, cities, and municipalities may, upon approval of the majority of all members of the Sanggunian concerned and in amounts not exceeding their surplus funds, extend loans, grants, or subsidies to other local government units under such terms and conditions as may be agreed upon by the contracting parties. Local government units may, upon approval of their respective Sanggunian, jointly or severally contract loans, credits, and other forms of indebtedness for purposes mutually beneficial to them;

PRIVATE MANAGEMENT OF MALABON CENTRAL MARKET

PPP Modality: Lease Agreement

Key Results:

- Guaranteed net income of 1.5 million per month for the City
- Strengthened the Malabon Central Market Development Cooperative
- LGU savings on other costs: repairs, utilities, personnel, etc.
- Private sector participation in service delivery
- Market operation free from partisan politics

PRIVATIZING THE WATER AND POWER UTILITIES OF THE PROVINCE OF BOHOL

PPP Modality: Joint Venture

Key Results:

- Infused fresh capital into the water and power utilities
- Accessed the needed engineering and management technologies to improve operations efficiency and
- Ensured the adequacy and sustainability of power distribution and water supply
- Contributed to Bohol's competitiveness and economic growth

BUILDING THE MANDALUYONG PUBLIC MARKET

PPP Modality: Build Operate and Transfer

Key Results:

- Public market without cost to the city
- Gross income of 20M instead of 10M annual outlay for loan payment
- Employment for city residents
- Rise of new commercial district
- Traffic, flooding, garbage and pollution problems minimized

FOR INQUIRIES:

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LGUs shall exercise corporate powers of the LGUs through their respective Local Chief Executives and Sanggunians;

Any undertaking by the LGUs in the exercise of their corporate powers should be limited to projects and activities, which the LGUS may legitimately implement in its proprietary or corporate capacity and should not extend to the implementation of governmental or public functions;

The enabling authority for the LGUs to engage in programs and projects in their proprietary capacity should be in the form of an Ordinance to be enacted by its Sanggunian where the obligations for such programs are clearly spelled-out;

The funds, if any, that will be required for the undertaking may come from the general fund of the LGU, duly certified by the Treasurer, Budget Officer, and Accountant as appropriated for any purpose whatsoever or may be specifically appropriated in their respective 20% Development Fund. Properties held by the LGUs in their proprietary capacity may likewise serve as part of the initial capitalization for the project;

Public Funds that are invested, expended, and/or disbursed for these proprietary undertakings should be subject to the jurisdiction and audit by the COA.

The appropriations for salaries, wages, representation and transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount for personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets

ROLE OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG)

DILG Regional Offices shall provide assistance, as needed to all local government units within their regional jurisdictions, in collaboration with other concerned agencies

