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**GOVERNING COUNCIL
92nd session
Rome, 8-10 May 2013**

UNIDROIT 2013
C.D. (92) 7 (b)
Original : English
March 2013

Item No. 7 on the agenda: Private Law and Agricultural Development

(b) Possible future work on private law aspects of agricultural investment and financing

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Proposals for future work</i>
<i>Action to be taken</i>	<i>The Council is invited to take note of the proposals for future work on private law and agricultural development for insertion in the Work Programme 2014-2016</i>
<i>Related documents</i>	<i>C.D.(92) 13</i>

1. Building upon the contributions made at the November 2011 Colloquium on "Promoting Investment in Agricultural Production: Private Law Aspects" as well as on consultations with potential partner multilateral organisations, the Governing Council, at its 91st session (Rome, 7-9 May 2012), decided on a course of action regarding future subjects that may be developed in the area of private law and agricultural development, a new line of work which was included in the UNIDROIT Work Programme by the General Assembly at its 67th session (1st December 2010).
2. As to the first subject to be addressed, the Council considered that UNIDROIT could bring its expertise to bear on the area of contract farming arrangements and proposed to confer to this project a high priority status. A Working Group was set up for the preparation of a legal guide on contract farming and held a first meeting on 28-31 January 2013. It is anticipated that altogether, four sessions of the Working Group will be necessary to complete the preparation of the envisaged Legal Guide on Contract Farming, which might be formally adopted by the Governing Council at its 2015 session.
3. As to future subjects that may be developed, at its 91st session, the Council considered the following topics or areas.

(a) Possible preparation of an international guidance document on land investment contracts (cf. UNIDROIT 2012 – C.D. (91) 15, para. 98)

4. Information gathered to date, in particular as it emerged from the contributions made at the November 2011 Colloquium, highlights that large scale investments in agricultural land whether through outright acquisitions or long term leases are developing in many regions of the world with complex and often critical economic, social and environmental implications. In this context, the contract has a key role in regulating the investment under the transactional perspective and ensuring a balanced relationship, especially in consideration of the prevailing weakness of the national legislative framework of host countries. While the complexity of this subject which is closely connected with investment law and touches upon different sensitive areas of the law should not be underestimated, the expertise gained with the *Principles of International Commercial Contracts* might enable UNIDROIT, together with other Organisations, in particular FAO – which had expressed an interest of principle toward the usefulness of such an initiative – to envisage the preparation of an instrument that would serve as a guide and a repository of "best practices" especially designed for land investment contracts. Such an instrument would offer an in-depth legal analysis of the different aspects of the problem and suggest balanced and sustainable solutions. It might be used in drafting contracts, and as a reference for national legislators engaged upon improving the domestic legislative and regulatory framework.

5. It should be noted that several international initiatives are underway in this area, most notably the preparation, within the Committee on World Food Security (CFS), of a set of Principles for Responsible Agricultural Investments ("RAI Principles") to be endorsed by CFS in October 2014, which will cover investment contracts in land. On the other hand, the UNIDROIT Secretariat has made a proposal to the Governing Council at its 92nd session (UNIDROIT 2013 – C.D. (92) 4 (b)) that UNIDROIT could launch work on long-term contracts in general and on investment contracts in particular, a subject which would in theory encompass specific forms of investment such as long term investment in agriculture, including investment in agricultural land.

6. On that basis, the Secretariat suggests that any decision regarding possible future work by UNIDROIT of preparation of an international guidance document on land investment contracts should (i) await the adoption of the future RAI Principles and take into account the ongoing initiatives which will by then have developed; (ii) consider the relationships between possible UNIDROIT work on "long-term contracts in general and on investment contracts in particular" and on "land investment contracts"; (iii) build upon the experience which UNIDROIT will by then have acquired with the preparation of a Legal Guide on Contract Farming and upon the co-operation established in the meantime with the Committee on World Food Security and other international Organisations active in the agricultural area.

7. *The Secretariat suggests that an overview of relevant preliminary considerations regarding these issues, together with any other aspects that the Governing Council would see appropriate, could be made in a document to be prepared by the Secretariat for the next session of the Council.*

(b) Possible future work in other areas: reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing (cf. UNIDROIT 2012 – C.D. (91) 15, paras. 99-100)

8. At its 91st session, the Governing Council authorised the Secretariat to monitor – resources permitting – developments at the international and national level in respect of reform and modernisation of land tenure regimes, and to take note of possible future projects in respect of the legal structure of agricultural enterprises and of an international guidance document to agricultural financing, with a decision to be taken at a later date, in light of the work which will by then have been carried out by UNIDROIT in the field of agriculture. The Governing Council further mandated the

Secretariat to promote – resources permitting – those UNIDROIT instruments in the area of finance that are of particular relevance to agricultural financing, in particular the UNIDROIT Conventions on International Financial Leasing and on International Factoring, as well as the UNIDROIT Model Law on Leasing.

9. *In view of the high priority status of the UNIDROIT current work of preparation of a Legal Guide on Contract Farming, the Secretariat has not been able to devote any resources to these various topics since the 91st session of the Governing Council and would consider unlikely that any significant progress could be made in 2013 in this regard. The Secretariat would suggest that consideration of possible future work in these areas, i.e. reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing, be postponed until the next session of the Governing Council.*