

**[DAR ADMINISTRATIVE ORDER NO. 05, s. 1997,
March 21, 1997]**

**RULES AND REGULATIONS GOVERNING THE LEASE OF LANDS
PLANTED TO PALM OIL TREES AND THE DETERMINATION OF
LEASE RENTAL UNDER LEASE ARRANGEMENT, AMENDING
ADMINISTRATIVE ORDER NO. 11, SERIES OF 1988**

I. PREFATORY STATEMENT

A. It is the policy of the State to recognize "the right of the farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till" (Section 4, Article XIII, Constitution).

B. The objectives of agrarian reform and owner-cultivatorship are:

1. "to enhance" the "dignity" of the farmers and farmworkers (Section 2, R.A. No. 6657; Sec. 2 (2), R.A. No. 3844, as amended);
2. "to improve the quality of their lives through greater productivity" (Sec. 2, R.A. No. 6657; Sec. 2 (3), R.A. No. 3844, as amended.);
3. "to create a truly viable social and economic structure in agriculture" (Sec. 2, (3), R.A. No. 3844, as amended); and
4. "to make the farmers more independent, self-reliant, and responsible citizens, and a source of genuine strength in our democratic society" (Sec. 2 (6), R.A. No. 3844, as amended), and "to divert landlord capital in agriculture to industrial development" (Sec. 2 (1), R.A. No. 3844, as amended; Sec. 2, R.A. No. 6657).

C. Section 2 of R.A. 6657 provides the following:

1. "It is the policy of the state to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.

x x x x x

2. "The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm-workers, to receive a just share of the fruits thereof. x x x x x

D. Paragraph 2 of Section 3 of R.A. No. 7905 amending Section 44 of R.A. No. 6657 provides that "the PARCCOM shall coordinate and monitor the implementation of the CARP in the province. It shall provide information on the provisions of the CARP guidelines issued by the PARC and on the progress of the CARP in the province: in addition, it shall:

"a.) recommend to the PARC the following:

x x x x x

"3) continuous processing of application for lease back arrangements, joint-venture agreements and other schemes that will optimize the operating size for agricultural production and also promote both security of tenure and security of income to farmer beneficiaries: provided, that lease back arrangements should be the last resort."

E. Section. 11 of E.O. No. 229 provides that "Leases and management contracts on land covered by land distribution and registered with the Register of Deeds prior to the approval of this Order may continue under their original terms and conditions, but not beyond five (5) years from the effectivity of this 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 shall 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."

F. The fourth paragraph of Section 8 (c) and the last paragraph of Section 8 of R.A. No. 6657 provide as follows:

1. "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 of 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."

2. "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."

These guidelines are hereby prescribed to streamline contracting procedures and the fixing of lease rental in lands planted to palm oil trees.

II. COVERAGE

These rules shall apply to all lands covered by the CARP and planted to palm oil trees under lease arrangement: Provided, that the lease arrangement has been considered as the last resort.

III. DEFINITION OF TERMS

A. *Lease Arrangement* — is an agribusiness scheme whereby the agrarian reform beneficiaries (ARBs), who already own the land covered by CARP, enter into a contract of lease with the lessee/investor through their cooperative or farmers' association. The lessee-investor, under this arrangement, shall be allowed to manage the farm operations within an agreed period of time, subject to extension, upon mutual agreement of the contracting parties, in exchange for the payment of lease rental and other benefits at rates agreed upon by the lessor and the lessee.

B. *Lessor* — pertains to beneficiaries of the agrarian reform program who organize themselves into cooperatives and/or associations and lease their awarded lands to any investor for purposes of agricultural production pending their readiness to assume general control and management over the farm.

C. *Lessee* — refers to any person who, with the consent of the lessor, operates the leased land for agricultural production in accordance with the terms of the lease arrangement.

D. *Normal Harvest* — refers to the average gross production of the subject land during the three (3) agricultural years immediately preceding the date of use of the data but which should not be lower than the industry data.

IV. POLICIES AND GOVERNING PRINCIPLES

A. The terms and conditions of the lease agreement, including the determination and computation of lease rental of palm oil land shall be mutually agreed upon by the contracting parties, subject to the approval of the PARC Executive Committee upon the recommendation of the PARCCOM and certification of the DAR that the lease agreement is not violative of agrarian policies and principles (Annex F).

In case of disagreement, the parties may submit themselves to mediation by the PARCCOM. Should the disagreement remain unresolved, the negotiations shall be terminated.

In no case shall the lease rental be less than the yearly amortization and taxes to be paid by the lessor on the land, or the computations based on Section 34 of R.A. No. 3844, whichever is higher.

The lease arrangement is an interim agreement between the lessee/investor and the agrarian reform beneficiaries until such time that the farmworkers' cooperative or organization is ready to assume general control and management over the farm, having sufficiently acquired the necessary managerial and technical skills which will

enable it to operate the farm on its own.

B. Lands shall be distributed directly to the individual worker-beneficiaries. However, in case the division of the land is deemed not economically feasible and sound, the land shall be owned collectively by the worker-beneficiaries who shall form a farmworkers' cooperative or association.

The lease arrangement shall balance and address the farmer/farmworker's distinctive roles and rights as a cooperative member, an employee/farmworker and an agrarian reform beneficiary. The ARB's membership in the cooperative shall be in accordance with the Cooperative Code (R.A. No. 6938), his/her beneficiary status shall be determined by the CARL (R.A. No. 6657), while his/her employment relation shall be governed by the Labor Code and related legislation.

C. The determination of lease rentals for palm oil plantations shall be undertaken on a case-specific basis, considering that the production levels and prices depend on: (a) product form (i.e., whether in fresh fruit bunches (FFB) or crude palm oil (CPO)); (b) production and processing technology; and (c) age of palm trees, among others.

D. Renegotiation of the amount of lease rental shall be undertaken by the parties every five (5) years, subject to the recommendation of the PARCCOM and review by the DAR.

Lease rental on the leased lands may be renegotiated by the contracting parties even prior to the termination of the contract on the following grounds: (a) domestic inflation rate of seven percent (7%) or more; (b) drop in the world prices of the commodity by at least twenty percent (20%); and (c) other valid reasons.

E. Any conflict that may arise from the implementation of the lease contract shall be referred to the PARCCOM by any of the contracting parties for mediation and resolution. In the event of failure to resolve the issue, any of the parties may file an action with the Department of Agrarian Reform Adjudication Board (DARAB) for adjudication pursuant to Section 50 of R.A. No. 6657.

F. In case of insolvency or bankruptcy of the lessee/investor, the lease contract shall be deemed terminated and the lands shall be returned to the ARBs. The ARBs shall be included in the insolvency proceedings. Any unpaid claim of the ARBs (e.g., salaries/wages, lease rentals and others) shall have first lien on the salvaged value of the remaining assets of the insolvent lessee/investor.

G. The lessee/investor shall give priority to members of the agrarian reform cooperative or association and their dependents, for employment in the enterprise. In such case, they (ARBs) shall be treated as employees of the lessee/investor and entitled to at least the mandated minimum wage and other economic benefits granted under the Labor Code and other existing laws.

H. The farmworkers, through their cooperative/association, shall set aside a portion of not less than twenty-five percent (25%) of the total area of the land to be used for livelihood purposes.

Members of the cooperative who are not employed in the corporation shall be given priority in the utilization of the area set aside for livelihood purposes.

I. The leased property shall be used solely as an agricultural plantation devoted to palm oil production, and the lessee shall not use or allow the use of the leased property for illegal or prohibited purposes or for other purposes not covered under the lease agreement.

J. The PARCCOM, through its Executive Officer, shall regularly monitor and review the progress/implementation of the existing lease arrangement to ensure compliance with its terms and conditions, particularly the security of tenure and income of farmer-beneficiaries, pursuant to R.A. No. 7905.

V. RIGHTS AND OBLIGATIONS OF THE LESSOR/COOPERATIVE AND LESSEE/INVESTOR

A. The lessor shall:

1. receive from the lessee rentals on the property and other benefits that may be agreed upon by the parties;
2. pay realty taxes on the leased property;
3. keep the lessee in full and peaceful possession and enjoyment of the leased property during the duration of the contract and shall not physically appropriate or partition the land among the farmworker cooperative's members;
4. have the right to ownership of permanent improvements introduced on the land by the lessee upon the termination of the lease agreement, unless the contracting parties provide otherwise; and
5. cause, permit and/or allow the annotation and registration of the lease agreement in the Office of the Register of Deeds of the Province where the leased property is located, and a memorandum thereof annotated and entered on the Original and the Owner's Duplicate Certificate of Title of the leased property.

B. The lessee shall:

1. manage and operate the property within the period stipulated in the lease arrangement, conditioned on the payment of lease rental and other benefits at rates agreed upon by both parties; such period may be extended by the parties, subject to approval by the PARC Executive Committee;
2. in consultation with the lessor, have the right to construct buildings and other infrastructure on the property which are deemed necessary for agricultural operations. In no case, however, shall any such improvement decrease the aggregate agricultural area and/or lower the rental and other privileges accruing to the farmworkers' cooperative and its members under the lease contract;
3. manage and care for the leased property and assume its undertakings properly and efficiently in accordance with sound agricultural and financial practices;
4. bear all expenses for production, cultivation, harvesting and marketing of products, and all charges necessary for the conduct of business operations including