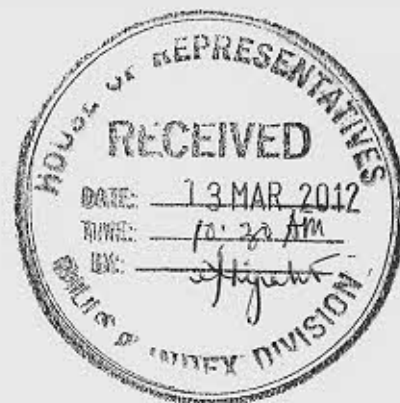


**Republic of the Philippines
HOUSE OF REPRESENTATIVES**

Quezon City

FIFTEENTH CONGRESS
Second Regular Session

House Bill No. 6004



Introduced by AKBAYAN Partylist Representatives

Hon. KAKA J. BAG-AO and Hon. WALDEN F. BELLO

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 for the allowance particularly of large scale foreign land investments in the Philippines. This is highlighted by the fact that in the last 5 years our government has been involved in numerous transactions involving the lease of large tracts of land nationwide for the production of biofuel feedstocks, food crops and mariculture investments. The influx of foreign investments in our country has exposed the basic sectors, particularly the farmers, fisher folk and indigenous peoples, to the threat of displacement and loss of control, ownership and possession over their lands.

The State's intervention is crucial in regulating large scale foreign investments on land. This is based on the premise that the Filipino population, especially the basic sectors, should have preferential use of and benefit from our land resources, and that our national interest, food security, cultural integrity, healthy environment and right to self determination be protected and upheld in any investment agreement entered into between the Philippine entity and its foreign counterpart involving the use of land in the country.

In this regard we are endorsing the adoption of the proposed Regulation on Foreign Investments on Land Act. This proposed bill seeks to ensure that negotiations and agreements entered into by any Filipino entity with foreign entities will be beneficial

to Filipinos and local communities. It provides for guidelines and criteria for the regulation of transactions involving vast tracts of lands. The bill further aims to ensure that any such agreement will not result in food insecurity, degradation of the environment and displacement of communities.

In particular, the bill provides for the:

- 1) Guiding principles for approval of large scale foreign investments on land;
- 2) Mechanism for the regulation of agreements and contracts involving large scale foreign investments on land and ;
- 3) Adoption of measures ensuring the protection of the rights of the basic sectors in agreements and transactions entered into with foreign investors in relation to land investments.

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



HON. KAKA J. BAG-AO
AKBAYAN Partylist



HON. WALDEN F. BELLO
AKBAYAN Partylist

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AN ACT REGULATING LARGE SCALE FOREIGN INVESTMENTS ON LAND

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

1 **Section 1. Short Title.** – This Act is known as the "*Large Scale Foreign Investment*
2 *on Land Regulatory Act.*

3

4 **Section 2. Declaration of Policy.** – It is hereby declared the policy of the State to
5 promote the general welfare of the public, and protect them from any risk or
6 negative impacts brought about by negotiations and investment deals which involve
7 large-scale transnational acquisitions and leases of lands in the Philippines. It is also
8 the policy of the State to adopt and implement sufficient measures that shall
9 guarantee the rights of the Filipino population, especially the basic sectors, to
10 preferential use of the land resources and ensure that there are enough agricultural
11 lands for the present and future domestic needs without compromising and

encroaching on ancestral domain lands, lands for socialized housing, lands for environmental integrity, watersheds, fisherfolk settlement and livelihood, and other social use of the land.

The State shall prioritize food security of the country through sustainable utilization and protection of lands for food production. The State shall uphold the sovereignty of the nation and protect the national interest, national food security, food sovereignty, cultural integrity, healthy environment and the right to self-determination in any investment agreement entered between Philippine and foreign entities involving the use of land in the Philippines

Congress shall give the highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall facilitate the establishment of adequate consultation mechanisms.

SEC. 3. Objectives. – This Act aims to:

- a) ensure that foreign investments on lands will benefit Filipinos especially the most vulnerable sectors in the country;

- b) guarantee that any negotiations and agreements entered into by any Filipino entity with foreign entities are transparent and beneficial to the Philippines and local communities;
- c) ensure that any agreements will not result in food insecurity, degradation of the environment, create illegitimate foreign debt or violation of any human rights law and administrative issuances;
- d) take into account the rights of small farmers, farmworkers, fisherfolk, informal settlers and the indigenous peoples; to ensure the right to self-determination and the right to development of Filipinos and indigenous peoples ;
- e) protect the environment from any hazard that can possibly be brought by such foreign agreements; and
- f) preserve and promote indigenous culture, practice and knowledge in agriculture.

Section 4. *Definition of Terms.* –

- a. Agricultural land** shall refer to lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry, fish or aqua-culture production, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations done by persons whether natural or juridical and not classified by law as mineral land, forest land, residential land, commercial land, or industrial land;
- b. Agricultural land use conversion** refers to the undertaking of any development activity which modifies or alters the physical characteristics of agricultural lands to render them suitable for non-agricultural purposes with

an approved order of conversion issued exclusively by the Department of Agrarian Reform (DAR);

c. Agricultural Sector is the sector engaged in the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry, or fish, including the harvesting and marketing off such farm products, and other farm activities and practices;

d. Alienable and disposable lands of the public domain refers to lands of the public domain which have been delineated, classified, and certified as such and available for disposition under Commonwealth Act No.141, otherwise known as the "Public Land Act," as amended;

e. Ancestral domains shall refer to all areas generally belonging to ICCs/IPs as defined in Republic Act No, 8371, otherwise known as the "Indigenous Peoples Rights Act (IPRA) of 1997;

f. Basic Sectors refers to but not limited to farmers, fisherfolk, indigenous peoples, informal settlers, forest dwellers or formal and informal labor;

g. Biopiracy refers to the claiming of ownership or taking unfair advantage of the indigenous genetic resources and traditional knowledge and technologies of the Philippines by foreign entities;

h. Coastal Area/Zone refers to a band of dry land and the adjacent ocean space (water and submerged land) in which terrestrial processes and uses directly affect oceanic processes and uses, and vice versa. Its geographic extent may include areas within a landward limit of one (1) kilometer from the shoreline at high tide to include mangrove swamps, brackish water ponds, nipa swamps, estuarine rivers, sandy beaches and other areas within a seaward limit of 200 meters isobath to include coral reefs, algal flats, seagrass beds, and other soft-bottom areas. For purposes of initiating and implementing sustainable coastal resources protection and management, it shall include foreshore lands;

- 89 **i. Conflicting Claim** is a dispute over a piece of land by various groups
90 claiming some right to own or possess the land;
91
- 92 **j. Filipino Entity** refers to the Philippine National government or local
93 government units (LGU) or Philippine registered private associations;
94
- 95 **k. Foreign Entity** refers to a Foreign Government or instrumentality or Foreign
96 Corporation or business associations (i.e. joint venture) with non-Filipino
97 owners. A corporation is considered a foreign entity if:
98 a) more than 40% of its shares of stocks at any time is owned by
99 non-Filipinos.
100 b) organized under laws other than those of the Philippines;
- 101 **l. Food Security** refers to the policy objective, plan and strategy of meeting the
102 food requirements of the present and future generations of Filipinos in
103 substantial quantity, ensuring the availability and affordability of food to all,
104 either through local production or importation, or both, based on the
105 country's existing and potential resource endowment and related production
106 advantages, and consistent with the overall national development objectives
107 and policies;
- 108 **m. Food self-sufficiency** refers to the policy objective of meeting the food
109 requirements through intensive local food production in a sustainable manner
110 based on the country's existing and potential resource endowments and
111 related production advantages;
- 112 **n. Foreign Land Grab** is defined as Large-scale Foreign Investment on Lands
113 which benefits the foreign party or disadvantageous to the Philippine entity;
114 or that results to the displacement and/or loss of livelihood of the basic
115 sectors, food insecurity, soil degradation, agricultural land conversion, bio-
116 piracy, land speculation, labor malpractice and conflicting claims.

117 **o. Forest** refers to an ecosystem or an assemblage of ecosystems dominated by
118 trees and other woody vegetation; a community of plants and animals
119 interacting with one another and its physical environment;

120 **p. Forestlands** refer to lands of the public domain which have been inventoried,
121 assessed and classified as public forest, permanent forest or forest reserves
122 and forest reservations;

123 **q. Foreshore land** refers to a string of land margining a body of water, the part
124 of a seashore between the low-water line usually at the seaward margin of a
125 low tide terrace and the upper limit of wave wash at high tide usually marked
126 by a beach scarp or berm;

127 **r. Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs)**
128 refer to groups of people or homogenous societies identified by self –
129 ascription and ascription by other, who have continuously lived as organized
130 community on communally bounded and defined territory, and who have,
131 under claims of ownership since time immemorial, occupied, possessed
132 customs, tradition and other distinctive cultural traits, or who have, through
133 resistance to political, social and cultural inroads of colonization, non-
134 indigenous religions and cultures, became historically differentiated from the
135 majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded
136 as indigenous on account of their descent from the populations which
137 inhabited the country, at the time of conquest or colonization, or at the time
138 of inroads of non-indigenous religions and cultures, or the establishment of
139 present state boundaries, who retain some or all of their own social,
140 economic, cultural and political institutions, but who may have been displaced
141 from their traditional domains or who may have resettled outside their
142 ancestral domains;

143 **s. Labor Malpractice** refers to the labor practices of management which is
144 below the standards set by the International Labor Organization (ILO), the
145 Philippine Labor Code or the Department of Labor and Employment issuances.

It may also include the unfavorable environment in the workplace for organizing unions or workers' association.

t. Land refers to resources, both human-made and natural, found on the surface, below, and above the ground including inland waters and the air therein;

u. Land Speculation is the practice of acquiring land at a lower price in anticipation of an increase in the market price because of some development like, but not limited to, building a road or reclassification by the LGU of the land into commercial or industrial zone, etc.

v. Large-Scale Foreign Investment on Lands refers to the following:

1) the leasing, acquisition or use of land exceeding an aggregate area of 5 hectares in the Philippines by foreign entities; or

2) entering into a joint venture agreement, partnership, cooperation or similar business arrangements where the control or the beneficial use of land with an aggregate area exceeding 5 hectares is given to the foreign entity;

w. Mandatory public hearings/consultations refer to the mechanism to ensure the involvement of affected sectors and communities. It involves giving notice of hearing/consultation to affected sectors and communities through publication and posting in conspicuous places, conduct of a reasonable number of hearings, and solicitation of positions and the public presentation and validation of the planning results before the final adoption of the plans;

x. Mineral lands shall refer to lands of the public domain, excluding those in permanent forestlands and protection lands, where mineral resources are found in sufficient quantity and quality for extraction and development;

y. National Land Use Plan refers to the national government's plan for the rational, holistic, and just allocation, utilization, management, and

development of the country's land resources to ensure their optimum use consistent with the principle of sustainable development;

z. Prime agricultural lands refer to all contiguous irrigated areas and irrigable lands already covered by irrigation projects; all alluvial plain land highly suitable for agriculture whether irrigated or not that have been identified to satisfy the country's needs for food self-sufficiency and security; agro-industrial croplands or lands presently planted and suitable to industrial and high value crops; highlands, or areas located at elevation of 500 meters or above and have the potential for growing semi-temperature and high value crops outside of declared permanent forestlands and protection forests and not located in ecologically-fragile and environmentally-critical areas;

aa. Resettlement sites refer to areas identified by the appropriate national agency or by the local government unit, with respect to areas within its jurisdiction, which shall be used for the relocation of the underprivileged and homeless, as defined under Republic Act No. 7279 or the Urban Development and Housing Act (UDHA);

bb. Settlements shall refer to communities or built-up environment areas where people prefer to live in; and

cc. Shoreline refers to a strip of land covering at least one (1) kilometer from the point where seawater reaches during the highest high tide.

Section 5. Regulation of all Large Scale Foreign Investments on Lands exceeding an aggregate area of 5 hectares. All contracts, agreements, negotiations, talks and deals involving foreign investment on land exceeding an aggregate of 5 hectares shall be publicly disclosed. It shall be approved by the National Regulatory Board on Foreign Land Investments before it is legally implemented. The regulation covers all investment deals on land between:

1. Philippine Registered Private Entity with a Foreign Entity; or
2. Philippine Registered Private Entity with a Foreign National or Local Government or its instrumentality; or
3. Philippine National Government or instrumentality with a Foreign Entity; or
4. Philippine National Government or instrumentality with a Foreign National or Local Government or its instrumentality; or
5. Philippine Local Government unit or its instrumentality with a foreign Entity; or
6. Philippine Local Government unit or its instrumentality with a Foreign National or Local Government or its instrumentality.

Notwithstanding the provisions in the Local Government Code, local government units are hereby required to seek the approval of the Board for agreements involving Large Scale Foreign land Investments.

Section 6: Creation of a National Regulatory Board on Foreign Land Investments. There shall be a National Regulatory Board on Foreign Land Investments (hereinafter known as the "**Board**") which is directly under the Industry Development and Trade Policy Group of the Department of Trade and Industry and has the power to approve or disapprove Large Scale Foreign Investment agreements on land based on the guidelines it will formulate.

Except for the representatives from the basic sectors who will serve for a term of three (3) years, the other Board members shall have concurrent term with their position. Representatives from the basic sector shall be appointed by the

224 President for a term of 3 years among the nominees submitted by the National Anti-
225 Poverty Commission (NAPC).

226 The members of the Board are the:

- 227 1. NEDA Director General;
- 228 2. Director of Board on Investments;
- 229 3. NAPC Chairperson;
- 230 4. Chairperson of the NCIP;
- 231 5. Chairperson of the Philippine Commission on Women;
- 232 6. One representative each from four (4) basic sectors directly involved in
233 land issues, namely the urban poor, peasants, fisherfolk and indigenous
234 peoples. Of the four (4) representatives, two (2) shall be women.
- 235 7. Secretary of the Department of Agriculture;
- 236 8. Secretary of the Department of Environment and Natural Resources; and
- 237 9. Secretary of the Department of Agrarian Reform.

238 The Board shall have the power to create its own secretariat, formulate its
239 own organizational plan, staffing pattern and internal rules.

240
241 **Section 7. General Principles for Approval of Large Scale Foreign**
242 **Investments on Land.** The guidelines to be formulated by the Board shall include
243 and strengthen the following essential principles. No investment will be approved if
244 the following conditions are not complied:

- 245 a) Impact assessment shall be conducted at the start of the investment talks
246 and prior to the finalization of agreement and at pre-defined intervals from
247 the finalization to implementation of the agreement, in order to assess the
248 consequences of the investment on food security, local employment and

incomes; on access to productive resources by the local communities especially the basic sectors and the effect on the environment. Potential impacts to be studied and taken into account for the approval or disapproval of the investment agreement include:

- 1) the eviction or displacement of land users with or without formal security of tenure over the land they have been cultivating;
- 2) the loss of access to land for indigenous peoples and informal forest dwellers;
- 3) competition for the use of natural resources like water;
- 4) decreased food security if local populations are deprived of access to productive resources;
- 5) conversion of agricultural land;
- 6) depletion of soil quality;
- 7) loss of critical biodiversity;
- 8) increase in greenhouse gas emissions;
- 9) destruction of watersheds and water resources;
- 10) diminution of cultural or historical significance of the land; and
- 11) any similar aspect which the Board may include.

b) All investment agreements must be written in English and Tagalog with translations to the local dialect of the area where the land is located.

c) All investment agreements shall include provisions on:

- 1) Mandatory setting aside of at least fifty percent (50%) of the crops for sale to domestic market with a qualification that if prices of food commodities in international market reach certain levels and there

273 is an acute domestic shortage of the crops produced, all the
274 harvest shall be sold in the local market at prevailing market price;

275 2) Non-displacement of any person from the land because of the
276 project unless favorable relocation and livelihood shall be provided
277 by the investor prior to the start of the project.

278 3) Application of Philippine laws and regulations especially but not
279 limited to CARL, IPRA, Fisheries Code, Labor Code, UDHA, AFMA,
280 Clean Air Act, Solid Waste Management Act, NIPAS Act which shall
281 be incorporated in the investment agreement and effective
282 remedies for violations thereof clearly provided.

283 4) Respect, promotion and protection of human rights and related
284 international standards of the affected sectors and provide effective
285 remedies of violations.

286 5) Adoption of Sustainable Agriculture as the farming practice.

287 6) Utilization of local labor.

288 7) Waiver of confidentiality. The written agreement can be accessed
289 by the public at any reasonable time.

290 d) Negotiations leading to investment agreements shall be conducted in full
291 transparency and with the participation of the affected local stakeholders
292 who may be affected as a result of the investment. Before any deal is
293 approved, mandatory consultation and consensus approval or the free,
294 prior and informed consent shall be given by the local communities
295 concerned.

- e) Mandatory publication of the investment deal. At the inception of the investment by the foreign party, its intention to invest shall be published in two (2) newspapers of general circulation. If there is no opposition, the foreign investor shall proceed with the negotiation and finalization of the agreement. The agreement shall be submitted for approval to the Board. The agreement will be published in two (2) newspapers of general circulation. The public is given the opportunity to scrutinize and oppose the contract. If there is no opposition, the agreement shall be approved by the Board and the foreign investor shall proceed with the project.
- f) The workers for the project must be afforded living wages and social protection like, but not limited to, health insurance and membership in the Social Security System which is a key component of the human rights.
- g) Particular to agro-ecological approaches and low external input farming practices, sustainable agriculture shall be included in the agreements, recognizing that a safe and productive environment is indeed an element in the realization of the right to food and sustainable development of local communities.
- h) "User's fee" will be charged for the utilization of land by the foreign party, which shall be determined and collected by the Municipality/ City where the project is located. It will be used for alternative off-farm livelihood projects/enterprises, agriculture infrastructures and funds for credit to small farmers and farmworkers.
- i) The investment agreement shall be subject to a yearly review by the Board and any violation may be a ground for its revocation.

Section 8. Minimum Lease Rental of Agricultural Lands by Foreign Entities.

In the negotiation of the annual lease rental per hectare, the parties shall factor in the annual land amortization value per hectare for agrarian reform lands, the annual Real Property Tax on the land per hectare, the annual poverty threshold in the area, and the gross income of company operating on the land based on its audited financial statements. The minimum lease rental shall be computed based on the formula set by the Board considering the above factors. The computed lease rental approved by the Board shall be incorporated in the terms and conditions of the lease agreement. All the pertinent data and documents used in the determination of the lease rental shall be submitted to the Board and made public. Renegotiation of the amount of lease rentals shall be undertaken every five (5) years or earlier if any of the following arise: extra-ordinary inflation, drastic price fluctuation on both production input and output, declaration of the areas as calamity or disaster area due to force majeure and other similar grounds.

Section 9. Inventory of Lands Open for Investment to Foreign Entities. The

Board shall undertake an inventory of all lands targeted for large scale foreign investment in the Philippines within six (6) months from the approval of this Act.

Section 10. Implementing Rules and Regulations. The Board is hereby

mandated to formulate rules and regulations for the implementation of this Act within sixty (60) days from effectivity hereof.

Section 11. Congressional Oversight Committee. A congressional oversight committee on Foreign land investments shall be created to monitor the

performance of the Board and to propose legislative actions in relation to foreign land grabbing. The oversight committee shall be composed of two (2) members of the House of Representatives and two (2) from the Senate. The members should elect among themselves their chairperson who shall preside their meetings.

Section 12. Appropriation for the Board. The Board shall have a yearly appropriation from the General Appropriations Fund of Fifty Million Pesos (Php 50,000,000) for its operations and can request for additional appropriation when necessary. The Congressional Oversight Committee shall be allocated a yearly budget of One Million Pesos (Php 1,000,000) for its operations to be sourced from the General Appropriations Fund.

Section 13. Prohibitive Acts and Penalties. Foreign Land Grabbing shall be prohibited and is punishable with a penalty of One Million Dollars (\$1,000,000) as fine and confiscation of its assets in the Philippines.

Any person or entity who violates, attempts to violate, or conspires to violate, any provision of this Act shall be punishable with a penalty of imprisonment for a period of not exceeding six (6) months or a fine of not less than Five Hundred Thousand Pesos (Php 500,000.00) but not more than One Million Pesos (Php 1,000,000.00), or both, at the discretion of the court. If the violator is a corporation, the sitting members of the Board of Directors during the violation shall be held liable and, in addition to the penalty, the foreign entity shall be black listed from doing business in the Philippines.

Section 14. Separability Clause. If any provision of this Act shall at any time be found to be unconstitutional or invalid, the remainder thereof not affected by such declaration shall remain in full force and effect.

Section 15. Repealing Clause. All laws, decrees, rules or regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 16. Effectivity Clause. This Act shall take effect after fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Approved,