

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SIXTEENTH CONGRESS
Second Regular Session

House Bill No. 5161



Introduced by **REP. TEDDY BRAWNER BAGUILAT**

EXPLANATORY NOTE

From February to April 2014, the House of Representatives Committee on Cooperatives Development and the Committee on Agrarian Reform conducted joint hearings to investigate the alleged onerous contract on the agri-business venture arrangement (AVA) between the Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) and Lapanday Foods, Inc. in Davao Oriental.

The HARBCO members, Comprehensive Agrarian Reform Program (CARP) beneficiaries managing their banana plantation, filed a petition with the two House Committees to recommend the revocation of their AVA contract with Lapanday Foods, Inc. to the Presidential Agrarian Reform Council (PARC). HARBCO reportedly incurred debts with Lapanday of at least Php 290 Million owing to controversial provisions in their AVA contract.

In 1998, HARBCO executed a 10-year Banana Sales and Marketing Agreement (BSMA) with its former landowner, Hijo Plantations, Inc. (HPI). In 1999, HPI transferred its rights over the BSMA to Lapanday. In 2008, Lapanday took over the operations of HARBCO on the basis of the BSMA. At that time, HARBCO had debts of Php 115 million with Lapanday which eventually ballooned to Php 290.8 million in 2012.

HARBCO's contract with HPI/Lapanday is similar with contracts of other ARBs with some local agribusiness corporations in the Davao Region, such as the Marsman/MEPI vs. Davao Marsman Agrarian Reform Beneficiaries Development Cooperative. Other ARBs, mostly banana growers who are in a similar situation with HARBCO, also attended the congressional inquiry held in Tagum, Davao Oriental and requested for the Congress' and the Department of Agrarian Reform's (DAR) intervention on their respective concerns.

The case of HARBCO reveals the plight of many ARBs who may still own the land awarded to them on paper, but in actual practice, have lost control and access to it by the takeover of their land's management by supposed partner agribusiness corporation.

In the midst of recurring calls to cease CARP implementation and give way to agricultural investments by private corporations, there is mounting concern that ARBs must retain possession and ownership of the lands awarded to them under the program and contribute to rural development. The pressure comes from domestic and foreign agribusinesses, which are directly leasing and/or managing agricultural lands at the risk of the ARBs losing control over their land.

The HARBCO case further validates the need to strengthen the existing policies on AVAs to address and prevent similar cases that compromise the tenure security of ARBs from occurring in the future.

The DAR originally initiated the amendment of their Administrative Order (AO) on AVAs, or AO 9, series of 2006. However, DAR officials opined to the House Committee on Agrarian Reform that they needed a stronger mandate to regulate the implementation of these agri-business ventures and ensure that the rights and interests of ARBs are protected in these business transactions.

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. 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 both local and 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.

It is in this regard that this bill is being proposed. It seeks to institutionalize the establishment and implementation of AVAs, particularly in agrarian reform areas, to promote productive and collaborative ventures between the private sector and the ARBs and transform them into farmer-entrepreneurs as well as 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.



Hon. TEDDY BRAWNER BAGUILAT
Representative, Lone District of Ifugao

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Introduced by **REP. TEDDY BRAWNER BAGUILAT**

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

**An Act Regulating the Establishment and Implementation of
Agribusiness Ventures Arrangements (AVAs) in Agrarian Reform Lands**

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

Article 2. *Governing Principles and Policies.* The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. The State shall ensure that control over the lands awarded under the agrarian reform program shall remain always with the agrarian reform beneficiaries so that they can plan, organize and manage their farmlands independently and productively with adequate support services from the State and investors.

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

- a. Ensure the security of ownership, tenure and income of all agrarian reform beneficiaries;
- b. Optimize the use of distributed lands for agricultural production;
- c. Facilitate the development of ARBs or Cooperatives/Associations into viable agricultural entrepreneurs or enterprises ;
- d. Encourage responsible private sector investments in developing agrarian reform areas;
- e. Address the concerns on food security of the Philippines;

- f. Enhance and sustain the productivity and profitability of agrarian reform lands; and
- g. Transform the local agriculture sector into a globally competitive industry.

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

- A. *Agrarian Reform Beneficiaries* (ARBs) refer to qualified individual beneficiaries under Presidential Decree (P.D.) No. 27 or R.A. No. 6657, as amended, or their cooperative or association duly registered with the Cooperative Development Authority (CDA), the Securities and Exchange Commission (SEC) or the Bureau of Rural Workers (BRW) of the Department of Labor and Employment (DOLE).
- B. *Agrarian Reform Lands* refer to lands awarded under P.D. No. 27 and R.A. No. 6657, and their amendments.
- C. *Agribusiness Venture Arrangement* (AVA) refers to the entrepreneurial collaboration between ARBs and private investors in the implementation of an agriculturally-related business venture involving lands distributed under CARP.
- D. *Arbitration* is a voluntary dispute resolution process where the parties submit their dispute to an arbitral committee who, in turn, conducts hearings and makes final decisions binding upon the parties.
- E. *Association* refers to ARBs who voluntarily form a group duly recognized by the SEC or DOLE, and organized for the purpose of, but not limited to, entering into an AVA with a common investor.
- F. *Build-Operate-Transfer* (BOT) is an AVA scheme where the investor builds, rehabilitates or upgrades, at his own cost, capital assets, infrastructure and facilities applied to the production, processing and marketing of agricultural products and operates the same for a fixed period after which ownership thereof is conveyed to the ARBs.
- G. *Contract Growing* is an AVA scheme where the investor provides farm inputs and technology at reasonable cost in exchange for the ARBs' commitment to produce certain crops at pre-arranged agreement involving volume, quality standards, selling price, delivery and other terms and conditions.
- H. *Control* refers to the power of ARBs to direct the whole operation of the farm.
- I. *Cooperative* refers to a group of ARBs, duly registered under R.A. No. 9520, otherwise known as the "Philippine Cooperative Code of 2008", who have voluntarily (i) pooled their land, human, technological, financial and/or economic resources to achieve social and economic ends, (ii) made equitable contributions to the capital required and (iii) accepted a fair share of the risks and benefits of the group's undertakings.

- J. *Equity* is the value of the shares subscribed to and paid for by each party in relation to the authorized capital stock of a joint venture corporation.
- K. *Growership* is an AVA scheme where the investor supplies all the inputs and required technology for the production of certain crops, with no cost to the ARBs, in exchange for the latter's commitment to produce particular crops at pre-arranged agreement involving volume, quality standards, growership fee, delivery and other terms and conditions.
- L. *Investors* refer to the former landowners, private individuals, corporations, non-government organizations, ARB cooperatives/associations, government owned and/or controlled corporations or any entity duly authorized by law, who are willing and able to contribute their capital, equipment and facilities, technology, and/or management services in an AVA.
- M. *Joint Venture Agreement* (JVA) is an AVA scheme where the ARBs and investors form a joint venture corporation (JVC) for the purpose of managing the farm operations.
- N. *Lease Agreement* is an AVA scheme where the ARBs bind themselves to give the investor general control over the use and management of the land for a certain amount and for a definite period.
- O. *Management Contract* is an AVA scheme where the ARBs contract the services of an individual, partnership or corporation in order to assist in the management and operation of the farm in exchange for a fixed wage or commission.
- P. *Marketing Agreement* is an AVA scheme where the ARBs engage the investor to promote their produce in exchange for commission on actual sales.
- Q. *Mediation* is a voluntary dispute resolution process where a neutral facilitator assists the parties in reaching a settlement regarding a dispute.
- R. *Service Contract* is an AVA scheme where the ARBs engage the services of a contractor for mechanized land preparation, cultivation, harvesting, processing, post-harvest operations and/or other farm activities for a fee.
- S. *Voluntary Dispute Resolution* is a mode of resolving disputes other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party assists in the resolution of issues.
- T. *Take-over* – is an act of the investor in controlling the operation of the farm and/or assuming any of the responsibilities of the ARBs in an AVA.
- U. *Transfer* is the conveyance of the use and possession of CARP awarded lands from one person or entity to another.

Article 4. *Coverage.* This Act shall apply to all awarded lands distributed under the Comprehensive Agrarian Reform Program (CARP) and other agrarian reform laws.

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

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

- A. Growership
- B. Contract Growing
- C. Marketing Contract
- D. Management Contract
- E. Service Contracts
- F. Build-Operate-Transfer
- G. Joint Venture Agreements
- H. Lease Agreements; and
- I. Any combination of the foregoing AVAs without violating any provisions of this Act.

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

- A. ARBs (whether individual or organized) should be holders of an Emancipation Patent (EP), a Certificate of Land Ownership Award (CLOA) or similar tenurial instruments and are in possession of their land. In no case shall potential ARBs be allowed to enter into an AVA or any interim agreement prior to the award of such tenurial instrument and prior to the actual possession of the land.
- B. ARB cooperatives or associations shall have the legal personality to transact or enter into any contract. For ARB cooperatives or associations with CLOAs in the name of the organization, the Board of Directors/Trustees of such cooperative or association shall secure the vote of approval by the general membership in accordance with their articles of cooperation/association and by laws. In the absence thereof, a vote of approval of at least 2/3 of the general membership shall be secured.
- C. Prospective investors must have the following qualifications, namely:
 - 1. Must be registered with the appropriate regulatory agencies, such as Securities and Exchange Commission, Department of Trade and Industry.
 - 2. Good financial standing for the past three (3) years;
 - 3. Good track record in food and agribusiness;
 - 4. Stable business relations;
 - 5. Capable of managing and operating the AVA undertaking;

6. Shall not have violated any laws, rules and regulations, and contracts as the case may be.

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

- A. The landholding subject of the AVA shall be used for agricultural purposes;
- B. The contract shall require the participation of the ARB/s in the farm management operations and shall include, among others, capacity building programs aimed to facilitate transfer of technology and management techniques to the ARBs;
- C. The AVA shall include provisions for workers' productivity and quality incentives for the employed ARBs over and above the compensation they shall receive as employees of the AVA.

For the duration of the contract, the investor shall provide funds necessary to ensure ecological protection of the farm and safety of its workers, particularly for the conservation and maintenance of land quality, proper handling, storage and disposal of hazardous residues and waste products, and proper protective and acceptable safe methods of application of fertilizers and other chemicals.

- D. There shall be a periodic review and/or renegotiation of the critical terms of the contract by the contracting parties to allow for some 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.
- E. The review and/or renegotiation shall also be undertaken upon request or petition of any of the parties on any of the following grounds: (1) extraordinary increase of inflation rate; (2) drastic change in price fluctuation on both input and output; (3) declaration of the area where the land is located as calamity or disaster area ; and (4) other meritorious grounds to be determined by the DAR Secretary.
- F. The AVAs shall be subject to the approval of the PARC. Otherwise, it shall become void and unenforceable.

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

- G. The duration of the AVA shall be mutually agreed upon by all parties, but not more than 10 years subject to renewal. It shall take into consideration the following parameters: (i) crop or production cycle; (ii) gestation period of the crop; (iii) economic lifespan of existing major and essential facilities or infrastructure; and (iv) payback or recoup period of investments.

- H. In addressing the food security concerns of the country, the parties should agree that, in case of food shortage in the country, at least fifty percent (50%) of the produce in investment involving staple crops will automatically be set aside for the domestic market. For purposes of its enforcement, the DAR may invoke said provision, if and when necessary.
- I. The roles and responsibilities of DAR, the ARBs (individual or cooperatives/associations) and the investor shall be clearly identified in the contract as well as the expected output from each party. It must be clear that successors-in-interest of both the investors and the ARBs are bound by the terms of the contract.
- J. Consent of the other party in cases of transfer of rights and responsibilities shall be secured.
- K. An alternative dispute resolution mechanism in resolving disputes between the parties shall be established.
- L. Terms and conditions of the AVA contract shall be made known to all parties. The contract shall be translated to the language known to the ARBs.
- M. Terms and conditions for pre-termination of contracts shall be clearly stipulated in the AVA contract.
- N. In case of lease agreements, the rental shall be at least ten per cent (10%) of the gross sales per harvest.

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

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

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

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

Article 9. *Approval of Agribusiness Ventures Agreements.* All AVAs entered into between ARBs and any other person under this Act shall be approved by the Presidential Agrarian Reform Council (PARC) as established under Proclamation No. 129-A. For this purpose, the PARC, through the Department of Agrarian Reform (DAR)

shall issue policies, rules and regulations relative to such approval taking into consideration of the following, namely: a) economic viability; b) legal enforceability; c) ARB control over the land/or business operation; d) ARB skill development; (e) ecological soundness; f) non-transferability of ownership over the land to investor; and other considerations which PARC may deem proper under the circumstances.

Article 10. *Resolution of Disputes.* As a general rule, voluntary conciliation methods shall be preferred in resolving disputes arising from the execution of AVA contracts. Any dispute arising from the execution of the AVA contract shall be resolved first through mediation. If the parties fail to arrive at an agreement through mediation, the parties shall/may submit their dispute for arbitration in accordance with R.A. No. 876, also known as the "Arbitration Law," as amended by R.A. No. 9285 or the *Alternative Dispute Resolution System Act of 2004* or other pertinent arbitration laws, as the case may be. For this purpose, the AVA contract shall contain prior consent by both parties to submit themselves to arbitration when the need arises. The contract shall already identify the number of arbitrators to be appointed jointly by the parties as well as the venue for the hearing.

The decision of the arbitral committee shall be final and binding. Judgment thereon may be entered in any of the proper fora enumerated under Article 12 of this Act.

Article 11. *Revocation of AVA Contracts.* — AVA contracts may be revoked by the PARC based on the following grounds:

- A. Gross violation or non-compliance of the terms and conditions of the contract such as, but not limited to:
 1. Non-implementation of the human resources development plan provisions;
 2. Non-employment of the ARBs;
 3. Concealment of the true financial status of the enterprise; and
 4. Commission of fraud in the application or implementation of the AVA;
 5. Other analogous cases.
- B. When, without justifiable reasons, the AVA fails to provide benefits and incentives stipulated in the approved AVA contracts, such as, but not limited to, dividends accruing to ARB's equity shares, production and quality incentives. For this purpose, situations beyond the control of the investor such as *force majeure* are considered justifiable reasons;
- C. When the AVA is no longer financially and economically viable;
- D. When a portion of the commercial farm subject of the AVA is converted or fragmented into non-agricultural use without prior written consent of the ARBs and the DAR;
- E. Any action resulting to the transfer of ownership of the landholding subject of AVA to the investors;

- F. In cases of permanent take-over or temporary take over when the conditions set forth under Article 8 are not present;
- G. Acquisition or approval of AVA through fraud, intimidation, coercion, deceit, etc
- H. Other analogous or meritorious grounds.

Article 12. *Jurisdiction.* — The PARC shall have primary and exclusive jurisdiction over the approval and revocation of AVAs. :

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

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

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

Art. 13. *Penal Provision.* — Any act that wrests control over the agricultural land from agrarian reform beneficiaries not constituting a temporary take-over as defined in this Act shall be punishable by imprisonment of not less than three (3) years and one day but not more than six (6) years.

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

Article 15. *Separability Clause.* — If, for any reason, any section or provisions of this Act is declared unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full force and effect.

Article 16. *Transitory Provision.* — All existing AVAs without PARC approval shall be subject for review and approval of the PARC. Parties to existing AVAs shall submit their contracts to PARC within 60 days from the effectivity of this Act. Failure to comply with this requirement within the given period shall render the AVAs void.

Article 17. *Effectivity Clause.* — This Act shall take effect after fifteen (15) days upon publication in at least two (2) newspapers of general circulation.