

[DAR ADMINISTRATIVE ORDER NO. 02, June 16, 2008]

**GUIDELINES GOVERNING LEASE OF LANDS UNDER
AGRIBUSINESS VENTURE ARRANGEMENT (AVA) IN AGRARIAN
REFORM AREAS AND THE DETERMINATION OF LEASE RENTAL
THEREOF**

Article 1
PRELIMINARY PROVISIONS

SECTION 1. Prefatory Statement and Legal Bases - Section 8 of Republic Act (R.A.) No. 6657 provides that, "xxx In general, lands shall be distributed directly to the individual worker-beneficiaries. In case it is not economically feasible and sound to divide the land, then they shall form a workers' cooperative or association which will deal with the corporation or business association or any other proper party for the purpose of entering into a lease or growers agreement and for all other legitimate purposes. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, or any other proper party, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation, business association or such other proper party. In no case shall the implementation or application of this Act justify or result in the reduction of status or diminution or any benefits received or enjoyed by the worker-beneficiaries or in which they may have a vested right at the time this Act becomes effective, xxx In no case shall a foreign corporation, association, entity or individual enjoy any rights or privileges better than those enjoyed by a domestic corporation, association-entity or individual."

Section 3 of R.A. No. 7905 amending Section 44 of R.A. No. 6657, provides that, "xxx the PARCOM shall coordinate and monitor the implementation of the CARP in the province, xxx in addition, it shall: a) recommend to the PARC the following; xxx 3) continuous processing of applications for lease back arrangements, joint venture .agreements and other scheme that will optimize the operating size for agricultural production and also also promote both security of tenure and security of income to farmer beneficiaries: Provided, that lease back arrangements should be the last resort"

Section 11 of Executive Order (E.O.) No 229 states that, "Leases and management tracts on land covered by land distribution and registered with the Register of Deeds c0 t0 ^e approval of this Order may continue under their original terms and conditions, but not beyond five (5) years from the effectivity of the Order; provided that upon expiration leases and management contracts may only be renewed subject to the agreement of the Qualified beneficiaries; and provided further that upon the distribution or award of the land, where the existing lease rentals are not acceptable to the qualified beneficiaries, such rentals snail be renegotiated with the

assistance of the Barangay Agrarian Reform Council (BARC)- If the parties fail to agree, the DAR shall determine the rental. Mortgages and other claims registered with the Register of Deeds will be assumed by the Government up to the landowner's compensation value as provided for in Section 6 hereof/

Pursuant to the abovementioned provisions of law, the following rules and regulations are hereby issued for the guidance of all concerned in the lease of lands under agribusiness venture arrangements (AVAs) in agrarian reform areas and the determination of lease rental thereof.

SEC. 2 Coverage - These guidelines shall apply to all lands covered by the Comprehensive Agrarian Reform Program (CARP) under agribusiness venture arrangement. It shall also apply to retained areas of small landowners and lands of agrarian reform beneficiaries (ARBs) that are fully paid and where the ten-year prohibitory period under Section 27 of R.A. No. 6657 has already lapsed, but ARBs have opted to include said landholdings under lease agreement.

SEC. 3. Definition of Terms - As used in this Order, the following terms are defined herein:

3.1 Average Household Size refers to the ratio of household population to the number of households. This is estimated by the National Statistics Office (NSO).

3.2 Comparable Lands refer to lands of the same estate or municipality/province/region with similar features in terms of crops planted, terrain, soil properties and conditions (i.e., type, texture, PH, moisture content, etc.), distances and accessibility.

3.3 Economic Family-Size Farm Unit means an area of farm land that permits efficient use of labor and capital resources of the farm family and will produce an income sufficient to provide a modest standard of living to meet a farm family's needs for food, clothing, shelter and education with possible allowance for payment of yearly amortization on the land reasonable reserves to absorb yearly fluctuation in income.

3.4 Land Amortization Value (LAV) refers to the amount of the regular annual amortization per hectare paid by the ARBs for the agricultural lands awarded to them under CARP. It shall be based on the land valuation and land amortization schedule determined by the Land Bank of the Philippines (LBP), subject to the land value as determined by final arbitration of the DAR Adjudication Board (DARAB), Special Agrarian Court (SAC) or Court of Appeals (CA), in case the land valuation of the subject landholding is contested or under appeal by the landowner (LO).

In cases where the lands are fully paid by the ARBs or donated by the LO to the ARBs, the "Land Amortization Value" shall refer to the equivalent value or amount of annual amortization of comparable lands within the municipality, province or region where the subject landholding is located.

In the case of lands under the voluntary land transfer (VLT) scheme, the "land amortization value" shall refer to the fixed amount of Land value specified in the signed agreement on voluntary land transfer between the ARBs and the LO.

3.5 Lease Rental refers to the income accruing to the owner as payment for the agricultural use of his land subject of lease agreement.

3.6 Lease Agreement is an AVA scheme wherein the ARBs bind themselves to give the former LO or any other investor general control over the use and management of the land for a certain amount and for a definite period.

3.7 Lessee-Investor refers to any person, natural or juridical who, with the consent of the lessor, operates the leased land of agricultural production in accordance with the terms of the lease agreement.

3.8 Lessor- ARB pertains to an individual ARB or duly registered ARB cooperatives or associations, who lease their awarded lands' to any investor for purposes of agricultural production.

3.9 Poverty Threshold is the minimum income/expenditure for a family/individual to meet the basic food requirement and non-food requirements. This is established by the National Statistics Coordination Board (NSCB).

SEC. 4 General Policies - The following basic principles shall govern the lease of CARP covered lands under AVA.

4.1 The terms and conditions of the lease agreement (LR Annex "A"), including the determination and computation of lease rental of lands under AVA, shall be mutually agreed upon by the contracting parties subject to the approval of the Presidential Agrarian Reform Council (PARC)/PARC Executive Committee (ExCom) upon the recommendation of the Provincial Agrarian Reform Coordinating Committee (PARCCOM), and review and evaluation of the National AVA Evaluation Committee (NAEC) pursuant to DAR Administrative Order (A.O) No. 09, Series of 2006 titled, Revised Rules and Regulations Governing Agribusiness Venture Arrangements (AVAs) in Agrarian Reform Areas.

Any amendment, change, extension or renegotiation of the terms and conditions of the lease agreement, including but not limited to, extension of period of the lease, renegotiated lease rental rates shall be subject to the same process of review and approval by the PARC or PARC Excom.

The absence of a PARC or PARC ExCom approval on any lease agreement renders , d lease agreement null and void pursuant to Sec. 4.9 of A.O. No. 09, series of 2006.

4.2 The DAR, through the NAEC, shall conduct an inventory, review and monitoring of all f a lease agreements with a period of at least 25 years and those subject of renegotiation, to determine the extent of development and use of the land, the parties' compliance with the terms of the lease agreement, the conditions relating to the period of the lease agreements, and the viability of full take over by the ARBs pursuant to the intent of agrarian reform. 4.3 in the negotiation or renegotiation of the annual lease rental (LR) per hectare, the concerned parties shall factor in the annual land amortization value per hectare, the annual Real Property Tax on the land per hectare, and the annual poverty threshold, and may consider the other forms of remuneration given to the lessor-ARBs and the historical net income of the company based on validated financial statements, the lease rental benchmark formula being:

$$LR = PT + LAV + RPT \times 3$$

where:

PT = annual poverty threshold which is computed by multiplying the annual per capita poverty threshold of the province where the subject landholding is located by the national average household size of five (5);

3 = maximum hectareage of lands that may be awarded to ARBs under R. A. No. 6657;

LAV = land amortization value per hectare per year; and

RPT = annual real property tax per hectare.

4.4 The computed and agreed lease rental shall be incorporated in the terms and conditions of the lease agreement or amendment thereto. All pertinent data and documents used as bases in the determination of the lease rental shall be submitted, together with the lease agreement, to the NAEC, through the AVA-Task Force (TF), for review and evaluation pursuant to DAR A.O. No. 09, series of 2006.

4.5 Renegotiation of the amount of lease rentals or any other provisions of the lease agreement shall be undertaken by the concerned parties every five (5) years or earlier if any of the following grounds under Sec. 4.14 of DAR A.O. No. 09, series of 2006 arise: (1) extraordinary increase in inflation rate; (2) drastic change in price fluctuation on both production input and output; (3) declaration of the areas as calamity or disaster area due to force majeure and (4) other meritorious grounds.

In no case shall the renegotiated lease rental be lower than the lease rental preceding renegotiation.

4.6 Any conflict that may arise from the negotiation or implementation of the lease agreement, or compliance of lease rental payments shall be governed by the provisions of secs 14 to 16 of DAR A.O. No. 09, series of 2006. However, in the event of failure to resolve the issue, any of the parties may submit their dispute for arbitration in accordance with the above A.O., provided that during the arbitration period, the lessee-investor shall continue to pay the lessor-ARB the lease rental, and productivity and quality premium, if any, based on the lease rental rate of the preceding year until the conflict has been resolved.

4.7 Without prejudice to the filing of a case for breach of contract, the lease agreement shall provide sanctions for violations or non-compliance by either party of the terms and conditions of the lease agreement. The DAR shall periodically monitor the implementation of these lease agreements pursuant to Sec. 4, Item 4.21 of A.O. No. 09, series of 2006

SEC. 5. Rights and Obligations of the Lessor-ARB (Whether Individual ARB or Organized as Cooperative or Association) and Lessee-Investor- The following are the rights and obligations of the lessor-ARB and lessee-investor:

5.1 The lessor-ARB shall: