

DUE DILIGENCE ON LAND LEASE CONTRACTS

A. Summary

1. Laws and Regulations related to Land Lease in the People's Republic of China

1. In the People's Republic of China (PRC), there are several laws stipulate the rural land system, which include the Constitution, the Property Rights Law (2007), the Land Administration Law (2004), the Law on Land Contract in Rural Area (2002), the Law on the Mediation and Arbitration of Rural Land Contract Disputes (2009), and the Contract Law (1999); as well as some administrative regulations related to rural land system are under effective, such as Regulation on the implementation of the Land Administration Law, Regulation on the protection of basic farmland. Furthermore, some ministerial regulations are also enforcing to stipulate the rural land, e.g., measures for the administration of the certificated of the right to contractual management of rural land; measures for the administration of the transfer of the land to contractual management of rural land, as well as the judicial interpretation of applicable law issues on rural land contract by the Supreme People's Court.

2. Land ownership and nature of land use should not be changed after land is leased, and the interests of collectives and farmers should not be infringed upon. Land leasing is one of the contractual relationships, which should in comply with the provisions of the PRC's Contract Law and other related laws.

2. Land Ownership

3. The Constitution clearly stipulates that the PRC has a socialist public ownership of land, i.e., an ownership by the whole people and ownerships by collectives. According to the Constitution and the Land Administrative Law, urban land is owned by the State, excluding those belonging to the state prescribed by law; whereas rural land (including suburban land) is owned by the collectives. State land requisition is the way to change the collective-owned land to state-owned land, whereby the State may requisition land owned by the collectives according to the Land Administrative Law and justification of public interest.

3. Land Use Right

4. The approaches of obtaining land use right are different according to different land ownership. For the land owned by state, the construction unit can obtain the land use right mainly depends on land use right transfer, namely bid invitation, auction, or listing-for-trading by the land administration department; after land use right transfer fee paid by the construction unit, it can obtain the land use right.

5. The land use right obtained from transference may be transferred to other enterprises, namely the transfer of state-owned land use right. Both parties involved in transfer of land use right shall sign a contract on transfer of land use right, and have the land use right leasing registered at the land administration department.

6. Usages of rural collective land can be divided into construction land, agricultural land (including cultivated land, orchards and/or gardens, forestry land, and grassland) and unused land. Based on the laws and regulations, the cultivated land can be classified as basic farmland and general farmland. It is different for obtaining land use right according to different identified

rural land use purpose.

7. For collective construction land, land use right transfer contract may be signed between rural collective economic organization and the potential land user; while policy constraints must be an underlying substance for obtaining land use right by the above mentioned method.

8. According to the Law on Land Contract in Rural Areas, the cultivated land, forestland, grassland, and other land for agricultural uses are owned by the farmers' collective; and the system of land contract management should be adopted in form of household and others (e.g., collective management or specialized management). For the collective land contracted by the rural households, the transference of the right is undertaken according to law, on a voluntary basis, and with compensation.

9. Transference of the right to land contractual management includes subcontracting, alienation, leasing, exchanging, equity contribution, or other means. Land leasing is one of those means.

4. Control on the Usages of Land

10. The key point for control on land usage is to control the conversion of agricultural land into non-agricultural land. In case the purpose of land use need to be altered, the approval of the relevant administrative department shall be obtained according to laws.

11. The key point for control on land usage is to prevent cultivated land been converted into non-cultivated land. If the project site belongs to basic farmland, according to laws, more strict conversion conditions, procedures, and requirements should be followed compared with general farmland.

5. Principles on Right to Land Contractual Management Transference

12. According to Article 33 in the Rural Land Contract Law, if the leased land had been contracted by rural households, the right to land contractual management shall be transferred in adherence to the following existing legal principles:

- (i) Consultation on an equal footing, voluntariness, and compensation; and no organizations or individuals may compel the contractor to transfer his right to land contractual management or prevent him for doing so;
- (ii) No change shall be made in the future of the land ownership or the purpose of use of the land designed for agriculture;
- (iii) The term of the transference may not exceed the remaining period of the term of land use contract;
- (iv) The transferee shall have the capacity for agricultural operation; and
- (v) Members of the collective economic organization concerned shall enjoy priority under equal conditions.

B. ADB Requirements on Land Leasing

13. Based on the Asian Development Bank's (ADB) Safeguard Policy Statement (2009), the main concerned issues have been paid attention to the project are illustrated as follows:¹

¹ ADB. 2009. *Safeguard Policy Statement*. Manila.

1. Negative Impact of Land Transfer

14. It is necessary to make sure that the land transfer will not cause any negative impact to the original subject of rights, especially the interests of rural households. Most of the land leased in the project is owned by farmers' collective, while such land has been contracted by households for 30-year terms. Therefore, it is necessary to make sure that the contract households are being treated fairly in the contract they have made with the enterprise, and that they are also protected during implementation of the land lease contract.

15. The fairness mentioned here includes (i) if the land lease contract can reflect the voluntariness of households when they sign the contract, (ii) if it meets the principles of good faith, (iii) if the rent is fair and reasonable, and (iv) if adequate compensation and relief can be provided when any disputes happen. Meanwhile, ADB also concerns if those households have good livelihoods after they lease out the land; and if the households can share with the enterprises about the added value from the leased land.

2. Protection Mechanism to Vulnerable Groups

16. Basic interests for women, low-income households, and persons with physical disabilities should not be influenced, and should ensure that their livelihood conditions shall be improved after the implementation of the project.

3. Environmental Protection

17. The utilization of leased land should follow with environmental protection objectives. The main purpose of the leased land in the project is mainly for developing animal husbandry; and so, the leased land for the construction of livestock farms or feed processing plants should not be located in the concerned distance from water resource protection zone, residential area, or any other areas that are not allowed to have livestock raising activities according to laws and regulations (i.e., within 500 meters).

C. Key Issues Related to Land Lease in the Project

18. In the project, the PRC's national laws and regulations, as well as ADB's policy requirements concerning involuntary resettlement (including negotiated settlements) should be complied accordingly. From the aspect of land lease relationship identification procedure, the following basic legal issues may exist:

1. Subjects of the land lease contract

19. In the project, mainly collective-owned land shall be leased.² As mentioned before, collective-owned cultivated land, forestland, and unused land have been contracted by households or individuals according to the Law on Land Contract in Rural Areas. Therefore, the most prominent issue of the land lease contract in the project is to make sure with whom the enterprises should sign contract with, either the collective organization, or the actual land contracted people.

20. Currently, all the enterprises that need to lease land have all signed a contract with the respective village committee(s) directly. Some of the contracts attached signatures of farmer

² One enterprise has leased land from a state farm; and this agreement dates back to year 2007.

representatives. However, the voluntariness between parties involved in the contract cannot be demonstrated. In other words, the interests of the land contracted farmers could have been influenced by the village leaders; but the project has moved to ensure that all agreements have been entered into on a voluntary basis.

21. To ensure the voluntariness of farmers, all the enterprises that signed contract directly with the concerned village committees were requested to revise the subjects of the land lease contract. Two methods have been suggested: one is to re-sign contract directly with land contracted peasants; and the other one is to sign contract with village committee who is acting as agent, together with the letter of authorization from the land contracted peasants.

22. For some subprojects, the leased land belongs to unused land without contractual relation between the collective economic organization and households; and so, they can actually sign the land lease contract directly with the concerned village committee.

2. Term of Contract

23. Two factors mainly restrict the term of land lease contract: one is that the term of land lease contract should not exceed to 20 years according to the PRC's Contract Law; and the other one is that the term of the transference may not exceed the remaining period of the term of the household land use contract. According to the status in the project areas, the identification of land contractual relationship has been mostly conducted during 1996–1997. According to the laws, the contractual term of cultivated land shall be 30 years, which means the remaining term is about 12–13 years. Therefore, the term of land lease contract in the project should not be more than 13 years or so in principle.

24. Two accompanied legal issues may be caused by above mentioned situations, and one is long project implementation period. Relatively shorter term of land lease contract could not ensure that the project implementing agencies will obtain reasonable benefits from the leased land. The other is that conflicts may happen to the identified ADB loan repayment period. Therefore, according to the suggestions from project preparatory technical assistance (PPTA) land lease specialist, the enterprises added clauses in the revised contract to make sure that they will have the priority to continuously lease the land from the leaser under equal conditions.

3. Usages of Land

25. Based on the land use control system identified in the laws, it is committed that the enterprises who are acting as lessee in the signed land lease contract should not change the agricultural land use purpose, should not destroy the plow layer of the agricultural land, and should be clearly willing to take on reclamation obligation once its contract expires.

26. The control system indicated that the land should be used strictly in line with the purposes of land use defined in the general plan for the utilization of the land by enterprises who are implementing the project.

4. Rent and Date for Delivery of Rent

27. Fair and reasonable rent payment is to ensure that the basic requirement of the rural household contractor's interest shall be inviolable. In all the land lease contracts in the project, the rent will be paid annually based on fixed amount of cash, or equivalent payment of fixed amount of agricultural products as specified in the contract.

5. Sublet Right of the Leased Land

28. In all the land lease contracts, none has clearly defined that the lessee could sublet the leased land to others, which means that the lessee has no sublet right of the land.

6. Ownership of State Subsidies Revenue

29. Regarding the ownership of state subsidies to the lease land, it should be identified according to state subsidies policies and not necessarily to be involved in the contract.

7. Ownership of Compensations after the Leased Land had been Exploited

30. When requisitioning land happens, it is required, in accordance with the Land Administrative Law and in full amount, to pay land compensation fees and compensations for the seedlings and the above-ground fixtures and structures; and arrange for social security fees for the households with land requisitioned. Different compensation fee has different objectives, and the ownership belongs to different subjects. Therefore, this item is not necessarily to be involved in the contract.

D. Land Lease Contract Signed by the Project Participating Enterprises

1. General Information in the Contracts

31. There were a number of important issues needed to be clarified here relating to the following areas: (i) the location of land to be leased from the cooperatives; (ii) those in the cooperatives who would share the putative benefits of the lease—either the collective as a whole, or those individual households whose designated plots that would have been allocated for agricultural purposes (whether this is cropping, livestock-raising or a combination of both thereof) would be leased out; and (iii) in the context of benefit-sharing, whether all adult household members were actively consulted and have agreed to the terms of the lease as evidenced for the purpose of this project by their signature affixed to the leasing document. There were also issues relating to the length of each lease; and whether the lease permits an adjustment in lease payments to account for higher income derived from the leased land, especially through farm-gate price rises in cereal crops (notably wheat and maize) which the lessor would have benefited from had they retained use of the land. These are the issues that the ADB policy require answers to demonstrate that the lessors are not disadvantaged by the terms of the lease negotiated with the PPE lessee (see further discussion below).

32. The project involves 9 project participating enterprises (PPEs) as project implementing agencies; and 12 land lease contracts, 2 land use certificates, and 1 land preliminary review opinion document (Fenghua PPE) which was issued by the local land resource bureau have been provided so far. The Donghan PPE is undertaking land certificated application.

33. Regarding land ownership and use, state-owned land, collective-owned cultivated land, forestland, and unused land are involved in the signed contracts.

34. As per land contract duration, the shortest period is 14 years; while the longest period is 50 years. In the contract, the unused land belongs to collective owned and management by village committee; and so, the land contract duration should not be restricted by the Rural Land Contract Law; but it has to follow the provisions of the Contract Law, which indicate that the longest period of lease contract should not exceed 20 years. According to these restrictions, the

barren mountain lease contracts provided by the Sangao PPE have contracted in 50 years, which are beyond the ceiling. It is indicated in the Rural Land Contractual Law that the waste mountain could be contracted by parties that do not belong to collective economic organization members; and some those contracts signed by the Dadi and Sangao PPEs could be considered contracted directly by the concerned village committees. The laws and regulations stipulate that the contractual term of barren mountain shall be 50–70 years. Therefore, the above mentioned three contracts shall be considered as legal and do not need to be applicable to the Contract Law.

35. The contractual term of cultivated land shall be 30 years, and the contractual term of grassland shall be 30–70 years. The term of the transference may not exceed the remaining period of the term of contract. All the contracts related to agricultural land leasing exceed the remaining period of the term of contract, except those contracts provided by the Muyuan PPE.

36. The total leased land area in all 12 lease contracts sum up to 2,756.97 mu in the project. Two land use certificates show that the total area is 140.07 mu; and the land preliminary review notice provided by the Fenghua PPE shows that the available land area is 40 mu, while the documents provided by the Donghan PPE shows that it is applying for land certificate for 95.115 mu. More details are in Table 1.

Table 1: General Information in Land Lease Contracts of the Project Participating Enterprises

No.	Name of PPE/ Lessee	Project Area	Lessor	Land Properties	No. of Contract HHs	Lease Period (Year)	Lease Contract Signed Date	Land Area (mu)
1	Henan Afanti Food Co.,Ltd.	East of Zhenxing Road, north of Bayi Road, Liangyuan District	Shangqiu Municipal Government	State-owned land	0	NA	2014/1/10	62.800
2	Henan Dadi Animal Husbandry Co., Ltd.	Ruanping Village, Guanyingtang Town, Shan County	Village committee	Facility agricultural land	0	20	2014/3/11	300.00
3	Luoyang Donghan Poultry Co., Ltd.	Dongmotou Village, Dizhang Township	Village committee	Facility agriculture land	5	20	2014/3/12	100.000
		Liangquangou Village, Xishandi Township	Village committee	Forest land		20	2014/3/12	60.000
		Wangling Village, Dongsong Town	Village committee	Collective construction land (vacant)	0	20	2014/3/12	60.000
		Zhongfang Village, Xishandi Township	Village committee	Forest land		20	2014/3/12	160.000

No.	Name of PPE/ Lessee	Project Area	Lessor	Land Properties	No. of Contract HHs	Lease Period (Year)	Lease Contract Signed Date	Land Area (mu)
		Xitaiyu Village, Caozhuang Village, Jiankou Township	NA	State-owned land				10.000
		Xitaiyu Village, Caozhuang Village, Jiankou Township	NA	State-owned land				15.000
		Hongyan Village, Dongkou Township	NA	State-owned land				70.115
4	Henan Fenghua Breeding Share Co., Ltd.	East to Weiwei Group, West to west 4th ring, south to horticultural farm and north to winery in Zhengyang County	NA	State-owned land	0	NA	2014/1/17	40.000
5	Kerchin Cattle Industry Nanyang Co., Ltd.	Shimen Village, Waizi Town, Xinye County	Village committee	Facility agriculture land	77	20	2014/02/25	259.700
		Yanzhuang Village, Wangzhuang Town	Village committee	Agriculture land	53	20	2014/2/21	140.270
6	Muyuan Foodstuff Co., Ltd.	Songgou Village, Wangdian Town	Village committee	Agriculture land (facility agriculture land)	85	16	2012/9/20	200.500
		Houma Village, Guanzhuang Town, Xinye County	Village committee	Agriculture land (facility agriculture land)	265	16	2012/9/20	280.000
7	Henan Niuniu Animal Husbandry Co., Ltd.	Yanling State Farm	Yanling State Farm	State-owned land	0	20	2007/3/6	630.000
8	Henan Sangao Agriculture and Animal Husbandry Co., Ltd.	Wanghang Village, Zushimiao Township	Village committee	Unused land/ Dryland	34	50	2012/4/6	255.750 unused land, 10.750 dryland
		Northwest corner of Wangshenzhi Road and Jinyuan Road, Gushi County	Gushi County Government	State-owned land	0	50	2013/5/16	77.300

No.	Name of PPE/ Lessee	Project Area	Lessor	Land Properties	No. of Contract HHs	Lease Period (Year)	Lease Contract Signed Date	Land Area (mu)
9	Henan Hengtianran Pasture Farming Co., Ltd.	Hezhang Village, Chenchun Township	Village committee	Agriculture land (facility agriculture land)	29	25	2014/6/25	300.000
	TOTAL	12 village committees, 1 state farm, and 3 district governments			548			3,032.185

2. Willingness of Rural Households to Lease Land

37. Currently, all the land lease contracts attached letter of authorization from rural households to concerned village committees, or have signatures and fingerprints in the signed contracts to express their willingness to lease the land. In legal terms, the rural households should be the beneficiaries from the rental payment; while the village committee acts as agent. More details are shown in Table 2.

38. Issues needed to be noticed in accordance with the provisions of the Rural Land Contractual Law include the following: (i) the rural collective land is contracted by households as a unit, and (ii) their rights within the family have not been split; and so, the signed household representative is actually on behalf of the household but not individuals. Therefore, the signing of the land lease contract does not involve issues related to the protection of the rights and interests of women and other vulnerable groups. More details are shown in Table 2.

Table 2: Willingness of Households Expressed in the Land Lease Contracts

No.	Name of PPE/ Lessee	Project Area	Lessor	Letter of Authorization from Farmers who are related to the Leased Land
1	Henan Afanti Food Co., Ltd.	East of Zhenxing Road, north of Bayi Road, Liangyuan District		
2	Henan Dadi Animal Husbandry Co., Ltd.	Ruanping Village, Guanyingtang Town, Shan County	Village committee	\
3	Luoyang Donghan Poultry Co., Ltd.	Dongmotou Village, Dizhang Township	Village committee	Fingerprints from 5 farmer households (both spouses)
		Liangquangou Village, Xishandi Township	Village committee	No
		Wangling Village, Dongsong Town	Village committee	\
		Zhongfang Village, Xishandi Township	Village committee	No
		TBD		
		TBD		
4	Henan Fenghua Breeding Share Co., Ltd.	East to Weiwei Group, West to west 4th ring, south to horticultural farm and north to winery in Zhengyang County		

No.	Name of PPE/ Lessee	Project Area	Lessor	Letter of Authorization from Farmers who are related to the Leased Land
5	Kerchin Cattle Industry Nanyang Co., Ltd.	Shimen Village, Waizi Town, Xinye County	Village committee	Signatures and fingerprints from 77 farmer households (both spouses)
		Yanzhuang Village, Wangzhuang Town	Village committee	Signatures and fingerprints from 53 farmer households (both spouses)
6	Muyuan Foodstuff Co., Ltd.	Songgou Village, Wangdian Town	Village committee	Signatures and fingerprints from 85 farmer households
		Houma Village, Guanzhuang Town, Xinye County	Village committee	Signatures and fingerprints from 225 farmer households (both spouses)
7	Henan Niuniu Animal Husbandry Co., Ltd.	Yanling State Farm	Yanling State Farm	\
8	Henan Sangao Agriculture and Animal Husbandry Co., Ltd.	Wanghang Village, Zushimiao Township	Village committee	Letter of authorization from 34 farmer households (both spouses)
		Northwest corner of Wangshenzhi Road and Jinyuan Road, Gushi County		
9	Henan Hengtianran Pasture Farming Co., Ltd.	Hezhang Village, Chenchun Township	Village committee	Signatures and fingerprints from 29 farmer households (both spouses)

3. Rent, Mode of Payment, Review Period, and Date for Payment Delivery

39. Rent should be determined in principle of fairness and rationality. At least, the rent plus the possible income for farmers working as migrant should be higher than what they can gain from the original land. In all the land lease contracts in the project, the rent will be paid annually based on fixed amount of cash, or equivalent payment of fixed amount of agricultural products. Each contract provides the specific details.

40. Rental payments that have been agreed upon appear to reflect the prevailing market rate for harvested wheat and maize (it is land being used for wheat that is being leased out not land used for maize). As of the end of May 2014 (the most recent United States Department of Agriculture [USDA] survey of wheat prices in the PRC) the farm-gate price per kilogram is CNY2.24 per kilogram or CNY2,240 per ton. According to production data supplied by local authorities, it is possible to harvest 530.94 kilogram per mu (Henan has some of the highest yields of wheat per mu in the PRC where yields in some provinces can be as low as 250 kilogram per mu). This would represent a cash value of CNY1,189.30 per mu.

41. ADB required that consultations be facilitated, and all stakeholders were in agreement with the provisions of the lease. Of the 18 project sites according to the PPTA land leasing specialist, all the lessees can demonstrate based on records of letters of authorization from the lessor (the local village committee representing affected land). The one instance where a state farm is leasing out (largest area of 630 mu or 419,995.8 square meters), such an authorization is not necessary.

42. There was no indication as to whether adult female members of these eight farmer households were also signatories to the lease. This has since been rectified; but had it not been and in common with the other PPEs, the project management office (PMO) is working assiduously to ensure as many signatories as possible of both husbands and wives—based on

informed consent linked to consultations undertaken by local authorities in conjunction with the PPTA consultants—are collected before the end of August 2014. As of November 2014, all 548 affected farmer households have provided signatures from both spouses. From the final signed land lease contracts, it concluded that 2,483 people have been involved. For ADB to accept these leasing agreements as compliant, it is also necessary for the project to ensure that affected female farmers receive an equal share of the rental payment based on the household's proportionate lease of its user rights. The principle is similar for affected women being entitled to receive equal payment of compensation monies and other allowances.

43. The rent for all the leased land has been clearly agreed on in the contracts, this should be considered as the results after mutual consultations. The different rental standards in different contracts were considered as different location and land production capacity.

44. Since the value of land may vary during the contract period, rent adjustment clauses have been agreed upon in some contracts. In all the twelve contracts, three contracts agreed to review the rent every 3–10 years; and some even agreed on the increasing rate. Since the adjustment of rent depends on the results of consultation, it should be the essential clause for signing the contract.

45. Regarding the rent payment delivery date, 11 out of 12 clearly have the date for rent payment delivery; while the contract for Sangao PPE has no exact date for it.

4. Other Information in the Contracts

a. Priority to Lease Land after Contract Expiration Date

46. According to the restrictions in the Contract Law and the Rural Land Contractual Law, the term of transference could not meet the demand of each PPE; and so, there are 11 contracts out of 12 which have the clause to make sure that the PPE has the priority to lease the land after the contract date expired under same conditions. Such clause is extremely important to make sure that the project can be implemented in a stable and sustainable manner. More details are shown in Table 3.

Table 3: Priority to Lease Land after Contract Date Expired

No.	Name of PPE/Lessee	Priority to Lease the Premises after Lease Contract Date Expired?
1	Henan Afanti Food Co., Ltd.	/
2	Henan Dadi Animal Husbandry Co., Ltd.	Yes, the lease period extended into 50 years
3	Luoyang Donghan Poultry Co., Ltd.	YES
4	Henan Fenghua Breeding Share Co., Ltd.	/
5	Kerchin Cattle Industry Nanyang Co., Ltd.	YES
6	Muyuan Foodstuff Co., Ltd.	YES
7	Henan Niuniu Animal Husbandry Co., Ltd.	NO
8	Henan Sangao Agriculture and Animal Husbandry Co., Ltd.	YES
9	Henan Hengtianran Pasture Farming Co., Ltd.	YES

b. Obligation of Land Reclamation

47. There are nine contracts related to cultivated land lease (include facility agricultural land lease) in the project. According to the law, the construction unit should take the obligation of land reclamation to make sure the land has same planting conditions. There are seven contracts have such clauses to agree on the obligation of land reclamation, including three contracts provided by the Donghan PPE which should not take the obligation of land reclamation (one for unused land leasing, one for forest land leasing, and the other one for collective construction land leasing). The other four contracts have not involved such obligation. Since reclamation obligations are legal ones even if there is no agreement in the contract, it will not affect the implementation of the obligations to the lessee. More details are shown in Table 4.

Table 4: Obligation of Land Reclamation in the Contract

No.	Name of PPE/Lessee	Obligation of Land Reclamation by Lessee?
1	Henan Afanti Food Co., Ltd.	/
2	Henan Dadi Animal Husbandry Co., Ltd.	/
3	Luoyang Donghan Poultry Co., Ltd. (4 contracts)	YES
4	Henan Fenghua Breeding Share Co., Ltd.	/
5	Kerchin Cattle Industry Nanyang Co., Ltd. (2 contracts)	YES
6	Muyuan Foodstuff Co., Ltd. (2 contracts)	NO
7	Henan Niuniu Animal Husbandry Co., Ltd.	NO
8	Henan Sangao Agriculture and Animal Husbandry Co., Ltd.	YES
9	Henan Hengtianran Pasture Farming Co., Ltd.	NO

E. Deficiencies in the Original Contracts and Results after Revision

48. In the original contracts, main issues are wrong subjects of the contract, too long period of term of contract, and no legal procedures if the alternation of land usage is required. Rights of the lessee have been over strengthened; and obligations of lessor have been overstated in the original contracts, which cause unfairness between two parties.

49. To solve the above mentioned issues, training and separate guidance have been provided by the PPTA land lease specialist in the last several months, revisions have been made as follows:

1. Inappropriate Subject in the Contract

5. As mentioned before, most of the PPEs signed the contract directly with local village committee; while the contracted households possess the actual user rights of the land. Therefore, the land contract signed with village committee could not take into effect. Based on the principle of relativity of the contract, the validity of the contract is limited to the contracting parties. Since the farmers are not the contracting parties in the original contract, farmers who own the actual use rights can neither be responsible for the obligation, nor have access to land rent payment.

6. Regarding this issue, the corresponding agent mechanism has been adopted by the PPEs. The contracted households signed authorized letter with concerned village committee,

and the PPEs signed land lease contract with village committee who is acting as agent. Subjects of the contracts have been identified appropriately.

7. The rental payment will be delivered to village committee and will be delivered to households by village committee. All 12 land lease contracts appointed that any kind of payment retaining should not be taken by village committee and the rent should be delivered to contracted households in full and on time.

2. Over Duration on Term of Contract

8. Training and separate guidance have been provided by PPTA land lease specialist during the PPTA period. He emphasized that the land lease period should not be longer than the remaining term of land contract and the 20 years maximum contract period that stipulated in the PRC's Contract Law. However, most of the contracts provided by the PPEs exceed those two thresholds.

9. Reasons for this phenomenon lie in the expectations of the PPEs to have stable land to earn long-term return from what they invest into the land, and long ADB loan payback period is another important reason for causing this.

10. After the training, the term of land lease contract has been adjusted. Currently, the term of land lease contract by the Muyuan PPE is complying with the stipulation of laws. The leased land for the Sangao PPE belongs to unused land; and the period is also reasonable according to the other contract patterns in the Contract Law, such as public bidding, auction, and public consultation. However, in the land lease contract of the Sangao PPE shows that a small part of leased land is farmland, which should not be included in the unused land lease contract as it could not be contracted for 50 years. Meanwhile, the signatures of households who contract the farmland could not originally be identified. This has since been rectified.

11. However, since both the Rural Land Contractual Law and the Contract Law have the legal validity, which should be taken priority than contract effectiveness under the principle of legal validity. Therefore, the legal time limit is more prevail than the contracted land lease period in the contract.

12. Regarding to the land use right issue after the date of contract expired, most of the contracts have clause to clarify that the contracted households are willing to relend the land to the concerned enterprises under the same conditions. Such agreement can make sure the sustainability of project implementation.

3. Procedures for Land Usage Alteration

13. Based on the needs of food security, the PRC strictly protects the basic farmland and controls the occupation of agricultural land for nonagricultural purposes. According to the project needs, livestock farms, feed processing plants, or hatchery will be constructed on the leased land, these activities may result in land use changes. Solutions to this problem include the following:

- (i) Adjustment can be made by local government based on local land use general plan from cultivated land to facility agricultural land. All the PPEs who have rented the land have received facility agricultural land permission documents from local government;
- (ii) To rent unused land, such as the Dadi and Sangao PPEs;

- (iii) To rent collective construction land, such as the vacant village unused land lease contract signed between the Donghan and Wangling village committees; and
- (iv) To get land use right on state-owned land, such as the Afanti, Fenghua, and Sangao PPEs, who got land use right from the state or other users who have already applied the use right of state-owned land.

14. No matter what alternative PPEs have, as long as they rent the cultivated land, the land plow layer should not be destroyed and reclamation obligations should be taken after the date of contract expired.

4. Fairness of Rights and Obligations

15. In the original contracts, most of them have been drafted by the PPEs, without mutual consultations with affected households during the processing; and many additional obligations have been put into lessor to try to release themselves responsibilities.

16. For this reason, the PPTA land lease specialist emphasized in the training that during the process of contract signing, willingness of affected land users (including family members) should be fully respected to protect their interests. After the revision, unfair clauses have been deleted in most of the contracts. For those contracts that need to have signatures of household representatives, the PPEs provided those after consultation with households. During the PPTA project loan fact-finding mission, the PPEs have been requested to provide the signatures from the heads and spouses from the households. The whole process is also a channel for households to understand their rights.

F. Suggestions and Recommendations for the Project Implementation Period

17. On one hand, contract legitimacy should be further strengthened in the project implementation period; on the other hand, protection to households' interests should be focused. The main issues needed to be paid attention to are illustrated as follows:

1. Legality of Land Use Guarantee

18. Several suggestions and supervisions should be conducted by the PPEs and the PMO:
- (i) Those PPEs who rent the cultivated land have to complete all the relevant legal documents accordingly, such as facility agricultural land permission document issued by the local land resource bureau;
 - (ii) Strictly in accordance with the usage of land, no permanent structures and buildings can be constructed on leased cultivated land; should not destroy arable layer of the land; and reclamation obligations should be taken after the date of contact expired according to agreement and policy;
 - (iii) It is not allowed to sublease the leased land without permission of the lessor;
 - (iv) For the Fenghua PPE, it re-selected a project site as the original one could not meet environmental protection requirements. Land preliminary review document has been provided; and while it does not have land use certificate so far, attention should be paid on this during project implementation; and
 - (v) For the newly added subcomponents for the Donghan PPE, namely hatchery and cooked food processing project, no land preliminary review document has been provided for review; and so, attention should be paid on this during project implementation.

2. Protection of Farmers' Rights and Interests

19. Young crops, trees, buildings and structures, etc. on the leased land should be compensated reasonably prior to project implementation, or clearly identify the ownership and take maintenance obligations by the subproject implementing agencies.

20. The PPEs should ensure that the rental payment be delivered to village committee in a timely manner and fully implemented in accordance with the contract. The village committee should ensure that the rental payment be delivered to the farmer in a timely manner and fully implemented in accordance with the contract.

21. State subsidies to agriculture should be allocated according to laws and regulations, as well as what have been agreed on the contracts, to protect the interests of the rural collective economic organizations and households whose land have been leased.

22. The enterprises should provide more job opportunities to villagers, especially to those vulnerable groups such as women, low-income families, and persons with physical disabilities.

G. Conclusion

23. In general, the revised land lease contracts submitted in the project are (i) in line with the principle of fairness and rationality; (ii) basically reflected the willingness of collective organizations and households who contracted the land; and (iii) in line with the domestic laws, regulations and policies, and relevant requirements by ADB. Some issues have already been pointed out in the above chapters; and those issues can be solved after the completion of procedures, remedial measures, or other measures.