Uniform Law for Sustainable Development: The UNIDROIT/FAO/IFAD Guide on Contract Farming

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UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING

• Published in 2015 by UNIDROIT in cooperation with the two UN Rome-based specialised organisations:
  ➢ Food and Agricultural Organization (FAO)
  ➢ International Fund for Agricultural Development (IFAD)

• Text available on the UNIDROIT website in several languages:
  • English, French, Spanish, Portuguese, Chinese
UNIDROIT’s work in the field of agriculture

• The idea for UNIDROIT to work in the area of agricultural development originated in 2009 with a memorandum presented to the Governing Council on “Private Law and Economic and Social Development”

• An important step was the Colloquium in Rome in 2011 on “Promoting Investment in Agricultural Production: Private Law Aspects”, where the synergy with the multilateral organisations working for agricultural development was explored (FAO; IFAD)

• Potential areas of work were defined:
  - Financing of agriculture ➔ - 2020 UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts – ALIC
  - 2019 MAC Protocol to the Cape Town Convention
  - Ongoing project with UNCITRAL on a Model Law on Warehouse Receipt
  - Legal structure of enterprises ➔ - Ongoing UNIDROIT/FAO/IFAD project
  - Title to land
UNIDROIT’s work in the field of agriculture (2)

KEY ROLE OF THE CONTRACT to create a balanced investment relationship

Interplay with the REGULATORY FRAMEWORK
Role of the contract and legal guidance documents

**General Principles elaborated at international level**
- CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles)
- UN Global Compact

**GUIDANCE DOCUMENTS CONTAINING A MORE SPECIFIC (PRIVATE) LAW FRAMEWORK**
- Legislation at national or regional level
- Model contracts, standard terms…
CONTRACT FARMING AS A RISK MANAGEMENT TOOL IN AGRICULTURAL VALUE CHAINS

Contract farming as an intermediate form of coordination and connection between production and (international) markets:

Based on an agreement prior to production:

- The buyer agrees with the farmer on the commodity (type, quantity, quality attributes), on place and time of delivery, often on production methods.
- The buyer agrees to sell for a price (or price formula) set in advance, which takes the provided inputs and services into account.
- The buyer generally provides support for the production: material inputs, financing, technical assistance, monitoring of production...
POTENTIAL BENEFITS OF CONTRACT FARMING?

KEY POTENTIAL ADVANTAGES FOR CONTRACTORS:
• guaranteed access and regularity of supply of the commodity
• conformity to product quality and safety standards and traceability control
• facilitated access to land without land acquisition

KEY POTENTIAL ADVANTAGES FOR FARMERS:
• a secured output market and stabilized income, mitigated production risks
• facilitated access to inputs, services, technology, credit and financing, enhanced production methods
• empowerment with agronomical skills
• no interference with land right issues
KEY POTENTIAL GLOBAL ECONOMIC AND SOCIAL ADVANTAGES:

- **Food security objectives:**
  - early planning and better alignment between production and demand
  - enhance the stabilization of markets and limit price volatility
  - contribute to higher quality of produce

- **Economic development:**
  - private sector’s input (investment capacity, advanced technology, and facilitated access to export markets)
  - Empowerment of farmers and support transition from a subsistence production to a commercial/market-oriented production
  - Economic and social development of rural areas
POTENTIAL RISKS FOR PARTIES?

POTENTIAL RISKS FOR FARMERS:
- asymmetrical relationship in access to information, exposure to risks, bargaining power...
- small farmers in disadvantage against commercially oriented farmers
- potentially high dependency on the buyer regarding access to inputs, credit etc. and risk of growing indebtedness.
- risks of unfair conditions and fraudulent practices by buyer, with difficult or unavailable redress mechanisms
- shift to monoculture entails risks regarding access to subsistence crops, loss of biodiversity, environmental threats...

POTENTIAL RISKS FOR CONTRACTORS:
- viability of the investment
- Potentially high transaction costs
- Risk on farmers’ non compliance with quality requirement, proper use of inputs, delivery of the agreed commodity (no side-selling)...
Promotion of good practices:

- The aim is to reach a fair and enforceable agreement in application of basic principles:
  - Fair and loyal dealings
  - Transparency
  - Cooperation between parties
  - Effective and proportionate remedies
  - Easy and fair settlement of problems arising during performance and in final dispute resolution with a view to keeping the value of the relationship
Bilateral contract farming relationship between:

- a “producer” (farmer producing agricultural commodities, either as an individual or through a cooperative or other associative venture, including indigenous communities),

- and a “contractor” (a commercial purchaser, investor, exporter and/or food processor, typically an agribusiness company, but also non-commercial such a public or religious entity)

Third parties are usually involved: depending on the commodity, country, etc. (credit institutions, certification bodies, NGO’s, governmental bodies (also within a Public Private Partnership – PPP))
Remarkably uniform wherever used, *but*:  
- impact of domestic laws and practices as well as the different economic environment may introduce important variations

- Generally, stable, long-term relationship with frequent interaction between parties  
  - Importance of providing risk-sharing tools and alternatives

- Generally, not an international contract, *but*:  
  - Impact of international/regional standards  
  - Impact of contracts concluded along the value chain
Description of contractual phases and issues to be considered:

- The Guide follows the development of the contract from the negotiation phase to remedies and dispute resolution:
  - Parties, formation and form; Obligations of the parties; Excuses for non-performance; Remedies for breach; Duration, Renewal, and Termination; Dispute Resolution
  - The Guide highlights the interplay with the national or international private law and/or regulatory framework
  - A general approach, to be adapted to domestic legal, economic and social environments
Chapter 3 of the Legal Guide

- **Price** as a central element in the sustainability of the relationship for both parties
- The issues discussed in the Legal Guide include:
  - May the parties freely agree on the price and at what time?
  - Is it an essential term of the contract?
  - Situations where price terms may be invalidated under the applicable law
  - Illustration of advantages and risks of common price determination mechanisms:
    - fixed prices
    - flexible prices with scales according to quality, performance or yield (bonus and penalties)
  - Examples of good practices:
    - transparency regarding price mechanisms
    - Cooperation
    - mutual profitability
    - considering mechanisms for price adjustment for long term contracts
HOW CAN A GUIDANCE INSTRUMENT BE SUCCESSFUL?

- **NEED TO INVOLVE ALL ADDRESSEES/STAKEHOLDERS IN THE DRAFTING AND SUBSEQUENT IMPLEMENTATION**
  - Contract parties and their representatives
    - Early involvement in Working Group and consultation events
  - International organisations engaged (also) in field work
    - Field work needed!
  - Legislators defining public policy in contract farming and related areas
    - Specificities of domestic legal, social and economic environment to be taken into account!
  - National cooperation agencies