

EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session



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SENATE
S. No. 786

'19 JUL 25 P 4:48

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INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT REGULATING THE ESTABLISHMENT AND IMPLEMENTATION OF
AGRICULTURAL VENTURES ARRANGEMENTS (AVAS) IN AGRARIAN REFORM
LANDS**

EXPLANATORY NOTE

The advent of increasing interest on land investments in the Philippines fueled by the rising global demand for food and raw materials for agro-fuel production, tourism and mining calls for a strong regulatory mechanism to govern land investments. The influx of both local and foreign investments in our country has exposed the basic sectors, particularly the farmers, fisher folk and indigenous peoples, not only to the threat of displacement and loss of control, ownership and possession over their lands, but also to *adverse incorporation* – whereby they are incorporated into the capitalist economy but under terms grossly unfavorable to them.

In the Southern part of the Philippines, rich in natural resources and blessed with fertile lands, large tracts of lands are being developed into pineapple and banana plantations for the export markets. The narrative is that the investments are beneficial to the country and uplift the lives of otherwise impoverished agrarian reform beneficiaries. However, a closer look at the agrarian rural economy in these areas shows stark asymmetrical relations between the smallholder farmers and the transnational investor. And study of the contracts signed between these farmers and the investor demonstrates how these asymmetries in economic power are translated in legally-binding documents that are barely understood by the farmer.

It is in this regard that this bill is being proposed. While the economic benefits of these agreements cannot be discounted, regulation is necessary in order to protect the weaker party to the contract and to ensure that welfare-enhancing outcomes are obtained, that will have meaningful impacts on rural poverty reduction. This bill seeks to promote productive, collaborative and just relations between the private sector and the

ARBs, transform the latter into farmer-entrepreneurs, and maximize distributed agrarian lands without compromising the famers' tenure rights.

The provisions in this bill emphasize the principle of agrarian reform of providing "farmers and farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands." AVAs should not be a threat to the ARBs' land rights but should give incentive to develop their lands and improve their productivity.

Moreover, the bill likewise ensures that there are social preparation, capacity building, and assistance provided to ARBs to better equip them in the negotiation for and evaluation of the agreement they are entering into.

In view of the foregoing, the immediate passage of the bill is earnestly sought.


RISA HONTIVEROS
Senator

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*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress Assembled:*

1 Section 1. This Act shall be entitled as Agribusiness Ventures Arrangements in
2 Agrarian Reform Lands Act.

3 Sec. 2. *Governing Principles and Policies.* The 1987 Constitution mandates that
4 the State shall promote social justice in all phases of national development and
5 guarantee full respect for human rights.

6 Predicated on these overarching principles, the agrarian reform program is founded on
7 the right of farmers and regular farmworkers, who are landless, to own directly or
8 collectively the lands they till or, in the case of other farm workers, to receive a just
9 share of the fruits thereof. The State shall ensure that control over the lands awarded
10 under the agrarian reform program shall remain always with the agrarian reform
11 beneficiaries so that they can plan, organize and manage their farmlands independently
12 and productively with adequate support services from the State and investors.

13 To provide support services to the ARBs, the State shall encourage the participation of
14 the private sector in order to enhance the development and productivity of the awarded
15 lands under the agrarian reform program. In providing such support services, the State
16 shall take utmost consideration of the following, to wit:

- 17 a) Ensure the security of ownership, tenure and income of all agrarian
18 reform beneficiaries;
19 b) Optimize the use of distributed lands for agricultural production;
20 c) Facilitate the development of ARBs or Cooperatives/Associations into
21 viable agricultural entrepreneurs or enterprises;

- 1 d) Encourage responsible private sector investments in developing agrarian
2 reform areas;
3 e) Address the concerns on food security of the Philippines;
4 f) Enhance and sustain the productivity and profitability of agrarian reform
5 lands; and
6 g) Transform the local agriculture sector into a globally competitive
7 industry.

8 Sec. 3. *Definition of Terms.* For purposes of this Act, the following terms are
9 hereunder defined:

- 10 a) *Agrarian Reform Beneficiaries* (ARBs) refer to qualified individual
11 beneficiaries under Presidential Decree (P.D.) No. 27 or R.A. No. 6657,
12 as amended, or their cooperative or association duly registered with the
13 Cooperative Development Authority (CDA), the Securities and Exchange
14 Commission (SEC) or the Bureau of Rural Workers (BRW) of the
15 Department of Labor and Employment (DOLE).
16 b) *Agrarian Reform Lands* refer to lands awarded under P.D. No. 27 and
17 R.A. No. 6657, and their amendments.
18 c) *Agribusiness Venture Arrangement* (AVA) refers to the entrepreneurial
19 collaboration between ARBs and private investors in the implementation
20 of an agriculturally-related business venture involving lands distributed
21 under CARP.
22 d) *Arbitration* is a voluntary dispute resolution process where the parties
23 submit their dispute to an arbitral committee who, in turn, conducts
24 hearings and makes final decisions binding upon the parties.
25 e) *Association* refers to ARBs who voluntarily form a group duly recognized
26 by the SEC or DOLE, and organized for the purpose of, but not limited
27 to, entering into an AVA with a common investor.
28 f) *Build-Operate-Transfer* (BOT) is an AVA scheme where the investor
29 builds, rehabilitates or upgrades, at his own cost, capital assets,
30 infrastructure and facilities applied to the production, processing and
31 marketing of agricultural products and operates the same for a fixed
32 period after which ownership thereof is conveyed to the ARBs.
33 g) *Contract Growing* is an AVA scheme where the investor provides farm
34 inputs and technology at reasonable cost in exchange for the ARBs'
35 commitment to produce certain crops at pre-arranged agreement

1 involving volume, quality standards, selling price, delivery and other
2 terms and conditions.

- 3 h) *Control* refers to the power of ARBs to direct the whole operation of the
4 farm.
- 5 i) *Cooperative* refers to a group of ARBs, duly registered under R.A. No.
6 9520, otherwise known as the "Philippine Cooperative Code of 2008",
7 who have voluntarily (i) pooled their land, human, technological,
8 financial and/or economic resources to achieve social and economic
9 ends, (ii) made equitable contributions to the capital required and (iii)
10 accepted a fair share of the risks and benefits of the group's
11 undertakings.
- 12 j) *Equity* is the value of the shares subscribed to and paid for by each
13 party in relation to the authorized capital stock of a joint venture
14 corporation.
- 15 k) *Growership* is an AVA scheme where the investor supplies all the inputs
16 and required technology for the production of certain crops, with no cost
17 to the ARBs, in exchange for the latter's commitment to produce
18 particular crops at pre-arranged agreement involving volume, quality
19 standards, growership fee, delivery and other terms and conditions.
- 20 l) *Investors* refer to the former landowners, private individuals,
21 corporations, non-government organizations, ARB
22 cooperatives/associations, government owned and/or controlled
23 corporations or any entity duly authorized by law, who are willing and
24 able to contribute their capital, equipment and facilities, technology,
25 and/or management services in an AVA.
- 26 m) *Joint Venture Agreement (JVA)* is an AVA scheme where the ARBs and
27 investors form a joint venture corporation (JVC) for the purpose of
28 managing the farm operations.
- 29 n) *Lease Agreement* is an AVA scheme where the ARBs bind themselves to
30 give the investor general control over the use and management of the
31 land for a certain amount and for a definite period.
- 32 o) *Management Contract* is an AVA scheme where the ARBs contract the
33 services of an individual, partnership or corporation in order to assist in
34 the management and operation of the farm in exchange for a fixed
35 wage or commission.

- 1 p) *Marketing Agreement* is an AVA scheme where the ARBs engage the
2 investor to promote their produce in exchange for commission on actual
3 sales.
- 4 q) *Mediation* is a voluntary dispute resolution process where a neutral
5 facilitator assists the parties in reaching a settlement regarding a
6 dispute.
- 7 r) *Service Contract* is an AVA scheme where the ARBs engage the services
8 of a contractor for mechanized land preparation, cultivation, harvesting,
9 processing, post-harvest operations and/or other farm activities for a
10 fee.
- 11 s) *Voluntary Dispute Resolution* is a mode of resolving disputes other than
12 by adjudication of a presiding judge of a court or an officer of a
13 government agency, in which a neutral third party assists in the
14 resolution of issues.
- 15 t) *Take-over* – is an act of the investor in controlling the operation of the
16 farm and/or assuming any of the responsibilities of the ARBs in an AVA.
- 17 u) *Transfer* is the conveyance of the use and possession of CARP awarded
18 lands from one person or entity to another.

19 Sec. 4. *Coverage.* This Act shall apply to all awarded lands distributed under

20 Republic Act No. 6657, as amended, or the Comprehensive Agrarian Reform Program
21 (CARP), and other agrarian reform laws.

22 Former landowners (LO) with respect to their untenant retained areas, and ARBs,
23 who have completely paid their land amortizations and tenants in certain cases, shall be
24 covered should they opt to place the said landholdings under this Act.

25 Sec. 5. *Agribusiness Venture Arrangements.* Individual ARBs and ARB
26 cooperatives or associations, who are bonafide holders of Emancipation Patent (EP),
27 Certificate of Land Ownership Award (CLOA) or similar tenurial instruments issued by
28 the Department of Agrarian Reform (DAR) or its predecessor may enter into any of the
29 following Agribusiness Venture Arrangements, namely:

- 30 a) Growership
31 b) Contract Growing
32 c) Marketing Contract
33 d) Management Contract
34 e) Service Contracts
35 f) Build-Operate-Transfer
36 g) Joint Venture Agreements

- h) Lease Agreements; and
 - i) Any combination of the foregoing AVAs without violating any provisions of this Act.

Sec. 6. Contracting Parties and their Qualifications. The parties to an agribusiness venture agreement shall have the following qualifications, namely:

- a) ARBs (whether individual or organized) should be holders of an Emancipation Patent (EP), a Certificate of Land Ownership Award (CLOA) or similar tenurial instruments and are in possession of their land. In no case shall potential ARBs be allowed to enter into an AVA or any interim agreement prior to the award of such tenurial instrument and prior to the actual possession of the land.
 - b) ARB cooperatives or associations shall have the legal personality to transact or enter into any contract. For ARB cooperatives or associations with CLOAs in the name of the organization, the Board of Directors/Trustees of such cooperative or association shall secure the vote of approval by the general membership in accordance with their articles of cooperation/association and by laws. In the absence thereof, a vote of approval of at least 2/3 of the general membership shall be secured.
 - c) Prospective investors must have the following qualifications, namely:
 - a. Must be registered with the appropriate regulatory agencies, such as Securities and Exchange Commission, Department of Trade and Industry.
 - b. Good financial standing for the past three (3) years;
 - c. Good track record in food and agribusiness;
 - d. Stable business relations;
 - e. Capable of managing and operating the AVA undertaking;
 - f. Shall not have violated any laws, rules and regulations, and contracts as the case may be.

Sec. 7. Mandatory provisions of the AVAs. Agribusiness Venture Arrangements entered into under this Act, being imbued with public interest, shall have the following mandatory provisions, to wit:

- a) The landholding subject of the AVA shall be used exclusively for agricultural purposes. Only two thirds of the entire area shall be subjected to the AVA, the remaining one third portion shall be

1 exclusively controlled and used by the ARBs with full support from the
2 government;

- 3 b) The contract shall guarantee the participation of the ARB/s in the farm
4 management operations and shall include, among others, capacity
5 building programs aimed to facilitate transfer of technology and
6 management techniques to the ARBs;
7 c) The AVA shall include provisions for workers' productivity and quality
8 incentives for the employed ARBs over and above the compensation
9 from the AVA.

10 For the duration of the contract, the investor shall provide funds
11 necessary to ensure ecological protection of the farm and safety of its
12 workers, particularly for the conservation and maintenance of land
13 quality, proper handling, storage and disposal of hazardous residues and
14 waste products, and proper protective and acceptable safe methods of
15 application of fertilizers, pesticides and other chemicals; provided that
16 decisions as to the ecological protection of the farm and safety of
17 workers, and the methods employed in the application of fertilizers,
18 pesticides and other chemicals, shall be mutually agreed upon by the
19 investor and the ARBs;

- 20 d) There shall be a periodic review and/or renegotiation of the terms of
21 the contract by the contracting parties to allow for some changes in
22 the economic assumptions and/or the prevailing economic conditions
23 at the time of AVA application and processing as well as changes on
24 the physical attributes of the land.
25 e) The review and/or renegotiation shall also be undertaken upon request
26 or petition of any of the parties on any of the following grounds: (1)
27 extraordinary increase of inflation rate as declared by the Bangko
28 Sentral ng Pilipinas (BSP); (2) drastic change in price fluctuation on
29 both input and output by at least 20% from the previous price; (3)
30 declaration by the executive department of government or the
31 f) local government unit of the area where the land is located as calamity
32 or disaster area; and (4) other meritorious grounds to be determined
33 by the DAR Secretary.
34 g) The AVAs shall be subject to the approval of the PARC Executive
35 Committee (EXECOM). Otherwise, it shall become void and
36 unenforceable.

All renegotiated/renewed/extended contracts and their effectivity shall be subject to the same process of review and approval by the PARC EXECOM in accordance with the rules and regulations issued therefor.

- h) The duration of the AVA shall be mutually agreed upon by all parties, but not more than 10 years subject to renewal. It shall take into consideration the following parameters: (i) crop or production cycle; (ii) gestation period of the crop; (iii) economic lifespan of existing major and essential facilities or infrastructure; and (iv) payback or recoup period of investments. All AVA contracts must contain a provision allowing the ARB to rescind the AVA, upon due notice to the investor.
- i) In addressing the food security concerns of the country, the parties should agree that, in case of food shortage in the country, at least fifty percent (50%) of the produce in investment involving staple crops will automatically be set aside for the domestic market. For purposes of its enforcement, the DAR may invoke said provision, if and when necessary.
- j) The roles and responsibilities of DAR, the ARBs (individual or cooperatives/associations) and the investor shall be clearly identified in the contract as well as the expected output from each party. It must be clear that successors-in-interest of both the investors and the ARBs are bound by the terms of the contract.
- k) Consent of the other party in cases of transfer of rights and responsibilities shall be secured.
- l) An alternative dispute resolution mechanism in resolving disputes between the parties shall be established.
- m) Terms and conditions of the AVA contract shall be made known to all parties. The contract shall be translated to the language known to the ARBs.
- n) Terms and conditions for pre-termination of contracts shall be clearly stipulated in the AVA contract.
- o) In case of lease agreements, the rental shall be at least ten per cent (10%) of the gross sales per harvest;
- p) Where the AVA requires the employment of workers, the parties shall comply with labor laws, rules and regulations particularly the prohibition on employment of children fifteen years and below.

Sec. 8. Control over agrarian reform lands. In any AVA, control over the agrarian reform land shall always remain with the agrarian reform beneficiaries. For this purpose, joint venture agreements between agrarian reform beneficiaries and investors which result to a minority equity of the agrarian reform beneficiaries shall not be allowed or approved by PARC EXECOM. Also, any provision of permanent take-over in the AVAs that takes away the management of the agricultural production in growership contract or contract growing agreement shall be void.

Temporary takeover may be allowed provided that all of the following conditions are present:

- a) Upon mutual agreement of the parties;
 - b) The takeover shall only be for one (1) cropping cycle;
 - c) When both parties mutually determine that the agreed quantity and/or quality of production cannot be delivered by the ARBs.

Temporary takeover shall not take place during the transition to a new production technology.

Sec. 9. Approval of Agribusiness Ventures Agreements. All AVAs entered into between ARBs and any other person under this Act shall be approved by the PARC XECOM as established under Proclamation No. 129-A. For this purpose, the PARC XECOM, through the DAR, shall issue policies, rules and regulations relative to such approval taking into consideration of the following, namely: a) economic viability; b) legal enforceability; c) ARB control over the land/or business operation; d) ARB skill development; (e) ecological soundness; f) non-transferability of ownership over the land to investor; and other considerations which PARC XECOM may deem proper under the circumstances.

Sec. 10. Revocation of AVA Contracts by the PARC EXECOM. — Without prejudice to the right of rescission by the investor and the ARBs, AVA contracts may be revoked by the PARC EXECOM based on the following grounds:

- a) Gross violation or non-compliance of the terms and conditions of the contract such as, but not limited to:
 - a. Non-implementation of the human resources development plan provisions;
 - b. Non-employment of the ARBs;
 - c. Concealment of the true financial status of the enterprise; and
 - d. Commission of fraud in the application or implementation of the AVA;
 - e. Other analogous cases.

- 1 b) When, without justifiable reasons, the AVA fails to provide benefits and
2 incentives stipulated in the approved AVA contracts, such as, but not
3 limited to, dividends accruing to ARB's equity shares, production and
4 quality incentives. For this purpose, situations beyond the control of the
5 investor such as *force majeure* are considered justifiable reasons;
- 6 c) When the AVA is no longer financially and economically viable;
- 7 d) When a portion of the commercial farm subject of the AVA is converted
8 or fragmented into non-agricultural use without prior written consent of
9 the ARBs and the DAR;
- 10 e) Any action resulting to the transfer of ownership of the landholding
11 subject of AVA to the investors;
- 12 f) In cases of permanent take-over or temporary take over when the
13 conditions set forth under Article 8 are not present;
- 14
- 15 g) Acquisition or approval of AVA through fraud, intimidation, coercion,
16 deceit, etc
- 17 h) Other analogous or meritorious grounds.

18 Sec. 11. *Support Services for ARBs entering an AVA.* The State shall establish an

19 AVA Capacity Building Program with sufficient funding from the General Appropriations
20 Act. The purpose of the capacity building program is to strengthen the farmer's ability
21 to negotiate fairer terms for agribusiness contracts, deal with markets, harness local
22 and international opportunities, and identify and act on onerous agreements to protect
23 their rights.

24 The program shall be formulated jointly by the DAR, DA, DTI, LBP and CDA, upon
25 consultations with civil society organizations and people's organizations, within 60
26 days from the enactment of this law. It shall include, but will not be limited to, the
27 following components: acquisition and design of technology for production and
28 packaging, access and management of production credit, organizing of business units
29 like clustering and sugar blocks, registration of juridical entities (cooperative,
30 corporation or association), business ideation, organizational development and
31 strengthening, market linkages, product development and value addition, certification of
32 products and processes of DAR, enterprise lawyering, the review and renegotiation of
33 onerous agreements, and compliance with sanitary and phytosanitary requirements.

34 Sec.12. *Disaster and calamity relief and rehabilitation assistance.* In the event of
35 a disaster or calamity affecting production, or where a State of Calamity has been
36 declared in the province, the contract may be temporarily suspended upon the request

1 or petition of any of the parties and the investor shall assist the ARBs in disaster relief
2 and rehabilitation efforts. The existence of a valid AVA shall not be used a precondition
3 by government agencies in granting or denying calamity loans or disaster relief funds.

4 Sec. 13. *Jurisdiction*. — The PARC Executive Committee shall have primary and
5 exclusive jurisdiction over the approval and revocation of AVAs :

6 The DAR Adjudication Board (DARAB) shall have jurisdiction over disputes involving the
7 interpretation and enforcement of agribusiness agreements or agrarian disputes as
8 defined in Sec. 3 (d) of R.A. No. 6657;

9 The DAR Secretary, in his/her capacity as Chairperson of the PARC Executive
10 Committee, may issue orders, as may be appropriate, to maintain the status *quo* and
11 preserve peace and order in the farm subject of AVAs, particularly in the following cases
12 pursuant to Sec. 5 (b) in relation to Sec. 7 of E.O. No. 129-A:

- 13 a) Where there is clear and imminent threat to life or property;
- 14 b) Where the dispute will cause serious and irreparable damage to either
15 party or to the AVA; or
- 16 c) Where, in the Secretary's judgment, there is an urgent need to protect
17 the national interest

18 Sec. 14. *Penal Provisions*. – Any act that wrests control over the agricultural land
19 from agrarian reform beneficiaries not constituting a temporary take-over as defined in
20 this Act shall be punishable by imprisonment of not less than three (3) years and one
21 day but not more than six (6) years.

22 Any act to impose undue pressure to the ARBs to enter into an AVA, or renew an
23 existing AVA, or rescind an existing AVA, or agree to new terms of an existing AVA,
24 including but not limited to threats, harassment, economic coercion, denial of
25 government support, and the like, shall be punishable by imprisonment of not less than
26 three (3) years and one day but not more than six (6) years.

27 Additional administrative sanctions will apply if the offender is a government employee.

28 Sec. 15. *Repealing Clause*. – All other laws, decrees, executive orders,
29 issuances, rules and regulations, or part thereof inconsistent with this Act are hereby
30 likewise repealed or amended accordingly.

31 Sec. 16. *Separability Clause*. – If, for any reason, any section or provisions of
32 this Act is declared unconstitutional or invalid, the other sections or provisions not
33 affected thereby shall remain in full force and effect.

34 Sec. 17. *Transitory Provision*. – All existing AVAs without PARC approval shall be
35 subject for review and approval of the PARC. Parties to existing AVAs shall submit their

1 contracts to PARC within 60 days from the effectivity of this Act. Failure to comply with
2 this requirement within the given period shall render the AVAs void.

3 Sec. 18. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days
4 upon publication in at least two (2) newspapers of general circulation.

Approved,