



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**UNIDROIT Working Group
on agricultural land investment contracts**

Third meeting
Rome, 25-27 April 2018

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DRAFT ANNOTATED AGENDA

1. Opening of the meeting
2. Adoption of the agenda and organisation of the meeting
3. Recent developments and general considerations in relation to the work
4. Review of chapter drafts and in-progress outline
5. Organisation of future work
6. Any other business
7. Closing of the meeting

ANNOTATIONS

Item No. 2 – Adoption of the agenda and organisation of the meeting

1. Subject to confirmation by the Working Group, the meeting hours will be as follows:

Morning sessions: on Wednesday, 25 April, the opening will be at 10 a.m.

On other days: 9.30 a.m. – 11 a.m.
11.20 a.m. – 1 p.m.

Afternoon sessions: 2.15 p.m. – 3.40 p.m.
4.00 p.m. – 6:00 p.m.

Every day, morning and afternoon refreshments will be served at the Institute.

2. A proposed provisional order of business and a list of documents for the meeting are included in Annexes 1 and 2 respectively.

Item No. 3 – Recent developments and general considerations in relation to the work

3. The Secretariat is to provide an update on recent developments. Before reviewing the chapter drafts and in-progress outline, the Working Group may wish to discuss that update or any general considerations in relation to the work (e.g. scope of the instrument, target audience, key themes).

Item No. 4 – Review of chapter drafts and in-progress outline

4. The in-progress outline of the future legal guide on agricultural land investment contracts – which resulted from the Working Group's second meeting (Rome, 13-15 September 2017) and remains subject to review – is attached as Annex 3. Since the Working Group's second meeting, the members of the Working Group have prepared drafts for various chapters and issues identified in that outline, with those drafts submitted to the Secretariat in March and early April 2018. The drafts are to be reviewed in detail at the meeting (see Annexes 1 and 2 for a provisional order of business and list of documents respectively).

5. In connection with reviewing those drafts, the Working Group may wish to discuss various drafting issues to facilitate revisions, including, for example, (a) terminology to be used; (b) the framing of guidance to be offered; (c) the level of detail to be provided; and (d) references to other instruments and sources.

Item No. 5 – Organisation of future work

6. Further to the discussion of next steps during the Working Group's second meeting (Rome, 13-15 September 2017), the Working Group may wish to discuss, *inter alia*: (a) remaining drafting and revising responsibilities; (b) stakeholder engagement and consultations for input on the drafts; (c) and the schedule for next steps in the work.

ANNEX 1

**PROPOSED PROVISIONAL ORDER OF BUSINESS
for the Working Group's third meeting (Rome, 25-27 April 2018)**

Wednesday, 25 April

- | | |
|-----------------------|--|
| 10.00 a.m. - 11 a.m. | <p>1. Opening of the meeting</p> <p>2. Adoption of the agenda and organisation of the meeting</p> <p>3. Recent developments and general considerations in relation to the work</p> |
| 11 a.m. - 11.20 a.m. | <i>Morning refreshments</i> |
| 11.20 a.m. - 1 p.m. | <p>4. Review of chapter drafts and in-progress outline</p> <p>- WP.3: PARTIES, FORMATION AND FORM, Part I : Parties</p> <p>- WP.4: PARTIES, FORMATION AND FORM, Parts II-III: Feasibility Studies and Impact Assessments</p> |
| 1 p.m. - 2.15 p.m. | <i>Lunch break</i> |
| 2.15 p.m. – 3.40 p.m. | <p>4. Review of chapter drafts and in-progress outline (cont'd)</p> <p>- WP.4: PARTIES, FORMATION AND FORM, Parts II-III: Feasibility Studies and Impact Assessments (<i>cont'd if necessary</i>)</p> <p>- WP.6: OBLIGATIONS AND RIGHTS OF THE PARTIES, Parts I-II(e): Introduction and Land Tenure</p> |
| 3.40 p.m. – 4 p.m. | <i>Afternoon refreshments</i> |
| 4 p.m. – 6 p.m. | <p>4. Review of chapter drafts and in-progress outline (cont'd)</p> <p>- WP.8: OBLIGATIONS AND RIGHTS OF THE PARTIES
Parts II(f), III-V: Land Development, Finance, Social and Environmental Obligations (Investor Obligations)</p> <p>[Related document: WP.14: Contribution on Environmental Aspects for use in various draft chapters (e.g. Chapters 1, 3(V))]</p> |

PROPOSED PROVISIONAL ORDER OF BUSINESS
for the Working Group's third meeting (Rome, 25-27 April 2018)
(cont'd)

Thursday, 26 April

- 9.30 a.m. - 11 a.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- WP.7: OBLIGATIONS AND RIGHTS OF THE PARTIES, Part II(g): Infrastructure
 - WP.9: OBLIGATIONS AND RIGHTS OF THE PARTIES, Part VI: Protection of investment and regulatory autonomy
 - WP.10: OBLIGATIONS AND RIGHTS OF THE PARTIES, Part VII: Transparency, compliance and monitoring
- 11 a.m. - 11.20 a.m. *Morning refreshments*
- 11.20 a.m. - 1 p.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- WP.11: CONTRACTUAL NON-PERFORMANCE
- 1 p.m. - 2.15 p.m. *Lunch break*
- 2.15 p.m. – 3.40 p.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- WP.13: DISPUTE RESOLUTION
- 3.40 p.m. – 4 p.m. *Afternoon refreshments*
- 4 p.m. – 6 p.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- WP.12: TRANSFER AND RETURN
 - WP.5: PARTIES, FORMATION AND FORM, Part IV: Contract Formation and Form

PROPOSED PROVISIONAL ORDER OF BUSINESS
for the Working Group's third meeting (Rome, 25-27 April 2018)
(cont'd)

Friday, 27 April

- 9.30 a.m. - 11 a.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- WP.5: PARTIES, FORMATION AND FORM, Part IV: Contract Formation and Form (*cont'd if necessary*)
 - WP.2: THE LEGAL FRAMEWORK
- [Related document: WP.14: Contribution on Environmental Aspects for use in various draft chapters (e.g. Chapters 1, 3(V))]
- 11 a.m. - 11.20 a.m. *Morning refreshments*
- 11.20 a.m. - 1 p.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- WP.2: THE LEGAL FRAMEWORK (*cont'd if necessary*)
 - WP.1: PREFACE AND INTRODUCTION
- 1 p.m. - 2.15 p.m. *Lunch break*
- 2.15 p.m. – 3.40 p.m. **4. Review of chapter drafts and in-progress outline (cont'd)**
- Discussion of drafting issues to facilitate revisions (e.g. terminology to be used; the framing of guidance to be offered; the level of detail to be provided; and references to other instruments and sources)
- 5. Organisation of future work**
- Discussion of, *inter alia*, (a) remaining drafting and revising responsibilities; (b) stakeholder engagement and consultations for input on the drafts; (c) and the schedule for next steps in the work
- 3.40 p.m. – 4 p.m. *Afternoon refreshments*
- 4 p.m. – 6 p.m. **6. Any other business**
- 7. Closing of the meeting**

ANNEX 2

LIST OF DOCUMENTS
for the Working Group's third meeting (Rome, 25-27 April 2018)

WP.1	PREFACE AND INTRODUCTION
WP.2	Chapter 1 – THE LEGAL FRAMEWORK
WP.3	Chapter 2 – PARTIES, FORMATION AND FORM Part I : Parties
WP.4	Chapter 2 – PARTIES, FORMATION AND FORM Parts II-III: Feasibility Studies and Impact Assessments
WP.5	Chapter 2 – PARTIES, FORMATION AND FORM Part IV: Contract Formation and Form
WP.6	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Parts I-II(e): Introduction and Land Tenure
WP.7	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part II(g): Infrastructure
WP.8	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Parts II(f), III-V: Land Development, Finance, Social and Environmental Obligations (Investor Obligations)
WP.9	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part VI: Protection of investment and regulatory autonomy
WP.10	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part VII: Transparency, compliance and monitoring
WP.11	Chapter 4 – CONTRACTUAL NON-PERFORMANCE
WP.12	Chapter 5 – TRANSFER AND RETURN
WP.13	Chapter 6 – DISPUTE RESOLUTION
WP.14	Research Fellowship: Contribution on Environmental Aspects for use in various draft chapters (e.g. for Chapters 1, 3(V))
WP.15	UW LLM Collaboration: Examining land tenure and gender issues relating to agricultural investment in Africa, South Asia and South America

ANNEX 3**DRAFT IN-PROGRESS OUTLINE
for UNIDROIT's future guide on agricultural land investment contracts****PREFACE** [see, e.g., Legal Guide on Contract Farming, Preface]

I. Overview and purpose

A. Brief summary of the Guide

B. Statement that the Guide seeks, *inter alia*, to:

- Respond to the need for greater investment in agriculture for food security and nutrition [CFS-RAI Principle 1];
- Support responsible agricultural investment, which incorporates necessary safeguards to protect legitimate tenure right holders, human rights, livelihoods, food security and the environment and is consistent with the objectives of social and economic growth and sustainable human development [VGGT, para. 7.1 et seq., 12.1 et seq.; CFS-RAI Principles 2-10];
- Respond to capacity constraints of host-State governments and the balance of power between investors and host-State governments; and
- Support tenure holders' knowledge of their rights, protection of those rights by host-State governments and respect of those rights by investors.

II. Approach and how to use the Guide

- A. Approach is for UNIDROIT – in light of its particular private law expertise and in collaboration with FAO and IFAD – to provide legal guidance on agricultural land investment contracts, incorporating necessary safeguards into them, and implementing and monitoring them in six stages (i.e. the legal framework; parties, formation and form; obligations and rights of the parties; contractual non-performance; transfer and return; and dispute resolution)
- B. Guide is to further the implementation of the VGGT and CFS-RAI Principles by serving as a reference tool for legal counsels and is to contain references to practical operations, contract practices and international instruments (e.g. VGGT; CFS-RAI Principles; UPICC)

INTRODUCTION [see, e.g., Legal Guide on Contract Farming, Introduction]

I. General introduction to agricultural land investment contracts

- A. The notion of agricultural land investment contracts, including why such contracts are important and being treated in the Guide

B. Issues that have been identified with respect to such contracts

- Tenure rights in general [see, e.g., Munro-Faure and Palmer, An Overview of the Voluntary Guidelines on the Governance of Tenure, LAND TENURE JOURNAL (2012)]
- Rights of legitimate tenure right holders not being protected by host-State governments or respected by investors, including difficulties in identifying such holders
- Gaps and difficulties in the implementation of domestic laws

II. Scope of the Guide

A. Description of various agricultural land investment contracts in practice, such as leases, concessions/investment agreements, purchases (i.e. a more technical discussion than in Part I.A above)

- Various possible parties and contractual arrangements (including JVs, PPPs, etc.)
- Briefly highlight complexities in such arrangements

B. Identification of those contracts falling within the Guide's scope, specifically leases and concessions/investment agreements for agricultural land

- Identifying, with examples, what falls within the scope of the Guide
- Setting out key definitions [agricultural land investment contract, investor, host-State government, legal tenure right holder, legitimate tenure right holder – with cross-reference to glossary]

CHAPTER 1 – THE LEGAL FRAMEWORK

I. Introduction

A. Freedom of contract

B. Limitations on that freedom for agricultural land investment contracts

- Mandatory rules from various sources – domestic and foreign
- Relevant areas

II. Sources

A. Domestic sources [VGGT Technical Guide No. 4 at 33 et seq.]

- Rules and principles of law (e.g. from legislation, judicial decisions or regulations)
- Customary rules and usages

B. International sources

- International treaties (e.g. ICCPR, ICESCR, CERD, CEDAW, CRC, ICRMW or bilateral/multilateral investment treaties binding for the respective State Parties) [VGGT Technical Guide No. 4 at 32]
- Soft law instruments (e.g. VGGT; CFS-RAI Principles; UPICC)
- Guidance documents (including standards documents) [e.g. OECD-FAO Guidance for Responsible Agricultural Supply Chains]

III. Relevant areas of law and regulation

- Land tenure/administration
- Human rights (including food security, gender and labour)
- [Social obligations / Protecting and respecting rights]
- Environment (including water)
- Finance (e.g. tax, accounting rules and anticorruption measures)
- Protection of investment (including national investment codes and IIAs) and regulatory autonomy
- Transparency, compliance and monitoring (including tendering process [CFS-RAI Principle 9; VGGT Technical Guide No. 4 at 47 et seq., 61 et seq.])
 1. Need for a competitive, inclusive and transparent process involving all stakeholders
 2. Draft contract publication/disclosure [VGGT, para. 11.7; UN Principles for responsible contracts, no. 10; IISD Model Contract, para. 12.0]

CHAPTER 2 – PARTIES, FORMATION AND FORM

I. Identification of the possible parties to the contract and relevant stakeholders (including processes for doing so)

A. Types of parties and relevant stakeholders [CFS-RAI Principle 5; VGGT para. 12.1 et seq.; UN Principles for responsible contracts, nos. 1-2, 7; VGGT Technical Guide No. 5 at 20 et seq.; VGGT Technical Guide No. 7 at 38; ISLP/CCSI Guide, part 2.2]

- Investor(s)
 - Transparency in the identity and nationality of each party, including issue of beneficial ownership
 - Corporate organisation [GCAP Model Lease, Section 16]

- Need for due diligence and FPIC (including cross references to Parts II and III below)
 - Legal tenure right holder(s) (e.g. host-State government, community, private individual)
 - Legitimate tenure right holder(s) [VGGT, paras. 3.2, 9.1]
 - Other possible parties or relevant stakeholders (e.g. local officials or public notaries)
 - B. Types of contracts or options (including with respect to third parties and an introduction to community development agreements [cross-reference to Chapter 3.IV.G below])
- II. Feasibility studies [GCAP Model Lease, Appendix 1; IISD Model Contract, para. 6.1]
- A. Suitable land availability (including access to necessary resources) and valuation [VGGT, para. 18.1 et seq.; VGGT Technical Guide No. 4 at 37; VGGT Technical Guide on valuation (forthcoming)]
 - B. Development of a business plan
- III. Impact assessments [CFS-RAI Principle 10; VGGT paras. 3.2, 12.10; IFC Performance Standard 1; Right to Food Guidelines, para 17.2; VGGT Technical Guide No. 4 at 56 et seq.; VGGT Technical Guide No. 7, parts 2-3, 6; IISD Model Contract, para. 6.2]
- A. Land tenure (including legitimate tenure rights)
 - B. Human rights and social aspects (including food security [CFS-RAI Principles 1-2; VGGT, paras. 12.1, 12.4, 12.12], gender and labour)
 - C. Environment [GCAP Model Lease, Appendix 2] (including impacts on water and other natural resources and access to those resources [CFS-RAI Principles 5-6])
- IV. Contract formation and form [Legal Guide on Contract Farming at 57; UPICC, Chapter 2]
- A. Capacity and consent
 - B. Role of those who intervene or assist in contract negotiation
 - C. Required contract form and content and consequences for breach of such requirements, as well as any formalities for leases of agricultural land

CHAPTER 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES

- I. Introductory section
 - A. Recognising that not all agricultural land investment contracts (which might actually be a single contract or a series of contracts) would require or include clauses on all of the topics identified below, depending on the type of contact, the parties to that contact, and other circumstances
 - B. Recognising that the topics might not be addressed in this order

- C. Introducing the key parameters and themes from Chapter 1.III above (i.e. land tenure/administration; human rights (including food security, gender and labour); [social obligations / protecting and respecting rights]; environment (including water); finance; protection of investment and regulatory autonomy; and transparency, compliance and monitoring)

II. Land tenure

- A. Location/description of the land [GCAP Model Lease, Section 3; ISLP/CCSI Guide, part 2.4]
- Identification (e.g. total size; boundaries; geospatial data)
 - Option for additional land and right of first refusal for such land
- B. Tenure rights [GCAP Model Lease, Section 5; IISD Model Contract, para. 5.1; ISLP/CCSI Guide, part 2.5]
- Identification of rights (cross-reference to Chapter II) and highlighting the importance of the issue
- Grant of tenure rights
- Rights of use (e.g. land; water, including specification of water commitments and drought events; and underground resources)
 - Rights of entry and control (e.g. who owns improvements; fixtures; etc.) [UNCITRAL PFIP Guide at 108 et seq.]
 - Rights withheld (e.g. limitations on exclusivity/use; rights of way; continued access, etc.) [UNCITRAL PFIP Guide at 111 et seq.]
- Grant of related rights
- Right to access and use utilities [GCAP Model Lease, Section 11]
 - Rights to import (e.g. supplies; equipment)
 - Rights to market, transport and export (e.g. agricultural production)
- C. Duration and renewal [GCAP Model Lease, Section 4; IISD Model Contract, para. 5.1]
- Start and end dates
 - Drawbacks of limitations on period [UNCITRAL PFIP Guide at 151 et seq.]
 - Renewal and renegotiation (e.g. terms for extension/renewal of the lease, including key performance indicators and incentives for renewal) [GCAP Model Lease, Section 4]
- D. Conditions [UPICC, Chapter 5.3]
- Overview, including suspensive and resolute conditions [ISLP/CCSI Guide, part 2.3]

- Permits and licenses [GCAP Model Lease, Sections 5, 14]
- E. Purpose of the investment/Land management issues [VGGT Technical Guide No. 4 at 87]
- Identification of use
 - Indicative business plan
- F. Land development obligations [GCAP Model Lease, Section 11]
- Introduction: Investments that are not duly implemented can frustrate hopes for jobs, public revenues and social infrastructure (as applicable), and more generally create opportunity costs (other land users could have better developed the land). In some contexts, authorities choose to regulate land use activities (e.g. crop choice, processing) in order to pursue certain goals (e.g. meet domestic demand for a given commodity, or promote in-country processing). So, multiple policy considerations may be involved, depending on the context: (a) discourage speculative acquisitions; (b) timely implementation; or (c) promote specific land use activities.
 - Development plans and related clauses
 - Land use provisions (e.g. specifying forms of land use, and the investor cannot make material changes to the land use envisaged in the contract without prior authorisation in writing from the other party, sometimes with the clarification that the authorisation cannot be unreasonably withheld)
 - Local processing (i.e. provisions to encourage local processing, including via incentives, or to require the investor to explore feasibility of local processing at least in part)
 - Contract monitoring (with cross reference to transparency and monitoring below)
- G. Infrastructure [ISLP/CCSI Guide, part 2.7]
- III. Finance/Financial obligations [GCAP Model Lease, Section 6; IISD Model Contract, para. 7.0 et seq.; ISLP/CCSI Guide, part 2.11]
- A. Introduction: Public revenues are an important way in which the host country can benefit from investments. They can influence a government's ability to provide public services, and ultimately to contribute to inclusive sustainable development. Important role of national legislation (tax law). Agricultural land investment contracts often include provisions on public revenues. These govern issues such as types of revenue streams, applicable rates, monitoring arrangements.
- B. Types of public revenues (e.g. land rental fees; water fees; corporate income tax (charged on the company's profits); royalties (based on the value of production, or more rarely on production volume); withholding tax (tax deducted from payments made by the company to other persons located outside the country); dividends (in joint ventures))
- C. Policy choices

- D. Fixed income versus revenue sharing models
- E. Other contractual issues (e.g. timing and form of monetary payments, and interest accrual on late payments; mechanisms for periodic revisions; and capitalisation)
- IV. [Social obligations / Protecting and respecting rights] [GCAP Model Lease, Section 7; ISLP/CCSI Guide, part 2.13]
- A. Introduction (e.g. widely recognised that community relations are an important factor in the project's ultimate success; "social license to operate" debate; at the same time, relations with communities often one of the most difficult issues in agricultural land investments; developments in contractual practice to address these challenges)
- B. Local/domestic food security [CFS-RAI Principles 1-2; VGGT, para. 12.12]
- C. Land acquisition
- Provisions aimed at minimising extent of land acquisition
 - Provisions on compensation (conceptually distinct from benefit sharing and including compensable items (e.g. land, crops, structures or other items existing on the land), compensation rates, mechanisms, and timing; role of national law, for example, in defining compensable items and applicable rates; however, national law may fall short of international law (e.g. as reflected in human rights law jurisprudence) and international standards)
 - Provisions on continued access to land and resources for local stakeholders insofar as not inconsistent with project activities (with cross-reference to Chapter 3.B above)
- D. Employment [CFS-RAI Principles 2-4; GCAP Model Lease, Section 7; IISD Model Contract, para. 8.1 et seq.]
- Quality and quantity of jobs created through the project
 - Access to employment (i.e. contract provisions establishing priority or even exclusivity for local nationals in relation to specified roles (e.g. unskilled labour) and priority or sliding scales for hiring of local nationals in relation to other roles (e.g. technical, managerial))
 - Capacity support commitments on the part of the investor may be needed in order to achieve these targets (e.g. training for local nationals so they can take up technical or managerial roles)
 - Gender aspects, including possible mechanisms to handle gender segregation in agricultural labour force and promote women's access to skilled positions, as well as youth aspects
 - Monitoring mechanisms and reporting requirements

- E. Local content (e.g. provisions that require the company to prioritise domestic suppliers when sourcing goods and/or services for the agricultural investment) [CFS-RAI Principle 2; IISD Model Contract, para. 8.4]
- F. Outgrower schemes [CFS-RAI Principles 1-2, 8; GCAP Model Lease, Section 7; IISD Model Contract, para. 8.2]
- Contractual arrangements whereby small-scale farmers grow crop around the nucleus plantation to supply the commercial operation
 - Contractual practice with provisions requiring investor to develop an outgrower scheme where this responds to local development priorities (and arrangements for community engagement in the development of the scheme)
 - Basic terms of company-farmer relations (e.g. pricing formulae (possibly linked to international price indices where available), lending arrangements; tenure aspects (outgrowers farming own or company land; if the latter, farmers' tenure security on company land); gender issues (e.g. in outgrower selection, especially where growers farm company land))
 - Reporting requirements and monitoring arrangements
- G. Community development funds or social infrastructure [CFS-RAI Principle 9; GCAP Model Lease, Sections 8-9; IISD Model Contract, para. 8.5]
- Investor obligations in relation to establishing and financing a community development fund, or to provide social infrastructure (e.g. schools, clinics).
 - Policy choices at stake
 - Mechanisms to identify local priorities and translate them into contractualised action, including relevance of community-development agreements (between company and community) and relation / cross-referencing with main investment contract
 - Community development funds
 - Reporting requirements and monitoring arrangements
- H. Protecting and respecting cultural heritage [CFS-RAI Principle 7]
- V. Environment [CFS-RAI Principle 6; IFC Performance Standard 6; GCAP Model Lease, Section 14; IISD Model Contract, para. 9.0 et seq.; ISLP/CCSI Guide, part 2.12]
- A. Introduction
- Agricultural land investments often associated with environmental risks and impacts
 - Key role of national law in setting rules, institutions and processes (e.g. specialised agencies dealing with environmental aspects; impact assessment requirements in many jurisdictions; terms of environmental liabilities, and who can activate them (e.g. administrative sanctions/penalties vs tort liability for damage suffered by private actors))

- In some contexts, national law not in line with international standards and, in these cases, the contract can provide an opportunity to complement national legislation
- B. Impact assessment and management plans
 - C. Applicable standards
 - D. Water, including terms for water abstraction (quantity, timing, payments)
 - E. Waste management
 - F. Project closure
 - G. Monitoring, sanctioning and remediation
- VI. Protection of investment and regulatory autonomy
- A. Expropriation and respect for regulatory space [placeholder for resettlement]
 - B. Physical security [UN Principles for responsible contracts, no. 6; GCAP Model Lease, Section 12; IISD Model Contract, para. 5.4; ISLP/CCSI Guide, part 2.8]
 - C. Stabilisation and security of rights, including the importance of legal security for bankability and respect for regulatory space [UN Principles for responsible contracts, no. 4; IISD Model Contract, para. 10.0; ISLP/CCSI Guide, part 2.19]
- VII. Transparency, compliance and monitoring [GCAP Model Lease, Sections 11-12; ISLP/CCSI Guide, part 2.6]
- A. Insurance
 - B. Recordkeeping and audits [IISD Model Contract, para. 5.3]
 - C. Circumstances under which the lessor can enter the property to inspect the investor's activities and monitor compliance [IISD Model Contract, para. 5.3]
 - D. Conservation of premises
 - E. Monitoring [UN Principles for responsible contracts, no. 8; VGGT Technical Guide No. 4 at 70 et seq.; VGGT Technical Guide No. 7 at 68-69; GCAP Model Lease, Section 13; ISLP/CCSI Guide, part 2.14]
 - Performance guarantees [UNCITRAL PFIP Guide at 136-140]
 - Environmental performance bonds
 - Reporting requirements and access to information / disclosure, transparency / revenue transparency [VGGT, paras. 6.9, 11.7; UN Principles for responsible contracts, no. 10; VGGT Technical Guide No. 7 at 45 et seq.; IISD Model Contract, para. 12.0, 16.0 et seq.; ISLP/CCSI Guide, part 2.18]
 - Between the parties

- Between the parties and the public
 - Protection of confidential information
 - Delivery of notices [GCAP Model Lease, Section 21; ISLP/CCSI Guide, part 2.25]
- F. Amendments and periodic review (e.g. every 5 years, variations of certain indexes) [GCAP Model Lease, Section 18; IISD Model Contract, para. 13.0; ISLP/CCSI Guide, part 2.26]

CHAPTER 4 – CONTRACTUAL NON-PERFORMANCE

- I. Excuses for non-performance [Legal Guide on Contract Farming, Chapter 4]
- A. Particular importance in long-term contracts and underlying legal issues
- Force majeure versus change of circumstances
 - Anticipating the risk (e.g. contractual allocation of risks through force majeure clauses; price revision clauses and price adjustment mechanisms; types of clauses (adverse factors/adverse events))
 - Insurance and other risk mitigation schemes
- B. Force majeure [UPICC, art. 7.1.7; GCAP Model Lease, Section 20; ISLP/CCSI Guide, part 2.21]
- General notion
 - Qualifying events and burden of proof, including natural events (e.g. storm, fire, epidemics), governmental acts impeding fulfilment of obligations and other disturbances
 - Consequences
- C. Changes of circumstances in general/risks [UPICC, Chapter 6.2; UNCITRAL PFIP Guide at 140 et seq.; VGGT Technical Guide No. 7 at VIII-X; Equator Principle 1]
- General notion
 - Qualifying events, including possible link to renegotiations and periodic review
 - Consequences
- D. Additional considerations for host-State governments
- II. Remedies for breach [Legal Guide on Contract Farming, Chapter 5]
- A. Types of breach and types of contractual clauses on remedies
- Breach by the investor (Legal right holder, Legitimate tenure right holder)
 - Interference by the other party [UPICC, art. 7.1.2]

- Contractual clauses on remedies (exemption clauses; penalty clauses [UPICC, art. 7.4.13])
- B. Overview of remedies
- Remedies in kind (performance, corrective actions)
 - Withholding performance [UPICC, art. 7.1.3]
 - Termination and restitution [UPICC, Chapter 7.3; GCAP Model Lease, Section 19; IISD Model Contract, para. 15.0; ISLP/CCSI Guide, part 2.23]
 - Damages [UPICC, Chapter 7.4], including full compensation and foreseeability
 - Interests and late payments
- C. The role of the aggrieved party's conduct (e.g. price reduction or additional period for performance) [UPICC, art. 7.1.5]
- D. The breaching party's right to cure and cure by non-performing party [UPICC, art. 7.1.4]
- E. Renegotiation, including co-operation between the parties [UPICC, art. 5.1.3]
- F. Additional considerations for host-State governments

CHAPTER 5 – TRANSFER AND RETURN [Legal Guide on Contract Farming, Chapter 6]

- I. Transfer of obligations and rights / assignment [UPICC, Chapter 9; VGGT Technical Guide No. 4 at 75; GCAP Model Lease, Section 17; IISD Model Contract, para. 14.0; ISLP/CCSI Guide, part 2.16]
- A. Transferability of obligations and rights (including change of control [ISLP/CCSI Guide, part 2.17])
 - B. Legality of transfer
 - C. Limitations on transfer
 - D. Importance of disclosure
- II. Return [UNCITRAL PFIP Guide at 168 et seq.; ISLP/CCSI Guide, part 2.24]
- A. Stipulation of the condition in which land is to be returned, including replanting obligations (e.g. maintenance of tree crops, subject to or in line with the business plan)
 - B. Liabilities for deterioration

CHAPTER 6 – DISPUTE RESOLUTION [CFS-RAI Principle 9; VGGT, paras. 3.2, 21.1-21.6; Legal Guide on Contract Farming, Chapter 7; VGGT Technical Guide No. 4 at 72-74; VGGT Technical Guide No. 5 at 87 et seq.; VGGT Technical Guide No. 7 at 39 et seq.; GCAP Model Lease, Section 15; IISD Model Contract 11.0 et seq.; ISLP/CCSI Guide, part 2.20]

- I. Disputes arising under agricultural land investment contracts
 - A. The importance of access to justice
 - B. The provision of access to justice
- II. Non-judicial dispute resolution
 - A. Grievance mechanisms, including for local communities and employees [CFS-RAI Principle 9; UN Principles for responsible contracts, no. 9]
 - B. Expert determination (e.g. price of processing or of crops, in the event that the project involves processing or an outgrower arrangement respectively)
 - C. Negotiation and mediation
 - D. Conciliation
 - E. Arbitration (e.g. factors to consider, such as what investors might seek and what host States might oppose; considerations with respect to governing law and transparency of proceedings) [GCAP Model Lease, Section 22; ISLP/CCSI Guide, part 2.27]
- III. Judicial dispute resolution
 - A. Domestic courts
 - B. International courts
- IV. Enforcement of settlements or decisions resolving a dispute

[POSSIBLE ANNEXES OR FUTURE STEPS (e.g. checklist of issues, model provisions, detailed guidance on community development agreements or local supply contracts, etc.)]