



SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

'17 FEB 23 P 1:55

SENATE

RECEIVED BY: _____

S. B. No. 1351

Introduced by Senator **Ana Theresia "Risa" Hontiveros - Baraquel**

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

EXPLANATORY NOTE

The advent of increasing interest on land investments in the Philippines fuelled 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, and 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 farmers' 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.

Ana Theresia Baraquiel
**ANA THERESIA "RISA" HONTIVEROS -
BARAQUEL**



'17 FEB 23 P1:55

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

RECEIVED BY: 

SENATE

S. B. No. 1351

Introduced by Senator **Ana Theresia "Risa" Hontiveros - Baraquel**

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

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

1 **SECTION 1. Title.** - This Act shall be entitled as Agribusiness Ventures Arrangements
2 in Agrarian Reform Lands Act.

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

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

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

- 20
- 21 a. Ensure the security of ownership, tenure and income of all agrarian reform
- 22 beneficiaries;
- 23 b. Optimize the use of distributed lands for agricultural production;
- 24 c. Facilitate the development of ARBs or Cooperatives/Associations into viable
- 25 agricultural entrepreneurs or enterprises;
- 26 d. Encourage responsible private sector investments in developing agrarian
- 27 reform areas;
- 28 e. Address the concerns on food security of the Philippines;
- 29 f. Enhance and sustain the productivity and profitability of agrarian reform lands;
- 30 and
- 31 g. Transform the local agriculture sector into a globally competitive industry.
- 32

33 **SECTION 3. Definition of Terms.** - For purposes of this Act, the following terms are
34 hereunder defined:

- 1 A. *Agrarian Reform Beneficiaries* (ARBs) refer to qualified individual beneficiaries
2 under Presidential Decree (P.D.) No. 27 or R.A. No. 6657, as amended, or
3 their cooperative or association duly registered with the Cooperative
4 Development Authority (CDA), the Securities and Exchange Commission
5 (SEC) or the Bureau of Rural Workers (BRW) of the Department of Labor and
6 Employment (DOLE).
7
- 8 B. *Agrarian Reform Lands* refer to lands awarded under P.D. No. 27 and R.A. No.
9 6657, and their amendments.
10
- 11 C. *Agribusiness Venture Arrangement* (AVA) refers to the entrepreneurial
12 collaboration between ARBs and private investors in the implementation of an
13 agriculturally-related business venture involving lands distributed under CARP.
14
- 15 D. *Arbitration* is a voluntary dispute resolution process where the parties submit
16 their dispute to an arbitral committee who, in turn, conducts hearings and
17 makes final decisions binding upon the parties.
18
- 19 E. *Association* refers to ARBs who voluntarily form a group duly recognized by
20 the SEC or DOLE, and organized for the purpose of, but not limited to,
21 entering into an AVA with a common investor.
22
- 23 F. *Build-Operate-Transfer* (BOT) is an AVA scheme where the investor builds,
24 rehabilitates or upgrades, at his own cost, capital assets, infrastructure and
25 facilities applied to the production, processing and marketing of agricultural
26 products and operates the same for a fixed period after which ownership
27 thereof is conveyed to the ARBs.
28
- 29 G. *Contract Growing* is an AVA scheme where the investor provides farm inputs
30 and technology at reasonable cost in exchange for the ARBs' commitment to
31 produce certain crops at pre-arranged agreement involving volume, quality
32 standards, selling price, delivery and other terms and conditions.
33
- 34 H. *Control* refers to the power of ARBs to direct the whole operation of the farm.
35
- 36 I. *Cooperative* refers to a group of ARBs, duly registered under R.A. No. 9520,
37 otherwise known as the "Philippine Cooperative Code of 2008", who have
38 voluntarily (i) pooled their land, human, technological, financial and/or
39 economic resources to achieve social and economic ends, (ii) made equitable
40 contributions to the capital required, and (iii) accepted a fair share of the risks
41 and benefits of the group's undertakings.
42
- 43 J. *Equity* is the value of the shares subscribed to and paid for by each party in
44 relation to the authorized capital stock of a joint venture corporation.
45
- 46 K. *Growership* is an AVA scheme where the investor supplies all the inputs and
47 required technology for the production of certain crops, with no cost to the
48 ARBs, in exchange for the latter's commitment to produce particular crops at
49 pre-arranged agreement involving volume, quality standards, growership fee,
50 delivery and other terms and conditions.
51
- 52 L. *Investors* refer to the former landowners, private individuals, corporations, non-
53 government organizations, ARB cooperatives/associations, government
54 owned and/or controlled corporations or any entity duly authorized by law, who
55 are willing and able to contribute their capital, equipment and facilities,
56 technology, and/or management services in an AVA.
57

- 1 M. *Joint Venture Agreement* (JVA) is an AVA scheme where the ARBs and
2 investors form a joint venture corporation (JVC) for the purpose of managing
3 the farm operations.
4
5 N. *Lease Agreement* is an AVA scheme where the ARBs bind themselves to give
6 the investor general control over the use and management of the land for a
7 certain amount and for a definite period.
8
9 O. *Management Contract* is an AVA scheme where the ARBs contract the
10 services of an individual, partnership or corporation in order to assist in the
11 management and operation of the farm in exchange for a fixed wage or
12 commission.
13
14 P. *Marketing Agreement* is an AVA scheme where the ARBs engage the investor
15 to promote their produce in exchange for commission on actual sales.
16
17 Q. *Mediation* is a voluntary dispute resolution process where a neutral facilitator
18 assists the parties in reaching a settlement regarding a dispute.
19
20 R. *Service Contract* is an AVA scheme where the ARBs engage the services of a
21 contractor for mechanized land preparation, cultivation, harvesting,
22 processing, post-harvest operations and/or other farm activities for a fee.
23
24 S. *Voluntary Dispute Resolution* is a mode of resolving disputes other than by
25 adjudication of a presiding judge of a court or an officer of a government
26 agency, in which a neutral third party assists in the resolution of issues.
27
28 T. *Take-over* – is an act of the investor in controlling the operation of the farm
29 and/or assuming any of the responsibilities of the ARBs in an AVA.
30
31 U. *Transfer* is the conveyance of the use and possession of CARP awarded lands
32 from one person or entity to another.
33

34 **SECTION 4. Coverage.** - This Act shall apply to all awarded lands distributed under
35 Republic Act No. 6657, as amended, or the Comprehensive Agrarian Reform Program
36 (CARP), and other agrarian reform laws.
37

38 Former landowners (LO) with respect to their untenanted retained areas, and ARBs,
39 who have completely paid their land amortizations and tenants in certain cases, shall be
40 covered should they opt to place the said landholdings under this Act.
41

42 **SECTION 5. Agribusiness Venture Arrangements.** - Individual ARBs and ARB
43 cooperatives or associations, who are bonafide holders of Emancipation Patent (EP),
44 Certificate of Land Ownership Award (CLOA) or similar tenurial instruments issued by
45 the Department of Agrarian Reform (DAR) or its predecessor may enter into any of the
46 following Agribusiness Venture Arrangements, namely:
47

- 48 A. Growership
49 B. Contract Growing
50 C. Marketing Contract
51 D. Management Contract
52 E. Service Contracts
53 F. Build-Operate-Transfer
54 G. Joint Venture Agreements
55 H. Lease Agreements; and
56 I. Any combination of the foregoing AVAs without violating any provisions of this
57 Act.

1 **SECTION 6. Contracting Parties and their Qualifications.** - The parties to an
2 agribusiness venture agreement shall have the following qualifications, namely:

- 3
- 4 A. ARBs (whether individual or organized) should be holders of an Emancipation
5 Patent (EP), a Certificate of Land Ownership Award (CLOA) or similar tenurial
6 instruments and are in possession of their land. In no case shall potential ARBs
7 be allowed to enter into an AVA or any interim agreement prior to the award of
8 such tenurial instrument and prior to the actual possession of the land.
9
- 10 B. ARB cooperatives or associations shall have the legal personality to transact or
11 enter into any contract. For ARB cooperatives or associations with CLOAs in
12 the name of the organization, the Board of Directors/Trustees of such
13 cooperative or association shall secure the vote of approval by the general
14 membership in accordance with their articles of cooperation/association and by
15 laws. In the absence thereof, a vote of approval of at least 2/3 of the general
16 membership shall be secured.
17
- 18 C. Prospective investors must have the following qualifications, namely:
- 19
- 20 1. Must be registered with the appropriate regulatory agencies, such as
21 Securities and Exchange Commission, Department of Trade and
22 Industry.
 - 23 2. Good financial standing for the past three (3) years;
 - 24 3. Good track record in food and agribusiness;
 - 25 4. Stable business relations;
 - 26 5. Capable of managing and operating the AVA undertaking;
 - 27 6. Shall not have violated any laws, rules and regulations, and contracts as
28 the case may be.
29

30 **SECTION 7. Mandatory Provisions of the AVAs.** - Agribusiness Venture Arrangements
31 entered into under this Act, being imbued with public interest, shall have the following
32 mandatory provisions, to wit:
33

- 34 A. The landholding subject of the AVA shall be used exclusively for agricultural
35 purposes. Only two thirds of the entire area shall be subjected to the AVA, the
36 remaining one third portion shall be exclusively controlled and used by the
37 ARBs with full support from the government;
38
- 39 B. The contract shall guarantee the participation of the ARB/s in the farm
40 management operations and shall include, among others, capacity building
41 programs aimed to facilitate transfer of technology and management
42 techniques to the ARBs;
43
- 44 C. The AVA shall include provisions for workers' productivity and quality incentives
45 for the employed ARBs over and above the compensation from the AVA.
46

47 For the duration of the contract, the investor shall provide funds necessary to
48 ensure ecological protection of the farm and safety of its workers, particularly for
49 the conservation and maintenance of land quality, proper handling, storage and
50 disposal of hazardous residues and waste products, and proper protective and
51 acceptable safe methods of application of fertilizers, pesticides and other
52 chemicals; provided that decisions as to the ecological protection of the farm and
53 safety of workers, and the methods employed in the application of fertilizers,
54 pesticides and other chemicals, shall be mutually agreed upon by the investor
55 and the ARBs;

- 56 D. There shall be a periodic review and/or renegotiation of the terms of the
57 contract by the contracting parties to allow for some changes in the economic

1 assumptions and/or the prevailing economic conditions at the time of AVA
2 application and processing as well as changes on the physical attributes of the
3 land.

- 4
- 5 E. The review and/or renegotiation shall also be undertaken upon request or
6 petition of any of the parties on any of the following grounds: (1) extraordinary
7 increase of inflation rate as declared by the Bangko Sentral ng Pilipinas (BSP);
8 (2) drastic change in price fluctuation on both input and output by at least 20%
9 from the previous price; (3) declaration by the executive department of
10 government or the
11
- 12 F. Local government unit of the area where the land is located as calamity or
13 disaster area; and (4) other meritorious grounds to be determined by the DAR
14 Secretary.
- 15
- 16 G. The AVAs shall be subject to the approval of the PARC Executive Committee
17 (EXECOM). Otherwise, it shall become void and unenforceable.

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

- 21
- 22
- 23 H. The duration of the AVA shall be mutually agreed upon by all parties, but not
24 more than 10 years subject to renewal. It shall take into consideration the
25 following parameters: (i) crop or production cycle; (ii) gestation period of the
26 crop; (iii) economic lifespan of existing major and essential facilities or
27 infrastructure; and (iv) payback or recoup period of investments. All AVA
28 contracts must contain a provision allowing the ARB to rescind the AVA, upon
29 due notice to the investor.
- 30
- 31 I. In addressing the food security concerns of the country, the parties should
32 agree that, in case of food shortage in the country, at least fifty percent (50%) of
33 the produce in investment involving staple crops will automatically be set aside
34 for the domestic market. For purposes of its enforcement, the DAR may invoke
35 said provision, if and when necessary.
- 36
- 37 J. The roles and responsibilities of DAR, the ARBs (individual or
38 cooperatives/associations) and the investor shall be clearly identified in the
39 contract as well as the expected output from each party. It must be clear that
40 successors-in-interest of both the investors and the ARBs are bound by the
41 terms of the contract.
- 42
- 43 K. Consent of the other party in cases of transfer of rights and responsibilities shall
44 be secured.
- 45
- 46 L. An alternative dispute resolution mechanism in resolving disputes between the
47 parties shall be established.
- 48
- 49 M. Terms and conditions of the AVA contract shall be made known to all parties.
50 The contract shall be translated to the language known to the ARBs.
- 51
- 52 N. Terms and conditions for pre-termination of contracts shall be clearly stipulated
53 in the AVA contract.
- 54
- 55 O. In case of lease agreements, the rental shall be at least ten per cent (10%) of
56 the gross sales per harvest;
- 57

1 P. Where the AVA requires the employment of workers, the parties shall comply
2 with labor laws, rules and regulations particularly the prohibition on employment
3 of children fifteen years and below.
4

5 **SECTION 8. Control over Agrarian Reform Lands.** - In any AVA, control over the
6 agrarian reform land shall always remain with the agrarian reform beneficiaries. For this
7 purpose, joint venture agreements between agrarian reform beneficiaries and investors
8 which result to a minority equity of the agrarian reform beneficiaries shall not be allowed
9 or approved by PARC EXECOM. Also, any provision of permanent take-over in the
10 AVAs that takes away the management of the agricultural production in growership
11 contract or contract growing agreement shall be void.
12

13 Temporary takeover may be allowed provided that all of the following conditions are
14 present:
15

- 16 A. Upon mutual agreement of the parties;
- 17 B. The takeover shall only be for one (1) cropping cycle;
- 18 C. When both parties mutually determine that the agreed quantity and/or quality of
19 production cannot be delivered by the ARBs.
20

21 Temporary takeover shall not take place during the transition to a new production
22 technology.
23

24 **SECTION 9. Approval of Agribusiness Ventures Agreements.** - All AVAs entered into
25 between ARBs and any other person under this Act shall be approved by the PARC
26 EXECOM as established under Proclamation No. 129-A. For this purpose, the PARC
27 EXECOM, through the DAR, shall issue policies, rules and regulations relative to such
28 approval taking into consideration of the following, namely: a) economic viability; b)
29 legal enforceability; c) ARB control over the land/or business operation; d) ARB skill
30 development; (e) ecological soundness; f) non-transferability of ownership over the land
31 to investor; and other considerations which PARC EXECOM may deem proper under
32 the circumstances.
33

34 **SECTION 10. Revocation of AVA Contracts by the PARC EXECOM.** - Without
35 prejudice to the right of rescission by the investor and the ARBs, AVA contracts may be
36 revoked by the PARC EXECOM based on the following grounds:
37

- 38 A. Gross violation or non-compliance of the terms and conditions of the contract
39 such as, but not limited to:
40
 - 41 1. Non-implementation of the human resources development plan provisions;
 - 42 2. Non-employment of the ARBs;
 - 43 3. Concealment of the true financial status of the enterprise; and
 - 44 4. Commission of fraud in the application or implementation of the AVA;
 - 45 5. Other analogous cases.
46
- 47 B. When, without justifiable reasons, the AVA fails to provide benefits and
48 incentives stipulated in the approved AVA contracts, such as, but not limited to,
49 dividends accruing to ARB's equity shares, production and quality incentives. For
50 this purpose, situations beyond the control of the investor such as *force majeure*
51 are considered justifiable reasons;
52
- 53 C. When the AVA is no longer financially and economically viable;
54
- 55 D. When a portion of the commercial farm subject of the AVA is converted or
56 fragmented into non-agricultural use without prior written consent of the ARBs
57 and the DAR;

- 1
2 E. Any action resulting to the transfer of ownership of the landholding subject of
3 AVA to the investors;
4
5 F. In cases of permanent take-over or temporary take over when the conditions set
6 forth under Article 8 are not present;
7
8 G. Acquisition or approval of AVA through fraud, intimidation, coercion, deceit, etc
9
10 H. Other analogous or meritorious grounds.
11
12

13 **SECTION 11. *Support Services for ARBs Entering an AVA.*** - The State shall establish
14 an AVA Capacity Building Program with sufficient funding from the General
15 Appropriations Act. The purpose of the capacity building program is to strengthen the
16 farmer's ability to negotiate fairer terms for agribusiness contracts, deal with markets,
17 harness local and international opportunities, and identify and act on onerous
18 agreements to protect their rights.

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

29
30 **SECTION 12. *Disaster and Calamity Relief and Rehabilitation Assistance.*** - In the event
31 of a disaster or calamity affecting production, or where a State of Calamity has been
32 declared in the province, the contract may be temporarily suspended upon the request
33 or petition of any of the parties and the investor shall assist the ARBs in disaster relief
34 and rehabilitation efforts. The existence of a valid AVA shall not be used a precondition
35 by government agencies in granting or denying calamity loans or disaster relief funds.
36

37 **SECTION 13. *Jurisdiction.*** - The PARC Executive Committee shall have primary and
38 exclusive jurisdiction over the approval and revocation of AVAs :
39

40 The DAR Adjudication Board (DARAB) shall have jurisdiction over disputes involving
41 the interpretation and enforcement of agribusiness agreements or
42 agrarian disputes as defined in Sec. 3 (d) of R.A. No. 6657;
43

44 The DAR Secretary, in his/her capacity as Chairperson of the PARC Executive
45 Committee, may issue orders, as may be appropriate, to maintain the status *quo* and
46 preserve peace and order in the farm subject of AVAs, particularly in the following cases
47 pursuant to Sec. 5 (b) in relation to Sec. 7 of E.O. No. 129-A:
48

- 49 A. Where there is clear and imminent threat to life or property;
50 B. Where the dispute will cause serious and irreparable damage to either party
51 or to the AVA; or
52 C. Where, in the Secretary's judgment, there is an urgent need to protect the
53 national interest
54

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

5
6 Any act to impose undue pressure to the ARBs to enter into an AVA, or renew an
7 existing AVA, or rescind and existing AVA, or agree to new terms of an existing AVA,
8 including but not limited to threats, harassment, economic coercion, denial of
9 government support, and the like, shall be punishable by imprisonment of not less than
10 three (3) years and one day but not more than six (6) years.

11
12 Additional administrative sanctions will apply if the offender is a government employee.

13
14 **SECTION 15. *Repealing Clause.*** – All other laws, decrees, executive orders,
15 issuances, rules and regulations, or part thereof inconsistent with this Act are hereby
16 likewise repealed or amended accordingly.

17
18 **SECTION 16. *Separability Clause.*** – If, for any reason, any section or provisions of this
19 Act is declared unconstitutional or invalid, the other sections or provisions not affected
20 thereby shall remain in full force and effect.

21
22 **SECTION 17. *Transitory Provision.*** – All existing AVAs without PARC approval shall be
23 subject for review and approval of the PARC. Parties to existing AVAs shall submit their
24 contracts to PARC within 60 days from the effectivity of this Act. Failure to comply with
25 this requirement within the given period shall render the AVAs void.

26
27 **SECTION 18. *Effectivity Clause.*** – This Act shall take effect after fifteen (15) days upon
28 publication in at least two (2) newspapers of general circulation.

29
30
31 ***Approved,***