



Republic of the Philippines
DEPARTMENT of AGRARIAN REFORM

ELLIPTICAL ROAD, DILIMAN, QUEZON CITY • TELS. 928-7031 TO 39

ADMINISTRATIVE ORDER No. 04

Series of 2016

SUBJECT: RULES ON AGRI-BUSINESS VENTURE AGREEMENTS

PREFATORY STATEMENT

Since the issuance of Administrative Order (A.O.) No. 9, Series of 2006, many issues have cropped up in relation to Agri-Business Venture Agreements (AVAs) over the last decade. This required the Department of Agrarian Reform (DAR) to undertake consultations¹ to look into these matters. Relatedly, many international principles² related to AVAs were issued in the said period. Based on the results of the consultations, the guidance of new international principles, and in keeping with the policies provided by our Constitution and Republic Act (R.A.) No. 6657, as amended, these Rules on AVAs are hereby promulgated.

CHAPTER 1
STATEMENT OF PRINCIPLES

Section 1. Statements of Principles. –

- 1.1 The State shall promote social justice in all phases of national development.³ The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.⁴
- 1.2 The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.⁵ The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.⁶

¹ The Philippine Government, through the Department of Agrarian Reform, sought the technical and financial assistance of the United Nations Food and Agricultural Organization (UN FAO) and the expertise of the World Resources Institute (WRI) in conducting a *Multi-Sectoral Study on Agribusiness Venture Arrangement (AVA) Policy and Implementation under the Comprehensive Agrarian Reform Program (CARP)* in order to install more responsive policies and guidelines addressing the needs of agrarian reform beneficiaries, smallholder farmers, and their farmer organizations in increasing their farm-based income, and the private investors with regard to sustaining the profitability of their investments.

² Such as the (a) the Principles for Responsible Agricultural Investment That Respects Rights, Livelihoods and Resources (CPS-RAI); (b) the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT); and (c) the UNIDROIT, FAO and IFAD. 2015. *UNIDROIT/FAO/IFAD Legal Guide on Contract Farming*. Rome.

³Sec.10, Article II, 1987 Philippine Constitution.

⁴Sec. 2, Article XIII, 1987 Philippine Constitution.

⁵Sec. 20, Article II, 1987 Philippine Constitution.

⁶Sec. 13, Article XII, 1987 Philippine Constitution.

- 1.3 The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged. The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets.⁷
- 1.4 The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.⁸ Owners of agricultural land have the obligation to cultivate directly or through labor administration the lands they own and thereby make the land productive.⁹
- 1.5 The State shall promote comprehensive rural development and agrarian reform.¹⁰ The State shall, by law, undertake an agrarian reform program 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 farmworkers, to receive a just share of the fruits thereof.¹¹ 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.¹²
- 1.6 The DAR shall respect both the investors' and the ARBs' rights to freely and voluntarily enter into AVA, in that the contracting parties may establish such stipulations, clauses, terms and conditions as it may deem convenient, provided they are not contrary to laws, morals, good customs, public order, or public policy.¹³
- 1.7 The DAR adopts and adheres to the following principles of the CFS-RAI:
- 1.7.1 Existing rights to land are recognized and respected.¹⁴
 - 1.7.2 Investments do not jeopardize food security but rather strengthen it.¹⁵
 - 1.7.3 Processes relating to investments in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.¹⁶

⁷Sec. 1, Article XII, 1987 Philippine Constitution.

⁸Sec. 6, Article XII, 1987 Philippine Constitution.

⁹Sec. 2, R.A. No. 6657, 1987 Philippine Constitution.

¹⁰Sec. 21, Article II, 1987 Philippine Constitution.

¹¹Sec. 4, Article XIII, 1987 Philippine Constitution.

¹²Sec. 2, Republic Act (R.A.) No. 6657, as amended by R.A. No. 9700.

¹³Art. 1306, Civil Code of the Philippines.

¹⁴Principle 1, CFS-RAI.

¹⁵Principle 2, CFS-RAI.

¹⁶Principle 3, CFS-RAI.

- 1.7.4 All those materially affected are consulted, and agreements from consultations are recorded and enforced.¹⁷
- 1.7.5 Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.¹⁸
- 1.7.6 Investments generate desirable social and distributional impacts and do not increase vulnerability.¹⁹
- 1.8 The DAR adopts and observes the provisions of the VGGT:
 - 1.8.1 The DAR shall:
 - 1.8.1.1 Recognize, respect, and safeguard all legitimate tenure right holders and their rights, and promote and facilitate the enjoyment of the same.²⁰
 - 1.8.1.2 Provide access to justice to deal with infringements of legitimate tenure rights. It shall provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes.²¹
 - 1.8.1.3 Prevent tenure disputes, violent conflicts and corruption. It shall take active measures to prevent tenure disputes from arising and from escalating into violent conflicts.²²
 - 1.8.1.4 Ensure that business enterprises act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.²³
 - 1.8.2 The DAR acknowledges that responsible public and private investments are essential to improve food security. Responsible governance of tenure of land encourages tenure right holders to make responsible investments in these resources, increasing sustainable agricultural production and generating higher incomes.²⁴
 - 1.8.3 All forms of transactions in tenure rights as a result of investments in land shall be done *transparently* in line with relevant national sectoral policies and be consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders.²⁵

¹⁷Principle 4, CFS-RAI.

¹⁸Principle 5, CFS-RAI.

¹⁹ Principle 6, CFS-RAI.

²⁰ Secs. 3A.1.1 to 3A.1.3 and 12.5, VGGT.

²¹Sec. 3A.1.4, VGGT.

²²Sec. 3A.1.5, VGGT.

²³Sec. 3A.2, VGGT.

²⁴Sec. 12.1, VGGT.

²⁵Sec. 12.3, VGGT.



Responsible investments shall do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and shall be compliant with national laws and international core labor standards.²⁶

- 1.8.4 The DAR shall, with appropriate consultation and participation, provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes large-scale transactions in tenure rights.²⁷
- 1.8.5 The DAR and other relevant parties shall inform individuals, families and communities of their tenure rights, and assist to develop their capacity in consultations and participation, including providing professional assistance as required.
- 1.8.6 Contracting parties should provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations, and should seek that the agreements are documented and understood by all who are affected. The negotiation process should be non-discriminatory and gender sensitive.²⁸
- 1.8.7 The DAR and affected parties should contribute to the effective monitoring of the implementation and impacts of agreements involving large-scale transactions in tenure rights, including acquisitions and partnership agreements. The State should take corrective action where necessary to enforce agreements and protect tenure and other rights and provide mechanisms whereby aggrieved parties can request such action.²⁹
- 1.8.8 In case of disagreements between the parties arising from the validity, enforceability, breach of contract, the State shall strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination.³⁰
- 1.9 The DAR recognizes that benefits of perennial agriculture include: reduced expenditure for smallholder farmers (i.e. seed, fertilizer, and other inputs; extended growing seasons); protection of biodiversity and the development of healthy soil ecosystems that can ensure food security over the long term. Moreover systems which include perennial crops should offer farmers greater flexibility and diversity of enterprise, including livestock, and greater stability of income.³¹ To this end, the State shall encourage the cultivation perennial crops as far as practicable.

²⁶ See Sec. 12.4, VGGT.

²⁷ Sec. 12.4, VGGT.

²⁸ Sec. 12.11, VGGT.

²⁹ Sec. 12.14, VGGT.

³⁰ Sec. 21.6, VGGT: *In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.*

³¹ FAO, Consiglio per la Ricerca e la sperimentazione in Agricoltura (CRA), et. al. *Perennial Crops for Food Security Proceeding of the FAO Expert Workshop* (2013). Rome, Italy: FAO.

CHAPTER 2 PRELIMINARY PROVISIONS

Section 2. Definition, Scope, and Coverage – This A.O. shall be limited to Agri-Business Venture Agreements covering lands covered by Emancipation Patents (EPs) and Certificates of Land Ownership Award (CLOAs) and such other Titles issued pursuant to an agrarian reform law.

For purposes of this AO, an **Agri-Business Venture Agreement (AVA)** refers to a contract entered into by an agrarian reform beneficiary (ARB) or group of ARBs, or such juridical entities of ARBs owning the awarded land involved, on the one hand, and an investor, on the other, which involves the:

- (i) Possession of the land;
- (ii) Management of the operations of the farming of the land;
- (iii) Control/Distribution of the produce of the land, for a period of more than two cropping seasons;
- (iv) Commitment of the owners to produce certain crops, at a determinable quantity, for a period of more than two cropping seasons; and/or
- (v) Such other arrangements similar to the abovementioned.

Provided, That simple transactions of purchase of inputs or sale of crops or products, insofar as these are not linked to any of the abovementioned enumeration, shall not be considered as an AVA.

CHAPTER 3 ENTERING INTO AVA CONTRACT

ARTICLE A PERSONALITY TO NEGOTIATE AND SIGN

Section 3. Owners as Principal Bargaining Unit. – The owner(s) of the awarded land has the ultimate authority whether or not to enter into an AVA. He/she/they is/are the principal bargaining unit.

Section 4. Agrarian Reform Cooperative as Owner. – In case the ARBs transferred ownership of the land, pursuant to the pertinent laws and rules, to an Agrarian Reform Cooperative³² (AR Cooperative), the laws (especially the Cooperative Code) and pertinent rules on entering into such contracts akin to AVA shall govern in concurrence with this AO.

Section 5. Multiple Individual Owners, Agent an Option. – In case the proposed AVA involves several awarded lands covered by individual CLOAs, or tracts of land covered by a Collective CLOA, the affected ARB-Owners have the option to designate, elect, or appoint an

³² As defined and governed by R.A. No. 9520.

Agent, through a written Special Power of Attorney (SPA), to negotiate a possible AVA with an investor.

The Agent can be a person (whether the ARB-Owner or a third person), a group of persons (all ARB-Owners, all third persons, or a combination of both), or a juridical entity (such as, among others, a cooperative).

In crafting the SPA, it is recommended that the ARB-Owners consider the following matters:

- (a) The number of members of the Agent, if they decide to create a team;
- (b) Whether or not the Agent shall only be granted the authority to negotiate, or will include the authority to give consent to, sign and/or execute the proposed AVA on behalf of the several ARB-Owners;
- (c) If the Agent is granted the authority to sign *and* execute, whether it is necessary for the Agent to seek the concurrence, ratification or approval of the individual ARBs on the contents of the AVA negotiated before Agent can sign and execute the same, Provided, That the Agent will still be required to explain to the individual ARBs the AVA agreed upon and its repercussions;
- (d) Limitations or restrictions on the provisions of the AVA that the Agent can negotiate, such as, but not limited to, the length of contract, amount of consideration, benefits that must be sought, and quantity of crops to be committed;
- (e) Handling of expenses of the Agent in relation and incidental to the process of negotiations; and
- (f) Whether or not they want the DAR to be an Observer during the negotiation conferences.

If sought by the ARBs, it is the duty of the DAR Provincial Office (DARPO) to assist the ARBs in the crafting of the SPA, but the substance thereof must be collectively decided solely by the ARBs.

In all instances, whether the SPA was executed with or without the assistance of the DARPO, the Agent shall submit at least one original copy of the SPA to the DAR.

The DAR may, on its own initiative, through a petition, or as the circumstances may warrant, look into whether or not the ARB-Owners who signed the same gave their free, informed consent.

Section 6. Stabilization of Collective CLOA, a Pre-requisite. – The stability of the tenure of the collective owners of a Collective CLOA will necessarily affect the stability of an AVA. Unless all ownership issues have been threshed out, any question as to the consent given by the ARBs to an AVA will pose a danger to the stability of the latter.

Hence, the procedure of the stability of Collective CLOAs, as provided in A.O. No. 03, Series of 2016, with respect to a particular Collective CLOA must be completed first before the collective owners thereof enter into an AVA.

Section 7. Reference to ARBs. – The ARB-Owner(s) or the AR Cooperative, by himself/herself/itself/themselves or acting through their Agent, as the case may be, shall be hereafter referred to as the ARB Negotiation Unit or “ANU” for brevity.

ARTICLE B INITIATION AND PRE-NEGOTIATION

Section 8. Initiating Official Negotiation Process. – In case an ANU and an investor agree to start negotiating for an AVA, the parties shall submit their intention in writing to the DAR Provincial Office (DARPO) which has jurisdiction over the pertinent landholding.

If the ARB-Owner(s) is/are acting through their Agent, his/her/its SPA must be attached to the written intent; *Provided*, however, that the written intent shall not be deemed as defective if the SPA was not attached thereto for the reason that it was not yet executed at that time. Unless such SPA has been duly submitted to and received by the DAR, the Agent may not represent and act on behalf of the other ARB-Owners whose landholdings shall be covered under the prospective AVA.

The written intention must also state, among others, whether or not one or both the parties wants the DAR to sit as an observer in their negotiation meetings, and if so shall undertake the obligation to inform DAR in writing the schedule of their negotiation meetings no earlier than three (3) days prior to each meeting. They will also undertake to wait for the DAR Advisory to Proceed with Negotiations (DAPN) before proceeding with their first negotiation meeting.

In addition, the following must be attached to their written application:

- (1) A list of EP/CLOA Numbers, TCT Numbers, and date of registration of the landholdings to be covered by the AVA;
- (2) Information regarding any issue as to the tenurial status of the ARB-Owners such as:
 - a. Cases and disputes questioning the qualification or ownership of one or more of the ARB-Owners;
 - b. Issues on possession over the landholdings to be covered by the AVA;
 - c. Formal and informal encumbrances over the landholdings to be covered by the AVA;
 - d. Real Property Tax arrears, if any;
 - e. Amortization status of the ARB-Owners
- (3) Information regarding the investors, including the following:
 - a. Certified copies of memoranda and articles of association or incorporation.
 - b. Location of the registered office in the country of domicile.
 - c. List of directors of the company
 - d. Local representatives (if company is foreign owned).
 - e. Previous experience of this type of investment.
 - f. Overview of business plan – production model and alternatives, number of hectares, export versus domestic sales, timeline, expected pass-on rates, etc.
 - g. Involvement in any tenure rights disputes/violations and/or other environmental or social disputes/violations.

- h. Copy of most recent financial statements or, if company is new, copy of bank statement showing capital for investment, or such other sources of funds.³³

Section 9. Ensuring the Transparency between the parties. – Upon receipt of the written intent to negotiate and its attachments, the DARPO will immediately assess the information submitted by the ARB-Owners with respect to their tenurial status, and the investors with respect to themselves, by looking at data and resources available to the Office and submit its findings to both the ANU and the investors for their reference.

Section 10. Improving the Bargaining Power of ARBs and smallholder farmers – Simultaneous to the conduct of the assessment stated in Section 9 hereof, the DAR, by itself or through other private or public entities which will be funded by the DAR³⁴ through a capacity building fund^{35,36}, shall provide the ARB-Owners of the following with the purpose of strengthening the bargaining power of the ARBs and smallholder farmers:

- 10.1. **Business and legal advice and consultation** – Capacity building, coaching or mentoring services on business development services, market-oriented agricultural extension services and legal services. This may be provided either directly by government or indirectly by tapping professional service providers that shall be paid for by the government subject to availability of fund. Such advice, however, shall not be deemed ratification of the terms of the AVA or warranty thereof on the part of the government and its duly authorized representative.
- 10.2. **Data and Information** – Data on feasibility studies, industry analyses, crop data, and annual reports of potential partners and other pertinent information to aid the ARB-Owners in decision-making. The standard prices of inputs with respect to the crop(s) involved and the national and international data on prices of the said crop(s) shall also be given. These shall be explained to the ARBs and smallholder farmers.

Section 11. Pre-Negotiation Conference. – Simultaneous to the conduct of the assessment stated in Section 9 hereof and the activities to improve the bargaining power of the ANU under Section 10 hereof, the DAR shall convene a Pre-Negotiation Conference.

The DAR, during the Pre-Negotiation Conference, will inform the ARBs of the following available support services program which may be availed, subject to the needs of the ARB-Owners and the availability of government resources, through the government or private institutions:

- 11.1. **Financial services and crop insurance**³⁷ – Financial services and agricultural insurance shall be made available for ARBs and smallholder farmers. Financial and insurance service providers shall be tapped to enhance the flow of these services.
- 11.2. **Rural infrastructure** – Critical rural infrastructure like roads and irrigation.

³³ FAO (2015). *Governance of Tenure Technical Guide No. 4*, page 50. Available at <http://www.fao.org/3/a-i4998e.pdf>, last accessed 9 April 2016.

³⁴ Following the pertinent procurement rules and procedures.

³⁵ To be composed of SILCAB (Social Infrastructure and Local Capability Building) and SARED (Sustainable Area-Based Rural Enterprise Development) funds of the DAR Central, Regional, and Provincial Offices.

³⁶ Multi-Sectoral Study on AVA Policy and Implementation under the CARP engaged by FAO and DAR

³⁷ Multi-Sectoral Study on AVA Policy and Implementation under the CARP engaged by FAO and DAR

- 11.3. **Other Services Available** – The ARBs shall be informed of the services and programs available to them from the national government agencies and the local government units.

Access to these programs will depend on the needs of the ARB-Owners, the qualification rules of the activity and program, and the availability of resources.

Section 12. DAR Advisory to Proceed with Negotiations. – Once the DAR accomplishes the steps laid down in Sections 9, 10, and 11 hereof, the PARPO shall immediately issue a DAR Advisory to Proceed with Negotiations (DAPN). A list of the mandatory provisions provided in Section 15 hereof shall be attached to the DAPN. The investor and the ANU shall each be given an original copy of the said Advisory and its attachment.

Thereafter, the parties may schedule their Negotiation Conference meetings.

ARTICLE C NEGOTIATION

Section 13. The Negotiation Conference. – The ANU and the investor will act with mutual respect during their negotiation conference.

Should one or both of the parties request the DAR to observe the proceedings, the DARPO shall act only as an impartial and neutral observer during the conference. It shall endeavor to enable the negotiation to proceed peacefully and without any violence, duress, force, or threat thereof, intimidation, fraud or malice from either party.

Regardless if it is invited as an observer or not, any of the parties may request for relevant data or information from the DAR. Should it have access to the said data or information and it is available for public viewing, then the DAR shall immediately provide the requested data/information.

At the option of the ANU and upon their written request, the DAR, through the Provincial Agrarian Legal Assistance Unit (hereafter referred to as the ALA team), may render free legal assistance to them. The ALA team shall work independently from the DAR Observers. The ALA team, unlike the DAR Observers, is tasked to advocate for the legal rights of the ANU. However, the opinion and advice of the ALA team shall not be binding upon the DAR and shall not be deemed as a ratification by the DAR of the provisions that may be included in the AVA on the basis thereof.

The official report of the DAR Observers shall be open for viewing by any of the participants of the conference, subject to the DAR's rules on transparency. The parties shall also be given copies of the said report.

Section 14. Consensus and Reports – Should the DAR be invited as an observer, the DARPO shall report to both parties the summary of discussions. This report shall in no way be binding, but it shall simply advise the parties of what transpired per record of the DAR.

ARTICLE D
MANDATORY PROVISIONS AND
PROVISIONS TO CONSIDER IN THE AVA

Section 15. Mandatory Provisions. – The following provisions are required in every AVA:

- 15.1. The consideration of the AVA, the determination of which must consider several factors but which must include the following:
 - 15.1.1. land amortization³⁸ value per hectare per year, multiplied by the number of hectares and the number of years of the life of the AVA;
 - 15.1.2. annual real property tax per hectare, multiplied by the number of hectares and the number of years of the life of the AVA; and
 - 15.1.3. in case of lease AVAs, the increase of annual consideration on the basis of the annualized Core Inflation Rate most recently published by the Bangko Sentral ng Pilipinas.

The two abovementioned factors however must not be the only factors in determining the annual consideration.

- 15.2. A period for renegotiation of the AVA which should start not earlier than three (3) years, or, in case the primary crop is a perennial one, one (1) year, from the end of the term of the AVA.³⁹
- 15.3. That failure to renegotiate or agree to an extension shall result in the immediate and actual cessation of the relationship created under the AVA.
- 15.4. An express statement that both parties obligate themselves to uphold the provisions of the labor law and such rules and regulations issued pursuant thereto in the implementation of the AVA.
- 15.5. An express statement that both parties agree that any issue or dispute arising from the AVA, or such questions pertaining to its validity, shall be threshed out through a mediation/conciliation proceeding⁴⁰ first before the filing of an action.
- 15.6. The AVA and the employment contracts of the investor with its employees (including ARB-owners who may be hired as a result of the AVA) shall be separate, distinct and independent from one another, such that the termination of the employment shall not affect the terms of the AVA, and, conversely, the expiration or termination of the AVA shall not cause the automatic termination of the employer-employee relationship between the employees and the investor.

³⁸ Amortization herein pertains to that required under Section 26 of R.A. No. 6657. If the amortization has already been fully paid, or there is no required amortization (such as in the case of public lands distributed through CARP), then the value of LAV shall be 0.

³⁹ For example, if the term of the AVA is until June 2016, the period for renegotiation must begin sometime between June 2013 and June 2016, or in case of a perennial crop, between June 2015 and June 2016.

⁴⁰ The DAR may conduct such mediation/conciliation proceeding if so desired by the parties, but the parties are not required to have the DAR act as facilitator of the same. They may engage mediators/conciliators accredited by the DAR.

- 15.7. In the case of AVAs involving lease of agricultural land, the terms and conditions pertaining to the improvements introduced by the investor over the land leased, such as, among others, the manner by which such improvements may be retained or removed at the termination of the lease and/or the manner of its valuation by such date.
- 15.8. Provision by the investor of a program for technology and farm management training for the ARBs.
- 15.9. The date of effectivity of the AVA must not be earlier than the date of its approval pursuant to Article F hereof.
- 15.10. Furthermore, the AVA may **not** contain the following provisions:
- i. an automatic extension or re-enactment of the AVA;
 - ii. unilateral take-over of the investor over the possession or management of the land;
 - iii. non-payment of rentals on the ground of crop failure due to natural calamities and/or force majeure, in case of lease AVAs; and
 - iv. transfer of ownership of the land.
- 15.11. Finally, the AVA may not contain any provision that is contrary to an agrarian or any other law.

Section 16. Guide. – Based on the UNIDROIT Principles 2010⁴¹, the VGGT⁴², the CRS-RAI the findings and recommendations contained in the *Multi-Sectoral Study on AVAs*⁴³, and the previous A.O.s on AVAs, the following provisions in the AVA may also be provided by the parties, at their option and whenever applicable; *Provided*, that it shall not be required that the parties incorporate and adopt any of the following provisions enumerated herein:

16.1. AVAs in general

- 16.1.1. Goals and objectives.
- 16.1.2. Production process: (a) provision and use of inputs, (b) production methods, compliance and control; (c) product quantity and quality, and product safety; and (d) delivery of product: (i) Time and place; (ii) Acceptance.
- 16.1.3. Risk allocation: (a) production risk allocation, (b) commercial risk allocation, and (c) exclusivity.
- 16.1.4. Payment mechanisms, scales and time and method of payment.
- 16.1.5. Insurance obligations and other risk mitigation and allocation schemes.
- 16.1.6. Communication mechanisms between parties: (a) framework for consultations and monitoring between the investor and the ARB/s-Owner/s and the means by which the ARB/s-Owner/s can participate in the planning, implementation, management, measurement and monitoring of activities; (b) the means and consultation process for defining the roles and obligations in sustainable development of the investor and ARB/s-Owner/s; (c) The location where parties can consult the agreement.

⁴¹ UNIDROIT, FAO and IFAD. 2015. *UNIDROIT/FAO/IFAD Legal Guide on Contract Farming*. Rome.

⁴² FAO (2015). *Governance of Tenure Technical Guide No. 4*, page 90-91. Available at <http://www.fao.org/3/a-i4998e.pdf>, last accessed 9 April 2016.

⁴³ Multi-Sectoral Study on AVA Policy and Implementation under the CARP engaged by FAO and DAR

- 16.1.7. Accounting, auditing, record keeping and information management, transparency and annual reporting mechanisms: (1) means by which funds made available under the agreement are disbursed and for what purposes; (2) The accounts that must be kept and by whom; and reporting and auditing requirements.
- 16.1.8. Remedies for breach of obligation: (a) corrective measures and penalty; (b) grounds for (i) price reduction, the (ii) suspension of the agreement, (iii) termination with proper notice and exit and winding up clauses
- 16.1.9. Excuses for non-performance of obligation, i.e. recognition and consequence of change of circumstances (*rebus sic stantibus*).
- 16.1.10. Dispute resolution mechanisms.
- 16.1.11. Terms of renegotiation and renewal.
- 16.1.12. Review, amendment, and modification of contract provisions: (a) means for reviewing the agreement and how parties will be bound by the current agreement if any modifications sought by one party are not agreed to by the other party; (b) review mechanisms for setting of prices; (c) changes in the economic assumptions and/or the prevailing economic conditions at the time of AVA application and processing as well as changes on the physical attributes of the land, the critical terms of the contracts (i.e., duration and amounts involved); *Provided*, that all modified contracts shall be subject to the same process of review and approval as provided in herein.

16.2. AVAs concerning lease of land:

- 16.2.1. Frequency of rent revisions and method of calculating adjustments to the rent; Contribution to or payment of the legal expenses of the community or holder(s) of legitimate tenure rights through an "arms length" fund;
- 16.2.2. Management and operation of the subject landholding within the period stipulated in the lease agreement in accordance with sound agricultural, financial, business and environmental practices;
- 16.2.3. Full and peaceful possession and enjoyment of the leased property by the lessee-investor during the duration of the lease agreement; bar on physical appropriation or partition of the leased land among the ARB cooperative's/association's members;
- 16.2.4. Conditions under which the lessor can enter the property to inspect the investor's activities and monitor lease compliance;
- 16.2.5. Option to buy non-permanent improvements which are beneficial to the land at the amount agreed upon by both parties;
- 16.2.6. Option to remove, transfer or move non-permanent improvements with the written consent of the lessor-ARB/s, prior to or upon termination/expiracion of the lease agreement in case the lessor-ARB/s will not opt to purchase such non-permanent improvement, chargeable to the lessee's account, and without causing any damage to the premises and the land;
- 16.2.7. Maintenance of ecological balance through sustainable and efficient use of natural resources in the area, preserve soil fertility by providing the necessary investments to conserve the quality of the land such as soil and water conservation and fertility maintenance, and ensure the safety of the agricultural workers by conforming to internationally accepted standards in the use of hazardous chemicals.
- 16.2.8. Obtaining the consent of the lessor-ARB/s before the conduct of any experimental project(s) not directly related to the production and processing of

the agricultural products, but deemed necessary for sound agricultural production;

16.2.9. Condition in which land is to be returned and the liabilities for deterioration;

16.2.10. Details of rehabilitation and resettlement plans for land users who do not hold legitimate tenure rights;

16.3. AVAs concerning Joint Venture Contracts (JVC):

16.3.1. Additional seats in the board for ARBs, as agreed by the parties, as special privilege as incorporators or founders pursuant to Sec. 7 of B.P. Blg. 68.

16.3.2. Preference for employment in the joint venture for ARBs and/or their dependents.

16.3.3. Option of a member to sell his/her share capital to the cooperative or nominate his/her successor to the cooperative, in cases of his/her permanent total incapacity. In case of death, his/her heirs have the option either to monetize his/her share capital or nominate his/her successor to the cooperative. In both cases, the nominated successor should be qualified as an ARB and approved by the cooperative and the DAR.

16.4. AVAs concerning Production/Contract Growing/Growership/Marketing Contract:

16.4.1. If the application of the prescribed production technology results in the degradation of the substance and form of the land, the ARBs shall be justified in applying alternative and equally effective production technology upon proper notice to the investor.

16.4.2. If production exceeds the volume of crops agreed upon in the contract, the ARBs may dispose of the excess to other interested buyers, subject to the investor's right of first refusal. The proceeds of the sale of the excess shall accrue exclusively to the ARBs.

16.4.3. In case the investor assigns/delegates his/her marketing rights in the marketing contract to other investors, he/she shall inform the ARBs, in writing, on the matter, with the assurance that the terms and conditions of the existing marketing contract shall be honored and respected by the assignee. He/She shall furnish the AVA-TF a copy of the written assurance.

16.5. AVAs concerning Management Contract:

16.5.1. A human resource development program for members of the cooperative, association or federation may be implemented in coordination with DARPO.

The DAR shall create and/or propose model contracts to guide the parties, although the parties are not required to adopt such model contracts.

ARTICLE E EXECUTION

Section 17. No Execution without PARPO Permit. – No AVA may be executed until the parties have obtained a Permit to Execute the AVA (PTE) or a Permit to Execute the AVA and Observations (PEO) from the PARPO.

Section 18. Submission of Proposed AVA to DARPO. – Once the parties have drawn up the proposed written AVA, five (5) copies thereof shall be submitted to the DARPO together with

Application for PTE (form to be made available free of charge in all DAR Offices and the DAR Website) accomplished by both parties.

If the ANU is an Agent, a Verification Conference must be set wherein the Agent shall explain to the ARB-Owners or AR Cooperative, as the case may be, the contents of the AVA and its consequences. The DAR is required to attend the said Verification Conference. Hence, a Notice as to the date and venue of the Verification Conference must be attached to the Application for PTE, otherwise the Application will not be accepted.

Section 19. Verification Conference among ARBs. – In case the ANU is the Agent of the ARB-Owners/AR Cooperative, the former must explain to the latter the contents of the AVA and its consequences through a Verification Conference. The DAR is required to attend the said Conference.

In case the DARPO was invited as an observer in the Negotiation Conference, the Observer Team shall also give a report to the ARB-Owners/AR Cooperative.

While the Agent is primarily responsible for explaining the consequences of the AVA to the ARB-Owners/AR Cooperative, this fact does not prohibit the DAR from explaining such matters to them, if warranted.

Section 20. Review of the AVA. – Upon receipt, the DARPO shall review the proposed AVA to determine that the mandatory provisions as provided under Section 15 hereof (those that must be included and those that may not be included) is stated therein. Upon the completion of review, it shall forward the proposed AVA to the PARPO together with its written report.

In case the DARPO was invited as an Observer in the negotiations, the DARPO Observer team shall also review the proposed AVA. The Observer team shall review the proposed AVA to determine that (1) its contents contain what has been agreed upon during the negotiation process and that nothing that has been agreed upon were left out from the written draft; and that (2) the Agent acted within the parameters of its authority under the provisions in the SPA, if applicable. Upon the completion of review, it shall forward the proposed AVA to the PARPO together with its written report and observations.

The team reviewing the existence of the mandatory provisions and the observer team shall each be given a copy of the proposed AVA so that both teams can review the same simultaneously.

Section 21. Actions on the Application for PAE. – In case the PARPO determines that the proposed AVA does not violate Section 15 hereof, is faithful to what has been negotiated, and the ANU has not exceeded the parameters provided in the SPA, he/she shall approve the application by issuing the PTE. However, if the DARPO was invited as an Observer in the Negotiation Conference and the PARPO determines that while the proposed AVA does not violate Section 15 hereof, the provisions therein is not in keeping with what has been negotiated, he/she shall still approve the application by issuing a PEO. The PEO shall detail the observed discrepancies between what was stated in the negotiations vis-à-vis what is written in the AVA.

The PTE/PEO shall be issued in triplicate and shall be issued to the following:

- (1) Records of the DARPO;
- (2) Investor; and
- (3) ANU.

Three (3) of the five (5) copies of the proposed AVA submitted together with the Application shall be attached to each of the PTE/PEO.

In case the PARPO finds that the proposed AVA violates Section 15, it shall deny the Application for PTE in writing and furnish one copy of the same to each party. Both parties may decide to amend the AVA by adding the required provision or removing the violating provision. If they disagree with the PARPO, they may file an ALI case with the Regional Director.

Section 22. Non-Action of the DARPO. – If within ninety (90) days from receipt of the Application for PTE, the DARPO has yet to issue its decision, the PARPO must immediately, which in no case may be later than five (5) working days from the ninetieth (90th) day, issue a report to the Office of the Secretary, with copies furnished to the PARC Secretariat, the ARB-Owners, and the investor, stating the reason for the delay.

Section 23. Execution of the AVA. – Upon obtaining a PTE/PEO, the parties may execute the AVA.

ARTICLE F APPROVAL OF THE AVA

Section 24. Three Copies of the Signed AVA to be Submitted to DAR. – Once the AVA has been executed, three original copies thereof must be submitted to the DARPO. The DARPO shall immediately undertake to determine that the signed AVA is the same as that it has reviewed in issuing the permit. Once this has been verified, which in no case must be later than fifteen days from submission thereof, the PARPO shall issue a Certification that it contains the same provisions as that reviewed prior to its execution, and recommend for its approval.

The Certification, together with one original copy of the AVA and such number of photocopies equivalent to the number of members of the PARCCOM, shall be transmitted to the PARCCOM.

The two remaining original copies of the signed AVA shall be kept by the DARPO

Section 25. PARCCOM Review. – Pursuant to Section 44 of R.A. No. 6657, as amended, the PARCCOM is tasked to make a recommendation to the PARC as to the matter of approval of the AVA.

In reviewing the AVA, the PARCCOM shall limit its standards of recommendation to the process culminating to its execution (i.e., whether or not consent thereto were freely given with prior and informed consent, and whether or not the mandatory provisions are followed, among others), and such other matters expressly provided by the PARC, through a resolution, to be reviewed.

Upon reviewing the same, it shall make its recommendation to the PARC.

If within ninety (90) days from receipt of the Certification of the PARPO the PARCCOM have yet to issue its recommendation, it must immediately, which in no case may be later than five (5)

working days from the ninetieth (90th) day, issue a report to the PARC Secretariat, with copies furnished to the ARB-Owners, and the investor, stating the reason for the delay.

Section 26. PARC Review and Approval. – The PARC shall thereafter review the AVA.

Upon its approval, the PARC shall furnish both parties and the pertinent PARPO a copy of its Resolution.

Section 27. Certification of Approval and Effectivity. – Immediately upon receipt of the Resolution of the PARC, which in no case may be later than three business days therefrom, the PARPO shall issue a Certificate to both parties that the AVA has been registered and is recognized as valid.

The DARPO shall then transmit one of its two original copies of the AVA for the AVA Registry.

Section 28. PARC May Delegate Authority to Approve. – The PARC may delegate, through a Resolution, its authority to approve AVAs to the pertinent DAR Regional Directors.

In approving the AVA, the Regional Directors shall use such standards that the PARC shall provide.

The Regional Directors must furnish not only the investors and ANUs copies of its Resolution approving or denying the AVA, but also the PARC through its Secretariat.

In case the parties disagree with the decision of the Regional Director, he/she/it/they may appeal the said Resolution to the PARC.⁴⁴

If within ninety (90) days from receipt of the recommendation of the PARCCOM, the Regional Director has yet to issue his/her decision, the Director must immediately, which in no case may be later than five (5) working days from the ninetieth (90th) day, issue a report to the Office of the Secretary, with copies furnished to the PARC Secretariat, the ARB-Owners, and the investor, stating the reason for the delay.

CHAPTER 4 DISPUTE RESOLUTION

Section 29. Grounds for Extinguishing, Nullifying, Annuling, or Revoking. – An AVA is a special agrarian contract between two parties, and therefore the grounds for extinguishing obligations under the AVA, and/or nullifying, annulling, or revoking the AVA shall be those provided by the Civil Code (R.A. No. 386), R.A. No. 6657, and such other pertinent laws and jurisprudence.

Section 30. Primacy of Mediation and Conciliation. – Mediation and conciliation shall be the first mode of resolving any disputes between the parties of the AVA.

⁴⁴ The Secretary shall have no appellate jurisdiction over the Resolution of the Regional Director approving or disapproving the AVA.

Upon complaint by the ARBs or the investor, the DAR shall call both parties to a mediation/conciliation conference to see if the issue can be resolved amicably. Amendment of particular provisions of the AVA may be a solution to problems, and the DAR shall not act to hinder this possible solution unless such amendment is in violation of any law.

The parties are not limited to the DAR as facilitator of the mediation/conciliation. They may engage as mediators/conciliators such other persons accredited by the DAR.

Section 31. Jurisdiction over Cases. — Jurisdiction for cases involving specific performance or extinguishment of an obligation under, or for the nullification, annulment, or revocation of, the AVA shall be with the DAR Adjudication Board (pursuant to its rules and procedures).

CHAPTER 5 MISCELLANEOUS PROVISIONS

Section 32. AVA Online Registry. — The DAR shall create an online repository of all approved AVAs. The online registry shall be open to the public, and may be used as reference by potential investors and ARBs who wishes to enter into an AVA.

Section 33. ARB Discussion Sessions. — The DAR shall regularly invite ARBs of lands primarily growing the same crops into discussion sessions to relay to them the results of industry studies, which may include, among others — national and international prices of crop commodities, prices of inputs, and average consideration of AVAs. The discussion session can involve ARBs within the same area, or all ARBs nationwide of lands primarily growing the same crops.

Section 34. Process for Amendment or Extension of AVA. — Should the parties want to amend the AVA within its term, or before the end of the term of the AVA sought to extend the same, the process under Chapter 3 hereof must be followed.

CHAPTER 6 EXISTING AVAS

Section 35. Immediate Inventory of AVAs. — Upon the effectivity of this A.O., the DARPOs shall immediately undertake the inventory of all AVAs existing within their respective provinces, including those which have not been approved by the PARC.

Section 36. Mediation/Conciliation and Other Options in case of Disputes. — In case there are disputes between parties in existing AVAs, whether approved by the PARC or not, with respect to the said AVAs, mediation/conciliation shall be the first mode of resolving the same.

The DARPO shall also be responsible for explaining to the ARBs other options available to them aside from litigation (such as the cost-benefit analysis of litigation), taking in mind, however, that the ARBs shall have the final say as to their next steps.

CHAPTER 7 FINAL PROVISIONS

Section 37. Repealing Clause. - A.O. No. 09, Series of 2006, A.O. No. 02, Series of 2008, and all other orders, circulars, rules and regulations, and issuances or portions thereof that are inconsistent herewith are hereby repealed or amended accordingly.

Section 38. Separability Clause. - Any judicial pronouncement declaring as unconstitutional any provision of these Rules shall have no effect on the validity of the other provisions not affected thereby.

Section 39. Effectivity Clause. - These Rules shall take effect ten (10) days after its publication in two (2) newspapers of general circulation.

Diliman, Quezon City,

27 MAY 2016.


VIRGILIO R. DE LOS REYES
Secretary

Department of Agrarian Reform
Office of the Secretary



5/27/2016 ISU-16-03311

Published in two (2) National Newspaper
Of General Circulation:

1. Daily Tribune
2. The Standard

Date of Publication June 6, 2016

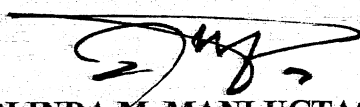


Republic of the Philippines
DEPARTMENT of AGRARIAN REFORM

CERTIFICATION

This is to certify that Administrative Order No. 4, Series of 2016 entitled **“RULES ON AGRI-BUSINESS VENTURE AGREEMENTS”** was published today, 06 June 2016 in the Daily Tribune and The Standard newspapers.

Issued this 6th day of June 2016 for whatever purpose it may serve.


ERLINDA M. MANLUCTAO
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Public Assistance and Media
Relations Service