



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

**UNIDROIT Working Group
on Agricultural Land Investment Contracts**

Fourth meeting
Rome, 9-11 October 2018

UNIDROIT 2018
Study 80B-WG4/Inf. 1 rev.2
Original: English
September 2018

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 Tuesday, 9 October, 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. key themes, terminology, scope).

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 third meeting (Rome, 25-27 April 2018) – is included in Annex 3. Since that meeting, the members of the Working Group have prepared revised drafts for various chapters and issues identified in that outline, with those drafts submitted to the Secretariat by the end of September 2018. The drafts are to be reviewed in detail at the meeting (see Annexes 1 and 2 for a proposed 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 with a view to the finalisation of the future Legal Guide, such as (a) terminology; (b) the framing of guidance; (c) the level of detail; 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 third meeting (Rome, 25-27 April 2018), the Working Group may wish to discuss, *inter alia*: (a) any remaining drafting and revising responsibilities; (b) stakeholder engagement and consultations for input on the consolidated draft, including the possible planning of regional events and online consultations; (c) the schedule for next steps in the work; and (d) the plan for finalisation of the draft Legal Guide on Agricultural Land Investment Contracts.

**PROPOSED PROVISIONAL ORDER OF BUSINESS
for the Working Group's fourth meeting (Rome, 9-11 October 2018)**

Tuesday, 9 October

10.00 a.m. - 11 a.m.

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

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

- WP.6: Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES
Part I: Introduction and Land Tenure

- WP.8: Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES
Part II: Social and economic matters

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.3: Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION
Parts I-IV.A: Parties, Contractual Arrangements and Due Diligence

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.3: Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION
Parts I-IV.A: Parties, Contractual Arrangements and Due Diligence (*cont'd if necessary*)

- WP.8: Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES
Part II: Social and economic matters (*cont'd if necessary*)

- WP.4: Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION
Part IV.B: Due Diligence

PROPOSED PROVISIONAL ORDER OF BUSINESS
for the Working Group’s fourth meeting (Rome, 9-11 October 2018)
(*cont’d*)

Wednesday, 10 October

- 9.30 a.m. - 11 a.m. **4. Review of chapter drafts and in-progress outline (*cont’d*)**
- WP.4: Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION
Part IV.B: Due Diligence (*cont’d if necessary*)

 - WP.8bis: Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES
Part III: Environment
- 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.9: Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES
Part IV: Protection of Investment and Regulatory Autonomy

 - WP.10: Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES
Part V: Monitoring, Transparency and Compliance
- 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.11: Chapter 4 – CONTRACTUAL NON-PERFORMANCE
- 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: Chapter 5 – TRANSFER AND RETURN

 - WP.13: Chapter 6 – DISPUTE RESOLUTION

PROPOSED PROVISIONAL ORDER OF BUSINESS
for the Working Group's fourth meeting (Rome, 9-11 October 2018)
(cont'd)

Thursday, 11 October

9.30 a.m. - 11 a.m. **4. Review of chapter drafts and in-progress outline (cont'd)**

- WP.13: Chapter 6 – DISPUTE RESOLUTION (*cont'd if necessary*)

- WP.5: Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION
Part V: Contract Formation

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: Chapter 1 – THE LEGAL FRAMEWORK

- 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 various drafting issues with a view to the finalisation of the future Legal Guide (e.g. terminology; the framing of guidance; the level of detail; and references to other instruments and sources)

5. Organisation of future work

- Discussion of, *inter alia*, (a) any remaining drafting and revising responsibilities; (b) stakeholder engagement and consultations for input on the consolidated draft, including the possible planning of regional events and online consultations; (c) the schedule for next steps in the work; and (d) the plan for finalisation of the draft Legal Guide on Agricultural Land Investment Contracts.

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 fourth meeting (Rome, 9-11 October 2018)

#	TOPIC
WP.1	PREFACE AND INTRODUCTION
WP.2	Chapter 1 – THE LEGAL FRAMEWORK
WP.3	Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION Parts I-IV.A: Parties, Contractual Arrangements and Due Diligence
WP.4	Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION Part IV.B: Due Diligence
WP.5	Chapter 2 – PARTIES, DUE DILIGENCE, AND FORMATION Part V: Contract Formation
WP.6	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part I: Introduction and Land Tenure
WP.7	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part I(e): Conditions (<i>incorporated into WP.6</i>)
WP.8	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part II: Social and Economic Matters
WP.8bis	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part III: Environment
WP.9	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part IV: Protection of Investment and Regulatory Autonomy
WP.10	Chapter 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES Part V: Monitoring, Transparency and Compliance
WP.11	Chapter 4 – CONTRACTUAL NON-PERFORMANCE
WP.12	Chapter 5 – TRANSFER AND RETURN
WP.13	Chapter 6 – DISPUTE RESOLUTION

ANNEX 3

DRAFT IN-PROGRESS OUTLINE
for UNIDROIT’s future guide on agricultural land investment contracts
(18 June 2018)

PREFACE [see, e.g., Legal Guide on Contract Farming, Preface]

I. OVERVIEW AND PURPOSE

- Brief summary of the Guide and statement that the Guide seeks, *inter alia*, to:
- Respond to the need for greater and more responsible investment in agriculture for sustainable development, including 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 State governments and the balance of power between investors and State governments; and
- Support tenure holders’ knowledge of their rights, protection of those rights by State governments and respect of those rights by investors.

II. APPROACH AND HOW TO USE THE GUIDE

- 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)
- 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. UN Guiding Principles, UPICC, UNIDROIT-FAO-IFAD Legal Guide on Contract Farming, VGGT Technical Guides)

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

I. THE NEED FOR GREATER AND MORE RESPONSIBLE INVESTMENT IN AGRICULTURE AND THE ROLE OF AGRICULTURAL LAND INVESTMENT CONTRACTS

- The notion of agricultural land investment contracts, including why such contracts are important and being treated in the Guide (e.g. need for greater investment and the opportunity for such contracts to shape that investment in a more responsible and sustainable way)
- Issues that have been identified with respect to such contracts, including with reference to data which highlights those issues:
 - 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 State governments or respected by investors, including difficulties in identifying such holders, and the need to promote greater recognitions of States' obligations and investors' responsibilities, particularly to tenure holders
 - Gaps and difficulties in the implementation of domestic laws
 - Lack of transparency
 - Lack of effective grievance and dispute resolution mechanisms
- Preparing, negotiating, implementing and reviewing the contracts in a responsible, inclusive and sustainable way, in particular by incorporating necessary safeguards, can support the realisation of benefits and avoidance or mitigation of negative impacts
- Agricultural investment and land tenure issues are complex, not only technically but also socio-politically. Accordingly, there may be some issues that prospective and contracting parties cannot adequately address through agricultural land investment contracts and, in these instances, careful consideration should be given to whether a particular investment should proceed

II. SCOPE OF THE GUIDE

- Introduction to subpart describing the guide's scope, in particular with respect to (A) various contractual arrangements and (B) possible parties to those arrangements

A. Contractual arrangements

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

- Identification of those contracts falling within the Guide’s scope, specifically leases and concessions/investment agreements for agricultural land (including not only new leases/agreements to be negotiated, but also existing ones)
- Briefly highlight complexities in contractual arrangements (including JVs, PPPs, etc.), while noting that some of the complexities (e.g. corporate governance issues relating to JVs) are beyond the Guide’s scope
- Include descriptions/definitions for the following key terms, with cross-reference to glossary: Agricultural land investment contract; and Tenure

B. Parties

- Description of various possible parties to agricultural land investment contracts
- Note that, in practice, State governments, legitimate tenure right holders, local communities, customary authorities or private landowners may be grantors
- The Guide, however, is tailored to contracts between investors and State governments which lease agricultural land, as well as those involving legitimate tenure right holders, local communities and customary authorities, including as possible parties to agricultural land investment contracts or as stakeholders to be consulted in the preparation, negotiation and implementation of such contracts
- Include descriptions/definitions for the following key terms, with cross-reference to glossary: Investor; Grantor; State government; Local community; Customary authority; Legal tenure right holder; and Legitimate tenure right holder

CHAPTER 1 – THE LEGAL FRAMEWORK

Introduction

- Freedom of contract
- Limitations on that freedom for agricultural land investment contracts
- Mandatory rules from various sources – domestic and foreign
- Relevant areas

I. 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 (including, for example, description of native title)

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], customs and general principles
- Soft law instruments and guidance documents, including standards documents (e.g. VGGT; CFS-RAI Principles; UPICC; UNIDROIT-FAO-IFAD Legal Guide on Contract Farming; SDGs; UN Global Compact; UN Guiding Principles; OECD Guidelines for multinational enterprises, OECD-FAO Guidance for Responsible Agricultural Supply Chains; private standards (such as the Global Reporting Initiative) [for the latter, see, e.g., Legal Guide on Contract Farming at 26-27]
- Judicial decisions and scholarly writings (regarding, for instance, need for due diligence and environmental impact assessments)

II. RELEVANT AREAS OF LAW AND REGULATION

- Land tenure and administration (including customary rules and tenure systems)
- Finance (e.g. tax, accounting rules and anticorruption measures)
- Human rights (including food security, gender, youth and labour)
- Social obligations/responsibilities
- Environment (including water)
- Protection of investment (including national investment codes and IIAs) and regulatory autonomy
- Transparency, compliance and monitoring (including need for competitive, inclusive and transparent process involving all stakeholders and for draft contract publication/disclosure) [VGGT, para. 11.7; UN Principles for responsible contracts, no. 10, IISD Model Contract, 12.0]

CHAPTER 2 – PARTIES, DUE DILIGENCE, AND FORMATION**I. PARTIES**

- Brief introduction to possible parties to the contract and relevant stakeholders, in particular legitimate tenure right holders
- Roadmap for the chapter

A. Types of contracts

1. Investor-Grantor Contracts/Transactions
2. Incorporation of Legitimate Land Right Holders
3. Tripartite Contracts/Transactions

4. Linked Contracts
5. Third Party Beneficiary Structures

B. 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]

1. Signatories to the agricultural land investment contract

- Investor(s)
 - Identity and nationality transparency, including issue of beneficial ownership
 - Corporate organisation [GCAP Model Lease, Section 16]
 - Brief reference to the need for investors to exercise due diligence and FPIC, with cross reference to Part II below on due diligence
- Grantor(s)
 - Legal tenure right holder(s) (e.g. State government, local community, private individual)
- Legitimate tenure right holder(s) and local community (if signatories), including a discussion why in some cases legitimate tenure right holder(s) are signatories and in other cases they are not [VGGT, paras. 3.2, 9.1]

2. Stakeholders

- Legitimate tenure right holder(s) and local communities who are not signatories [VGGT, paras. 3.2, 9.1]
- Other possible stakeholders (including third parties)

II. DUE DILIGENCE [OECD-FAO Guidance for Responsible Agricultural Supply Chains]

A. Identification of potential parties and stakeholders

1. Stakeholder Mapping
2. Consultation
 - Principles of Meaningful Consultation
 - Free, Prior, Informed Consent

B. Identification of land and potential impacts [GCAP Model Lease, Appendix 1; IISD Model Contract, para. 6.1]

1. Land and feasibility (including cross references to Chapter 3.II.A below)
 - Suitable land availability and valuation [VGGT, para. 18.1 et seq.; VGGT Technical Guide No. 4 at 37; VGGT Technical Guide No. 11; UN Habitat-FIG-GLTN Policy Guide on Valuation of Unregistered Lands]
 - Process of identifying land and properly valuing it (e.g. by whom, using which standards and which services)
 - Best practices in this regard
 - Access to resources
 - Business plans (with link to the agricultural land investment contract) and purpose of investment (the latter previously Chapter 3.II.E) [VGGT Technical Guide No. 4 at 87; GCAP Model Lease, Section 11]
2. 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]
 - Land tenure (including legitimate tenure rights) and land acquisition aspects (the latter previously Chapter 3.IV.C)
 - Human rights and social obligations/responsibilities (including food security [CFS-RAI Principles 1-2; VGGT, paras. 12.1, 12.4, 12.12], gender, youth and labour [CFS-RAI Principles 2-4])
 - Environment [GCAP Model Lease, Appendix 2] (including impacts on water and other natural resources and access to those resources [CFS-RAI Principles 5-6]) (including cross references to Chapter V below)
 - Economic aspects [CFS-RAI Principle 10]

III. CONTRACT FORMATION [Legal Guide on Contract Farming at 57; UPICC, Chapter 2]

A. Negotiations

- Capacity, representation, consent
- Role of those who intervene or assist in contract negotiation (e.g. NGOs/CSOs)
 - Public authorities
 - NGOs / CSOs
 - Others

B. Tendering Process / Transparency (with cross-references to Chapter 1.II and Chapter 3.VII)

C. Required contractual content and form

- Consequences for breach of such requirements
- Formalities for leases of agricultural land

CHAPTER 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES

I. INTRODUCTION

- 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 contract, the parties to that contract, and other circumstances
- Recognising that the topics might not be addressed in this order
- 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/responsibilities; 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) (including reference to Chapter 2.B.1 above)
- 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-references to various aspects of Chapter 2, including Chapter 2.II.B.2 on legitimate tenure rights) and highlighting the importance of the issue

1. 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.]
2. 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), with cross-reference to Chapter 3.II.D regarding infrastructure aspects below
- C. Land/project development** (formerly Chapter 3.II.F) [GCAP Model Lease, Section 11]
- Development plans and clauses (with cross-reference to Chapter 2.II.B.1 on land and business plans)
 - Key performance indicators
 - Project failure (with cross-reference to Chapter 5)
- D. Infrastructure aspects** [ISLP/CCSI Guide, part 2.7]
1. Types of infrastructure
 2. Rights (e.g. investor, State, local communities) (with cross-references to immediately preceding sections on related rights and land/project development)
 3. Fees and Financing
 4. Other issues
- E. Conditions** [UPICC, Chapter 5.3]
- Overview, including suspensive and resolutive conditions [ISLP/CCSI Guide, part 2.3]
 - Permits and licenses [GCAP Model Lease, Sections 5, 14]
- F. Duration and renewal** [GCAP Model Lease, Section 4; IISD Model Contract, para. 5.1]
1. Duration
 - Start and end dates
 - Contractual duration
 - Statutory duration
 - Drawbacks of limitations on period (e.g. with respect to collateralisation) [UNCITRAL PFIP Guide at 151 et seq.]

2. Renewal and renegotiation (e.g. terms for extension/renewal of the lease, including cross-reference to key performance indicators in section C above and incentives for renewal) [GCAP Model Lease, Section 4]

III. FINANCE/FINANCIAL ARRANGEMENTS [GCAP Model Lease, Section 6; IISD Model Contract, para. 7.0 et seq.; ISLP/CCSI Guide, part 2.11]

- Introduction: Public revenues are an important way in which the State 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.
- 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))
- Policy choices
- Fixed income versus revenue sharing models
- Incentives (e.g. the importance of a cost-benefit analysis on financial/fiscal incentives prior to their allocation; the importance to ensure that incentives induce responsible - as opposed to irresponsible - business conduct; risks associated with granting incentives ad-hoc or making them only available to a certain type of investor; and modalities to ensure that incentives do not induce moral hazard in business conduct (i.e. by granting incentives only ex-post, etc.)) [Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank on Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment]
- Other contractual issues (e.g. timing and form of monetary payments, and interest accrual on late payments; mechanisms for periodic revisions; capitalisation; collateralisation)

IV. SOCIAL OBLIGATIONS/RESPONSIBILITIES [GCAP Model Lease, Section 7; ISLP/CCSI Guide, part 2.13]

- 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)
- Importance of local/domestic food security [CFS-RAI Principles 1-2; VGGT, para. 12.12]

- A. 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 stable and decent 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
 - Youth aspects, including access to employment and career development opportunities
 - Monitoring mechanisms and reporting requirements
- B. Local content and processing** (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]
- C. Contract farming, outgrower schemes and supply chain relations** [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))
- D. 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, daycare for children of employees).
 - 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

E. Gender, youth and social differentiation

F. Cultural heritage [CFS-RAI Principle 7]

G. Reporting requirements, monitoring arrangements and sanctions for non-compliance (with cross-reference to Chapter 3.VII)

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]

- Agricultural land investments often associated with environmental risks and impacts (including cross references to Chapter 2.B.II above)
- 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 and indicators (cross-reference to Chapter 2.II.B.2); 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 (applicable standards)
- Water, including terms for water abstraction (quantity, timing, payments)
- Waste management
- Project closure (cross-reference to Chapter 5)
- Monitoring, sanctioning and remediation (with cross-reference to Chapter 3.VII below)

VI. PROTECTION OF INVESTMENT AND REGULATORY AUTONOMY

A. Expropriation (to deal with potential expropriation of the investment, while land acquisition aspects are to be dealt with in Chapter 2.II.B.2 above)

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 [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. 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]

- Matters to be monitored
- Methods (including inspections)
- Microdata/IP

B. Reporting and Access to Information

- Investor reporting and 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]
- State government transparency
- Public access to information
- Protection of confidential information

C. Key Compliance Issues, Notice and Periodic Review

- Insurance
- Possible use of performance guarantees [UNCITRAL PFIP Guide at 136-140] and environmental performance bonds
- Conservation of premises
- Delivery of notices [GCAP Model Lease, Section 21; ISLP/CCSI Guide, part 2.25]
- 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
- Burden of proof
- Consequences
- Contractual allocation of risks through force majeure clauses

C. Changes of circumstances [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
- Consequences

D. Additional considerations

1. State governments (including necessity)
2. Legitimate tenure right holders

II. REMEDIES FOR BREACH [Legal Guide on Contract Farming, Chapter 5; UPICC, Chapters 6-7]

A. Types of breach and types of contractual clauses on remedies

- Breach by the investor
- Interference by the other party [UPICC, art. 7.1.2]
- Contractual clauses on remedies

B. Overview of remedies

1. Withholding performance
2. Remedies in kind
 - Late performance
 - Specific performance
 - Corrective actions: the breaching party's right to cure
3. Price reduction

4. Termination
5. Restitution
6. Damages
7. Interest and late payments

C. The role of the aggrieved party's conduct and renegotiation (e.g. price reduction or additional period for performance)

1. The role of the aggrieved party's conduct [UPICC, art. 7.1.5]
2. Renegotiation, including co-operation between the parties [UPICC, art. 5.1.3]

D. Additional considerations

1. State governments
2. Legitimate tenure right holders

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

I. TRANSFER [UPICC, Chapter 9; VGGT Technical Guide No. 4 at 75; GCAP Model Lease, Section 17; IISD Model Contract, para. 14.0; ISLP/CCSI Guide, parts 2.16-17]

A. Scope

B. Legality of transfer

C. Transfer of the investor itself

D. Limitations on transfer

E. Importance of disclosure

II. RETURN [UNCITRAL PFIP Guide at 168 et seq.; ISLP/CCSI Guide, part 2.24]

A. Conditions of the return

B. Cost and liabilities

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 FROM AGRICULTURAL LAND INVESTMENT CONTRACTS**A. The importance of access to effective justice****B. The provision of access to effective justice****II. NON-JUDICIAL DISPUTE RESOLUTION****A. Grievance mechanisms** [CFS-RAI Principle 9; UN Principles for responsible contracts, no. 9]**B. Expert determination****C. Negotiation, mediation and conciliation****D. Arbitration** (e.g. factors to consider, such as what investors might seek and what 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 and regional courts****IV. ENFORCEMENT OF SETTLEMENTS OR DECISIONS RESOLVING A DISPUTE****ANNEX: Collection of issue checklists from each chapter****[OTHER POSSIBLE ANNEXES OR FUTURE STEPS (e.g. model provisions, detailed guidance on community development agreements or local supply contracts, etc.)]**