

LEASEHOLD PRIMER

I. LAWS AND ISSUANCES ON LEASEHOLD

What are the laws governing the leasehold relations between the landholders and lessees?

Various laws have been passed governing agricultural leasehold tenancy. A review of such laws would reveal a progression from one of election and limited operation to one of compulsion and comprehensive application.

1. RA 1199 – *An Act to Govern the Relations between Landholders and Tenants of Agricultural Lands (Leasehold and Share Tenancy, 30 August 1954)*. It is also known as the “Agricultural Tenancy Act of the Philippines”. Under this law, the tenant has the option to elect either share tenancy or leasehold tenancy arrangement.
2. RA 3844 – *An Act to Ordain the Agricultural Land Reform Code Instituting Land Reforms in the Philippines, including the Abolition of Tenancy and the Channeling of Capital into Industry, and for Other Purposes, (8 August 1963)*. It is also known as the “Agricultural Land Reform Code.” This law declared agricultural share tenancy to be contrary to public policy and was, thereby, abolished.
3. RA 6389 – *An Act Amending Republic Act No. 3844, as amended, otherwise known as the “Agricultural Land Reform Code, and for Other Purpose”, (10 September 1971)*. It is also known as “Code of Agrarian Reforms of the Philippines.” This law provides the automatic conversion of agricultural share tenancy to agricultural leasehold tenancy
4. RA 6657 – This Act shall be known as the “Comprehensive Agrarian Reform Law of 1988.” Under this Law, the DAR is mandated to determine and fix immediately the lease rentals in accordance with Section 34 of RA 3844, but expressly repealed Section 35 of RA 3844. This therefore, abolished the exemptions and made all tenanted agricultural lands subject to leasehold.

What are the significant implications of these changes in the laws?

The significant implications are as follows:

1. abolition of share tenancy now covers all agricultural landholdings without exceptions;
2. the conversion of share tenancy into leasehold is mandated by law;
3. leasehold can be a preliminary step to land ownership, hence, all share-crop tenants were automatically converted into agricultural lessees as of 15 June 1988, whether or not a leasehold agreement has been executed; and
4. Leaseholders' security of tenure shall be respected and guaranteed.

What Administrative Order covers leasehold implementation?

DAR Administrative Order No 2, Series of 2006 – Revised Rules and Procedures Governing Leasehold Implementation on Tenanted Agricultural Lands.

This AO superseded AO No. 04, Series of 1989, AO No. 09, Series of 1991, AO No. 04, Series of 1992, AO No. 5, Series of 1993 and AO No. 6, Series of 2003.

Why is there a need to institute leasehold on tenanted agricultural lands and tenanted areas retained by the landowners?

1. Leasehold protects the tenurial and economic status of tenant-tillers in agricultural lands;
2. Leasehold guarantees and improves the hold and physical possession and enjoyment, as well as, management of the land by the tenant-tillers;
3. Leasehold assures the continuity of relations between the landholder and tenant and shall not be extinguished by mere expiration of the term or period in leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding.

In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee shall be subrogated to the rights and substituted to the obligations of the agricultural lessor pursuant to Section 10 of RA 3844.

II. LEASEHOLD COVERAGE

What is the coverage of the agricultural leasehold under Administrative Order No. 2, Series of 2006?

Agricultural leasehold implementation shall cover all tenanted agricultural lands, including but not limited to:

1. Retained areas;
2. Tenanted agricultural lands not yet acquired for distribution under the Comprehensive Agrarian Reform Program (CARP);
3. All other tenanted lands which may be validly covered under existing laws, including but not limited to:
 - a) Tenanted landholdings that may be within the purview of DOJ Opinion No. 44-1990 but actual use remains agricultural; and,
 - b) All other tenanted landholdings that may otherwise qualify for exemption or exclusion from CARP coverage or land use conversion, for as long as actual use remains agricultural.

III. AGRICULTURAL TENANCY RELATION

What is Agricultural Tenancy?

The agricultural tenancy is classified into two; Leasehold tenancy and share tenancy (no longer sanctioned under RA No. 6657).

Agricultural Tenancy is the physical possession by a person of land devoted to agriculture belonging to, or legally possessed by another for the purpose of production through the labor of the former and of the members of his/ her immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain or ascertainable, either in produce or in money, or in both. (*Sec. 3, RA 1199, as amended*)

Share Tenancy exists whenever two persons agree on a joint undertaking for agricultural production wherein one party furnished the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with aid available from members of his/her immediate farm household, and the produce thereof to be divided between the landholder and the tenant. (Sec. 166 (25), RA 3844)

Leasehold Tenancy exists when a person who, either personally or with the aid of labor available from members of his/ her immediate farm household undertakes to cultivate a piece of agricultural land belonging to or legally possessed by, another in consideration of a fixed amount in money or in produce or in both. (Sec 4, RA 1199)

What are the requisites for agricultural tenancy relationship to exist?

Agricultural leasehold is based on a tenancy relationship and all the following essential elements must be present in order to establish the existence of tenancy relationship, to wit:

1. The parties are the landholder and tenant;
2. The object of the relationship is an agricultural land;
3. There is consent freely given either orally or in writing, express or implied;
4. The purpose of the relationship is agricultural production;
5. There is personal cultivation;
6. There is consideration given to the lessor either in a form of share of the harvest or payment of fixed amount in money or produce or both.

What is meant by personal cultivation?

Personal cultivation means that the tenant cultivates the land himself/ herself or with the aid of the immediate member of his/her farm household. *Immediate farm household* refers to the members of the family of the lessee and other persons who are dependent upon him/her for support and who usually help him/her in the farm activities.

Why should there be leasehold even in coconut lands or other permanent crops when there is practically no “cultivation involved”?

Cultivation has been defined in court rulings as *“not limited to the plowing and harrowing of the land, but also husbanding of the ground to forward the products of the earth by general industry, the taking care of the land and fruits growing thereon, fencing of certain areas, and the clearing thereof by gathering dried leaves and cutting of grasses.”*

In Coconut lands, *cultivation includes the clearing of the landholdings, the gathering of coconuts, their piling, husking and handling, as well as the processing thereof into copra, although at times with the aid of hired laborers”* (Coconut Cooperative Marketing Association, Inc. vs. court of Appeals, Nos. L-4681-83, August 19, 1988, 164 SCRA 568).

Does a tenancy relationship exist in cases where squatters are allowed by the landowner to cultivate the land for free?

No. Agricultural tenancy does not exist in this case since there is no expressed or implied agreement to undertake the cultivation of the land belonging to the landholder. No agreement exists in terms of share in harvest or payment in a fixed amount. It is, however, possible for the parties to subsequently enter into a leasehold relationship.

On the other hand, if the landholder-lessor (landowner, lessee, usufructuary or legal possessor of agricultural land) is himself an intruder, a usurper or a squatter, he/she can not be considered a landholder nor can he/she establish a tenancy relationship with another person although the latter may cultivate the land personally (*Lastimosa vs. Blanco, G.R. L-14697, June 28, 1961*).

What is meant by agricultural leasehold relation?

Agricultural leasehold relation is a juridical tie which arises between the agricultural lessor (landholder) and the agricultural lessee (tenant). It is limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor and the person who personally cultivates the same (R.A. No. 3844, Section 6).

On the other hand, a *leasehold contract* is the contract or agreement of the parties on the terms and conditions that will govern their relationship. It is also the formal tenurial arrangement reduced into writing between a landholder-lessor and tenant-lessee where the former consents to the latter's personal cultivation in consideration for a fixed rental either in money or produce or both.

The expiration of the contract or the subsequent modification of its terms and conditions does not affect the relationship. Notwithstanding the termination of the contract, the relationship of the parties subsists (*Tapang vs. Robles, 72 Phil. 79*).

When shall an agricultural tenancy relationship cease to exist?

1. Abandonment of the landholding without the knowledge of the agricultural lessor;
2. Voluntary surrender of the landholding by agricultural lessee; and
3. Absence of forced heir to succeed the agricultural lessee in the event of his/her death or permanent incapacity.

What are the reasons and causes if the agricultural lessee wants to terminate the leasehold relations during the agricultural year?

1. Cruel, inhuman or offensive treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;
2. Non-compliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of RA 3844 or by contract with the agricultural lessee;
3. Compulsion of the agricultural lessee or any member of his/her immediate farm household by the agricultural lessor to do any work or render any service not in any way connected with farm work or even without compulsion if no compensation is paid;
4. Commission of a crime by the agricultural lessor or his/her representative against the agricultural lessee or any member of his immediate farm household; or
5. Voluntary surrender due to circumstances more advantageous to the lessee and his/her family (*Sec. 28, RA 3844*).

On what grounds may a tenant-lessee be dispossessed of his/ her tillage?

1. He/she failed to substantially comply with the terms and conditions of the leasehold contract or with laws governing leasehold relations, unless the failure is caused by a fortuitous event or force majeure;
2. He/she planted crops or used the land for a purpose other than what had been previously agreed upon;
3. He/she failed to adopt proven farm practices necessary to conserve the land, improve its fertility, and increase its productivity with due consideration of the financial capacity and credit facilities available to the tenant-lessee;
4. His/her fault or negligence resulted in the substantial damage, destruction, or unreasonable deterioration of the land or any permanent improvement thereon;
5. He/she does not pay the lease rental when it falls due except when such non-payment is due to crop failure to the extent of 75 percent as a result of a fortuitous event;
5. He/she employed a sublessee;
6. Plant, grow, raise, or permit the planting, growing or raising of any plant which is the source of dangerous drug as defined in P.D. No. 1683, as amended;
7. If the land is subject of an approved land-use conversion application under DAR AO No. 1 S. of 2002 and the tenant-lessee receives or has been given a disturbance compensation equivalent to five times the average of the gross harvest on his landholding during the last five preceding calendar years (R.A. No. 6389, section 7);
8. If the land is covered with exemption or exclusion order issued by DAR and the tenant-lessee receives or has been given disturbance compensation as provided in the said exemption or exclusion order.

The tenant-lessee shall be entitled to disturbance compensation equivalent to five times the average gross on his landholding during the last five preceding calendar years (R.A. No. 6389, Section 7).

What is the right of the tenant-lessee to be indemnified for labor?

The tenant-lessee shall have the right to be indemnified for the cost and expenses incurred in the cultivation, planting or harvesting and other expenses incidental to the improvement of his/her crop in case he/ she surrenders or abandons his/ her landholding for just cause or involuntarily ejected therefrom.

In addition to this, the tenant-lessee shall also have the right to be indemnified for one-half of the necessary improvements of the landholding provided that these improvements are still tangible and have not yet lost their utility at the time of surrender and/or abandonment at which time the value of the landholding shall be determined.

How is extinguishment of relation distinguished from dispossession?

Extinguishment, to be effective, does not require court approval whereas dispossession, to be validly carried out, requires proofs and/or evidence to warrant the ejectment or dispossession of the tenant-lessee thru court order which is final and executory.

In addition to this, extinguishment is by reason of voluntary act of the tenant-lessee or an Act of God, whereas ejectment is premised on an offense committed by the tenant-lessee or excesses (abuses and violations) of the lessor/landholder.

What if the lessee employed hired labor but religiously pays the lease rental to the landowner?

The lessee can only avail himself of hired labor if he/she is temporarily incapacitated and has no immediate family household who will do the cultivation.

Can an agricultural leasehold relation be extinguished by the death or permanent incapacity of any of the parties?

No. In case the tenant-lessee dies or is permanently incapacitated, the leasehold relation shall continue between the agricultural lessor and the member of the lessee's immediate farm household who can personally cultivate the land. Such person shall be chosen by the lessor within one month from such death or permanent incapacity from among the following:

1. The surviving spouse;
2. The eldest direct descendant by consanguinity; or
3. The next eldest descendants in the order of their age.

If the death or permanent incapacity of the lessee occurs during the agricultural year, the choice by the lessor shall be done at the end of that agricultural year. If the lessor fails to exercise his choice within the prescribed period, the above-mentioned order of priority shall be followed. In case of death or permanent incapacity of the lessor, the leasehold relation shall bind his/ her legal heirs.

What is the effect of transfer of legal ownership of the land?

Leasehold is not extinguished with the transfer of legal ownership of the land from one landowner to another. Section 10 of RA 3844, as amended, provides that the purchaser or transferee shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

IV. RIGHTS AND RESPONSIBILITIES OF LESSEE

What is agricultural lessee?

Agricultural Lessee is a person who, by himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by another, with the latter's consent for purposes of production, for a price certain in money or in produce or both.

What are rights of the lessee?

1. To have possession and peaceful enjoyment of the land;
2. To manage and work on the land in a manner and method of cultivation and harvest which conform to proven farm practices;
3. To mechanize all or any phase of his farm work;
4. To deal with millers and processors and attend to the issuance of *quedans* and warehouse receipts of the produce due him/her;
5. To continue in the exclusive possession and enjoyment of any home lot the lessee may have occupied upon the effectivity of RA 3844;

6. To be indemnified for the costs and expenses incurred in the cultivation and for other expenses incidental to the improvement of the crop in case the lessee surrenders, abandons for a just cause or is ejected without DARAB/court order from the landholding;
7. To have the right of pre-emption and redemption; and
8. To be paid disturbance compensation in case the conversion in the land use of the farm holding has been approved.

What are the duties and responsibilities of the lessee?

The lessee shall at all times perform the following pursuant to Section 26 of RA 3844, as amended:

1. Cultivate and take care of the farm, growing crops, and other improvements on the land and perform all the work therein in accordance with proven farm practices;
2. Inform the lessor within a reasonable time of any trespass committed by third persons on the farm, without prejudice to his/her direct action against the trespasser;
3. Take reasonable care of the work animals and farm implements delivered to him/her by the lessor and see to it that they are not used for purposes other than those intended, or used by another without the knowledge and consent of the lessor;

If any of such work animals or farm implements gets lost or damaged due to the lessee's negligence, he/ she shall pay the lessor the equivalent value of the work animals or farm implements at the time of the loss or damage;

4. Keep the farm and growing crops attended to during the work season. In case of unjustified abandonment or neglect of his/her farm, any or all of the expected produce may, upon order of the appropriate body or court, be forfeited in favor of the lessor to the extent of the damage caused thereby; and
5. To pay the lease rental to the lessor when it falls due.

Is there a limit a lessee under CARP may cultivate?

No. Since RA 6657 only speaks of the three (3) hectare limit with respect to the award that may be given to the ARBs, this ceiling does not apply under the leasehold system. The tenant, however, must render personal cultivation on the entire area leased.

Can a lessee be a tenant in a separate landholding?

Section 27 of RA 3844 includes, as one of the prohibited acts of an agricultural lessee, the entering into a contract to work additional landholdings belonging to a different agricultural lessor or to acquire and personally cultivate an economic family size farm without the knowledge and consent of the lessor with whom he/she had first entered into leasehold, if the first landholding is of sufficient size to make him/her and the members of the immediate farm household fully occupied in its cultivation.

Based on this provision, it is still possible for a lessee to be a tenant in another landholding. The prohibition applies if the land presently cultivated is already of sufficient size to fully occupy the lessee or his/her immediate household in the cultivation. However, even if the size is already sufficient cultivation of other landholdings is still possible if there is consent of the original lessor.

What is meant by “economic family size” farm?

RA 3844 has defined economic family size farm as an area of farm land that permits efficient use of labor and capital resources of the farm family and will produce an income sufficient to provide a modest standard of living to meet a farm family's need for food, clothing, shelter and education with possible allowance for payment of yearly installments on the land, and reasonable reserves to absorb yearly fluctuations in income.

What are the specific rights of the lessees in sugarcane lands which should be part of the leasehold agreement?

The lessee in sugarcane lands shall have rights which can be exercised by them personally or through a duly registered cooperative or farmers' association of which they are members. These are, to wit:

1. Enter into a contract with the sugar central or millers for the milling of sugar cane grown on the leased property;
2. Be issued a warehouse receipt (*quedan*) or molasses storage certificate by the sugar central for the manufactured sugar, molasses and other by-products;
3. Have free access to the sugar Central's factory, facilities and laboratory for purposes of checking and/or verifying records and procedures;
4. Be furnished a weekly statement of cane and sugar account showing among other things, the tonnage of the delivered cane and analysis of the crusher juice;
5. Be given thirty (30) days notice in writing before the sugar and other by-products are sold through public auction; and
6. Be provided with the standard tonnage allocation by the miller/ sugar central.

What if the sugar miller refuses to recognize the rights of the lessee?

In cases of such refusal by the sugar miller, then the lessee with the assistance of DAR and/or the cooperative of which he/she is a member of, should file a petition with the DARAB for recognition of his/her rights.

What if the sugar land under lease is subject of an approved land use conversion applications?

The lessee can be dispossessed of his/her tillage if such land is subject of an approved land use conversion application, provided the lessee is given a disturbance compensation equivalent to five (5) times the average of the gross harvests on his/her land during the last five (5) preceding calendar years, and such other benefits he/ she is entitled to as provided for by law.

V. RIGHTS, PROHIBITIONS AND RESPONSIBILITIES OF LESSOR

What is an agricultural lessor?

Agricultural Lessor is a person, natural or juridical, who, either as owner, civil law lessee, usufructuary, or legal possessor, lets or grants to another the cultivation and use of his land for a certain price in money or in produce or both.

What are the rights of the agricultural lessor?

Section 29 of RA 3844 provides that it shall be the right of the lessor to:

1. Inspect and observe the extent of compliance with the terms and conditions of the leasehold contract;
2. Propose a change in the use of the landholding to other agricultural purposes, or in the kind of crops planted;
3. Require the lessee, taking into consideration his/her financial capacity and the credit facilities available to him/her, to adopt proven farm practices necessary to the conservation of the land, improvement of the fertility and increase in productivity; and
4. Mortgage expected rentals.

What are the duties and responsibilities of a lessor?

The lessor shall, at all times, keep the agricultural lessee in peaceful possession and cultivation of his/her landholding. In addition, he/she shall keep intact useful improvements existing on the landholding at the start of the leasehold relationship such as irrigation and drainage system and marketing allotments, which in the case of sugar quotas shall refer both to domestic and export quotas, provisions of existing laws to the contrary notwithstanding.

What are the prohibitions on the lessor?

1. To dispossess the lessee of his/her landholding except upon authorization by the DARAB/Court under Section 36, RA 3844;
2. To require the lessee to assume, directly or indirectly, the payment of the taxes or part thereof levied by the government on the landholding;
3. To require the lessee to assume, directly or indirectly any rent or obligation of the lessor to a third party;
4. To deal with millers or processors without written authorization of the lessee in cases where the crop has to be sold in processed form before payment of the lease rental;

5. To discourage, directly or indirectly, the formation, maintenance or growth of unions or organizations of lessee in his/her landholding; and
6. To allow or cause the indiscriminate cutting of coconut trees which is deemed a prima facie evidence of intent to dispossess the tenant of his/her landholding unless there is verified written consent of the lessee and there is certification by the Philippine Coconut Authority (PCA), copy of the finding and recommendations of which shall be furnished the affected tenants or lessees, or a resolution from the Municipal Board, allowing the cutting for valid reasons (*AO-05, Series of 1993 and AO-16, Series of 1989*).

Is indiscriminate cutting of coconut trees prohibited only in tenanted coconut lands?

No. Even in lands cultivated by farm workers.

Can the landowner execute two (2) separate leasehold contracts with the same lessee, one for the principal crop and the other for the secondary crops?

The execution of two contracts is no longer necessary since the lease rental shall cover the whole landholding cultivated by the lessee.

What if there are two or more tenants?

No. As a general rule, tenancy indivisible and dual tenancy/co-tenancy is not allowed. This rule is, however, subject to the following exceptions:

1. As among the heirs of deceased tenant-farmer, the landowner has recognized the children as the tenant's successor to the tenancy of the landholding;
2. A common law wife is recognized as a co-tenant by the landowner and is entitled to cultivation of the same after the common-law husband had left the landholding; and,
3. When co-tenancy exists with the consent of the landowner.

The DAR adheres to the policy of "indivisibility of tenancy", hence, only the foregoing exceptions are recognized. However, in the event that there are two or more tenants on the same lot, each producing a different crop, they may decide to have a joint leasehold agreement or execute a separate leasehold agreement with the landholder, whichever is feasible, provided such tenancy relationship existed and/or tolerated prior to or as of the effectivity of DAR AO No. 2, Series of 2006.

What are the liabilities of a lessor if he/she ejects his/her tenant-lessee without the court/s authorization?

A lessor shall be liable for:

1. Fine or imprisonment;
2. Damages suffered by the agricultural lessee in addition to the fine or imprisonment for unauthorized dispossession;
3. Payment of attorney's fee incurred by the lessee; and
4. Remuneration for lost income while illegally deprived of his tillage.

The lessee shall be reinstated upon order by the DARAB/Court.

Can the lessor order the lessee to change crops?

No. Section 29 of RA 3844 provides that the right of the lessor to propose a change in the use of the landholding to other agricultural purposes, or in the kind of crops to be planted is not absolute. The change, however, shall be agreed upon by both the landowner and the lessee. In case of disagreement, the matter shall be settled by the Provincial Agrarian Reform Adjudicator (PARAD) or in his/her absence, the Regional Agrarian Reform Adjudicator (RARAD) according to the best interest of the parties concerned.

VI. LEASE RENTAL

How much lease rental should the lessee pay?

The consideration for the lease shall not be more than the equivalent of twenty-five percent (25%) of the average normal harvest during the three (3) agricultural years immediately preceding the date the leasehold was established after deducting the amount used for seeds and the cost of harvesting, threshing,

loading, hauling and processing, whichever are applicable (RA 3844, 1st proviso).

If the land has been cultivated for a period of less than three (3) years, the initial consideration shall be based on the average normal harvest during the preceding years when the land was actually cultivated, or on the harvest of the first year in the case of newly-cultivated lands, if that harvest is normal (1st proviso, Sec. 34, RA 3844).

After the lapse of the first three (3) normal harvests, the final consideration shall be based on the average normal harvest during these three (3) preceding agricultural years (2nd proviso, Sec. 34, RA 3844).

In the absence of any agreement between the parties as to the rental, the maximum allowed herein shall apply (3rd proviso, Sec. 34, RA 3844).

For auxiliary crops, the lease shall be fixed at not more than the equivalent of 20% following the principles provided for principal crops on the use of average normal harvest provided that all expenses shall be borne by the tenant pursuant to Sec. 30, R.A. No. 1199, as amended.

Hence, auxiliary crops shall form part of the leasehold contract but computed on an 80-20 basis while 75-25 for principal.

When do we say the lease rental becomes final and executory?

The lease rental determined by the MARO in accordance with law and existing policies of the DAR shall be binding and immediately executory upon execution of the leasehold contract by both the lessor and the lessee and affirmation by the MARO (No. 13, Item IV, AO No. 2, Series of 2006).

What actions should DAR do in case of disagreement on the issues of fixing of lease rental?

In case of disagreement over the issue on the fixing of lease rental, the Provisional Lease Rental (PLR) issued by the MARO shall be reviewed and affirmed by the PARO. If no action is taken by the PARO after the lapse of fifteen (15) days from receipt of a copy thereof, the PLR shall be deemed approved and shall govern the leasehold relation (No. 18, Item IV, AO No. 2, Series of 2006).

What will the lessee do if the landowner refuses to accept the PLR?

The lessee shall deposit the contested lease rental with the nearest Land Bank of the Philippines (LBP) Office, or any duly authorized banking institution in the locality, in a trust account in the name of the landholder if the payment is in cash or in a bonded warehouse if the payment is in kind. The lessee shall also notify the MARO and the landholder on the payment made (No. 17, Item IV, AO No. 2, Series of 2006).

What are the allowable deductible costs of production under the leasehold system?

In coconut lands, the deductible items would depend on the final product. If the final product is green nuts, the cost of harvesting shall include picking and piling; if the final product is copra, the deductible items allowed shall be the cost of harvesting, loading, hauling, husking, splitting, scooping and drying.

Could the use or application of fertilizer to enhance the yield of crop production can be included in the list of allowable deductible costs for any particular crop?

No. Only those enumerated under Section 34 of RA 3844 as cited above can be included as a deductible item. However, DAR shall study the effect of the use of fertilizer and other related expenses as a cost of production and its impact on the rental structure. This shall be taken into account in the periodic review and adjustment of the rental structure.

How do you compute the lease rental of newly cultivated land?

In the case of newly-cultivated land or land cultivated for a period less than three years, the initial rental shall be based on the harvest of the first agricultural year, if such harvest is normal, or on the average normal harvest during the preceding agricultural years, if there had been no normal harvest, then the estimated normal harvest when the land was actually cultivated shall be used.

Once the three normal harvests have been established, the final rental shall be based on the average normal harvest of these three (3) preceding agricultural years.

Why is the lessor given only 25% while the lessee retains 75% of the net produce from the land?

This percentage was provided for under R.A, No. 3844 on the premise that the lessee largely contributes to the production of crops or fruits, while lessor's only contribution is the land.

What is the normal harvest?

The normal harvest is the usual or regular produce obtained from the land when it is not affected by any fortuitous event or force majeure such as typhoon, flood, drought, earthquake, volcanic eruption, and the like.

In sugarcane lands, the determination of the average normal harvest to be used in computing the lease rental shall be based on the following:

1. If the leasehold relationship existed before 15 June 1988, the effectivity of R.A. No. 6657, the average normal harvest of the three (3) agricultural years immediately before the date the leasehold relationship was established shall be used;
2. If the leasehold relationship was established on 15 June 1988 by operation of R.A. No. 6657, the average normal harvest of the three (3) agricultural years immediately preceding the said date shall be used; and,
3. If the land has been cultivated for less than three (3) years prior to the date the leasehold was established, the estimated normal harvest during the three (3) agricultural years immediately preceding the said date shall be considered as the normal harvest.

What is an agricultural year?

This is the period of time required for raising a particular agricultural product, including land preparation, sowing, planting and harvest of crops, and whenever applicable, threshing of said crops.

In case of crops yielding more than one harvest from one planting (e.g., sugar cane), the agricultural year shall be the period from the preparation to harvesting. *Ratooning* (from thrash burning to harvesting) shall likewise be considered as one agricultural year. An agricultural year, therefore, may be shorter or longer than a calendar year.

How do we determine if the crop planted thereon is principal or auxiliary?

Principal crop is any product raised from dominant cultivation or use of the land and harvested on a regular basis.

Auxiliary crop is any product raised other than the crop to which the cultivation of the land is principally devoted in each agricultural year, and excluding the produce of the home lot (R.A. No. 2263, Section 2(5)(r)).

Further, the test for determining whether a crop is auxiliary or principal is whether it is planted on a commercial scale or not. If planted on commercial scale and the tenant depend on its economic benefits, it is usually a principal crop, if not, it is an auxiliary crop. Further, the ordinary accepted principle of economics stated on Explanatory Note of Senate Bill 119 provides that *“the total acreage planted to, and length of time to which the land has been devoted to the crops should determine the principal crops.”*

How do we differentiate “crop diversification” to “inter-cropping?”

Crop diversification is the practice of growing two or more different kinds of crops in one area for a given period to maximize the whole area. On the other hand, *inter-cropping* is the practice of simultaneously growing two or more crops between the principal crops.

If there is already an existing leasehold agreement, is there a need to negotiate another one?

No. The existing leasehold agreement will be respected provided that the agreed lease rental does not exceed the maximum rental allowed by law. Furthermore, this agreement shall be subject to the periodic review of the MARO for purposes of determining compliance.

Can the landowner demand an increase in the agreed or fixed rental on the ground that there is an increase in yield or production?

The landowner can only demand an increase in the fixed or agreed lease rental if he/she introduced capital improvements on the farm. In such a case, the rental shall be increased proportionately to the resulting increase in production due to said improvements. The cost of capital improvement, including the interest thereon, will be determined, and the number of years shall be fixed within which the increase rental shall be paid.

What is capital improvement?

Capital improvement refers to any permanent and tangible improvement on the land that will result in increased productivity. If done with the consent of the lessee, then the lease rental shall be increased proportionately.

What will happen if there is a decrease in production as a result of large scale replanting in coconut lands? Can the lease rental be reduced?

Yes. If the lessor initiates large scale replanting and the normal coconut production is affected, a new lease rental may be computed proportionate to the decrease in production.

What happens to the lease rental should the tenant-lessee suffer crop failure due to a fortuitous event or force majeure?

The lessee may defer the payment of the lease rental due for the agricultural year affected by a fortuitous event or force majeure causing crop failure to the extent of 75 percent. The lease rental, however, shall be paid on a staggered basis subject to the agreement of both parties.

Normally, such rental is paid in installments every harvest time beginning the next agricultural year and to continue until the lessee is fully paid.

VII. DETERMINING THE EXISTENCE OF TENANCY RELATIONS AND FIXING OF THE LEASE RENTAL

What if there is no agreement reach during the mediation conference despite exhaustive effort made by the MARO?

As far as the determination and fixing of lease rental;

The MARO shall gather additional evidence and complete the corresponding Leasehold Documentation Folder (LDF) which shall contain all information/data pertaining to the disputed matter. On the basis of the documents submitted and gathered, determine if there exists a tenancy relationship and compute the lease rental and thereafter issue a Provisional Lease Rental (PLR) within seven (7) days upon manifestation of disagreement by any of the parties. For this purpose, the PLR and the corresponding LDF shall be submitted immediately to the PARO for automatic review, whenever warranted, and affirmation. Simultaneously, copies of the PLR shall be sent to the tenant and the landholder.

In such a case, the PARO shall act on the PLR within fifteen (15) days upon receipt thereof. If no action is taken by the PARO within the 15-day period, said PLR is deemed approved and executory and shall, henceforth, govern the tenancy relation until and unless ordered otherwise by a court of competent jurisdiction after due hearing on the merits.

On the other hand, should the PARO disapproves the PLR, the same shall remanded to the MARO for re-computation of the rental. Should the PARO disapproves the PLR on ground of non-existence of tenancy, the MARO shall inform the parties concerned, of such disapproval by the PARO. The aggrieved party may file an original action before the PARAD.

Supposing the two parties do not appear during the conference, can the MARO fix the Provisional Lease Rental (PLR)?

No. Either of the parties should show interest and the fixing of PLR presupposes that either the lessor or the lessee must be present during the conference.

Can a petition for injunction be filed to enjoin the conduct of mediation conference?

No. Mediation is intended for the settlement of disputes/issues and to prevent such disputes/issues from developing into full blown case.

Resort to mediation is in keeping with the policy of exhaustion of administrative remedies, hence, it will be premature on the part of the PARAD to enjoin administrative processes which has not yet ripened into a full blown case.

While the fixing of lease rental starts with mediation, and assumed to result in the execution of a leasehold contract, it is only upon the disagreement of the parties that will necessitate the issuance of a PLR, if warranted.

What will the tenant-lessee do if the landholder still refuses to accept the lease rental after the PARO affirmed the PLR issued by the MARO?

The lessee shall deposit the contested lease rental with the nearest Land Bank of the Philippines (LBP) Office, or any duly authorized banking institution in the locality, in a trust account in the name of the landholder, if the payment is in cash, or in a designated bonded warehouse, if the payment is in kind.

The lessee shall also notify the MARO and the landholder on the date/place when/where the payment was made.

What if either or both the parties concerned disagree with MARO's decision regarding the issuance of PLR?

Any party may challenge the PLR by filing an original action before the Adjudicator where the landholding is situated within fifteen (15) days upon receipt of a copy thereof.

What is the effect of the filing or pendency of an original action before the Adjudication Board in the implementation of the PLR?

The filing or pendency of an action before the adjudicator, shall not affect the implementation of the PLR unless and until the PARAD rules otherwise after due hearing on the merits. The PARAD may not enjoin the implementation of the PLR and shall not subject the same to injunction or Temporary Restraining Order.

What DAR policy governs the supervision of harvest during the pendency of the proceeding but before the leasehold contract is executed by the parties or before the issues in dispute particularly the lease rental are resolved by the MARO?

The following arrangement shall be:

1. 75% goes to the lessee claiming to be tenant; and
2. 25% goes to the landholder.

The above proportion shall, however, be released after deducting the cost or amount of deductible items as defined in Section III (10) of A. O. No. 2, Series of 2006.

VIII. OTHER RELATED LAWS AND ISSUANCES

1. *Presidential Decree (PD) No. 152*, promulgated on 31 March 1973, prohibited the employment or use of share-tenants in complying with the requirements of the law regarding entry, occupation, improvement and cultivation of public lands.
2. *Presidential Decree (PD) No. 583*, promulgated on 10 November 1974, prescribed penalty for the unlawful ejectment, exclusion, removal or ouster of tenant-farmers from their landholdings.
3. *Presidential Decree (PD) No. 816*, promulgated on 21 October 1976, penalized any agricultural lessee of rice and corn lands under PD 27 who deliberately refuses or continues to refuse to pay rental or amortization payments when they are due and remain unpaid within a period of two (2) years.
4. *Presidential Decree (PD) No. 1425*, promulgated on 10 June 1979, strengthened the prohibition against the practice of the share tenancy and provided penalties thereof. Under this Decree, any tenant who refuses to enter into leasehold contract may be prosecuted before the Court of Agrarian Relations (now DARAB).
5. *Presidential Decree (PD) No. 1040*, promulgated on 21 October 1976, prohibited and penalized the contacting of share-tenants in all agricultural lands covered by PD 27.

