



**Private law and agricultural development:
An overview of UNIDROIT's work on agricultural land investment contracts**

Preparing, negotiating and implementing an agricultural land investment contract that is consistent with the VGGT and CFS-RAI Principles

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)* and the *CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles)* set out principles and internationally accepted standards for the promotion of secure tenure rights and equitable access to land in the context of agricultural investment. For investors, governments, legitimate tenure right holders and local communities, the process of preparing, negotiating and implementing an agricultural land investment contract in a way that is fully consistent with those principles and standards can be very challenging.

The International Institute for the Unification of Private Law (UNIDROIT), in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), is preparing a future Legal Guide on Agricultural Land Investment Contracts for use by counsels working on the leasing of agricultural land from States and local communities. The instrument – which is being developed by a Working Group of renowned experts, representatives of international organisations, and stakeholders and is to build upon the success of the *UNIDROIT-FAO-IFAD Legal Guide on Contract Farming* and the *UNIDROIT Principles of International Commercial Contracts* – will not promote large-scale land acquisitions and will raise awareness about alternative investment models. In acknowledging that land acquisitions continue to occur, however, the instrument will help to ensure that leases of agricultural land are done responsibly and that stakeholders' rights, including those of legitimate tenure right holders, are both protected and respected. To do so, the instrument will address the following six main aspects.

(1) The legal framework: Various domestic sources of law (e.g. legislation, judicial decisions, regulations and, in some instances, customary rules) and various international sources (e.g. international human rights treaties, investment treaties or soft law instruments) make up the applicable legal framework, together with the agricultural land investment contract, which might be an investment agreement, lease contract or related agreements. In some instances, there might be gaps in the State's laws or in the implementation of those laws which, for example, fail to recognise the rights of legitimate tenure right holders or do not adequately protect the environment. The legal guidance will assist with the evaluation of the applicable legal framework and the identification of gaps in that framework, as well as the understanding of customary systems and rules.

(2) Parties, due diligence and formation: There are various possible parties to agricultural land investment contracts, and numerous stakeholders that could be affected by such contracts. Difficult tasks could include: (a) identifying both the holders of legal title to the land and any holders of legitimate tenure rights with respect to that land; (b) consulting with those various holders, including in customary settings in which the roles of various authorities might not be clearly defined; and (c) conducting detailed feasibility studies and rigorous impact assessments, with respect to possible tenure, social, environmental and economic impacts. The legal guidance will assist with the identification of all tenure right holders (including both legal and legitimate right holders) and the need for consultations with them, determination of the contract structure to take into account those holders, and the assessment of any possible impacts for which contractual safeguards would be needed. In so doing, the guidance will pay particular attention to gender and youth issues.

(3) Obligations and rights of the parties: The agricultural land investment contract, which may be a single agreement or series of agreements, can set out provisions addressing not only the particular tenure and related rights that are granted, but also necessary safeguards to ameliorate gaps in the State's law and possible impacts of the investment. The legal guidance will assist with the negotiation of provisions in various areas (e.g. land tenure; human rights, including food security, gender and youth; social obligations and responsibilities; the environment; finance; investment protection and regulatory autonomy of host States; and monitoring, transparency and compliance). That guidance will address various possible safeguards, such as mechanisms for ensuring compliance with environmental requirements and for sharing the benefits arising from the leased agricultural land with legitimate tenure right holders and local communities (e.g. community development agreements or trusts, local employment or content requirements and outgrower schemes).

(4) Contractual non-performance and remedies: As leases of agricultural land usually involve long-term contractual relationships, it is important to understand the risks inherent in a particular investment and to promote cooperation between the parties and stakeholders. The legal guidance will analyse possible excuses and remedies for non-performance, thereby helping to ensure a more balanced and sustainable contract and to prevent conflicts.

(5) Transfer and return: The transfer of leased agricultural land from one investor to another can raise various concerns, including whether the granted tenure rights are actually transferable, the transfer complies with any contractual limitations, and such transfer is disclosed to the public. The return of leased agricultural land can also raise various concerns, including with respect to the condition in which the land is to be returned and whether there are any replanting obligations. The legal guidance will analyse possible contractual provisions for addressing such concerns.

(6) Grievance mechanisms and dispute resolution: Understanding the types of grievances and disputes that commonly arise under agricultural land investment contracts and the various mechanisms for resolving them (e.g. expert determinations, negotiation, mediation, arbitration and litigation) can also create a more balanced and sustainable contract. For example, setting out and implementing grievance mechanisms (e.g. for employees, legitimate tenure right holders and local communities) might reduce risk and prevent conflicts. In the event that a dispute arises, however, having defined a dispute resolution procedure and related commitments in the applicable agreement can help to ensure that the dispute is resolved in a fair and timely manner and that the leased agricultural land does not lie fallow and remains productive. The legal guidance will assist with understanding various grievance and dispute resolution possibilities and setting out efficient procedures for resolution in the contract.

In sum, the instrument is meant to respond to the need for greater and more responsible investment in agriculture, which incorporates necessary safeguards to protect legitimate tenure right holders, human rights, livelihoods, food security, nutrition and the environment. It promises to provide legal guidance on the leasing of agricultural land that is consistent not only with the VGGT and CFS-RAI Principles, but also with the Sustainable Development Goals and the UN Guiding Principles on Business and Human Rights. Where possible and as applicable, the instrument will avoid duplication by referring to existing instruments and guidance documents.

For more information, please refer to the [UNIDROIT's webpage dedicated to the work](#) and to the consolidated draft – [ALIC Zero Draft](#) - agreed upon by the Working Group for the elaboration of the Legal Guide, submitted for consultations prior to its final revision and adoption by the UNIDROIT Governing Council at its 99th session in May 2020.

Regional consultations will be held in Asia (July), South America (August) and Africa (October).

The online consultation is open from 1 June until 30 September 2019. See the [UNIDROIT online consultation webpage](#).

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