UNIDROIT International Summer School

Legal Guide on Contract Farming

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Content

• Introduction to LEGN

• What is contract farming?

• The Legal Guide on Contract Farming

• Some examples from the field
What is LEGN?

Office of the Legal Counsel

- General Legal Affairs Service (LEGA)
- Development Law Service (LEGN)
LEGN – A Unique Asset

Support to Members to strengthen legislation

Capacity development

Legal information, databases, research & studies

Innovative

Participatory

Tailor-made

Multi-disciplinary

Flexible

Gender sensitive
What is Contract Farming?
What is contract farming?

At the heart of contract farming (CF) lies an agreement between farmers (producers) and buyers (contractors).

Both agree in advance on the terms and conditions for the production and marketing of farm products.

These commonly include:

- Price to be paid to the farmer
- The quantity and quality of the product demanded by the buyer
- The date for delivery to buyers
- How the production will be carried out
- Whether inputs such as seeds, fertilizers and technical advice will be provided by the buyer.
The Legal Guide on Contract Farming
Road to Legal Guide on Contract Farming

Working Group established in 2012

Four regional consultations in 2014

Adoption of the Guide in 2015
Key content of the Legal Guide

1. Regulatory framework

2. Contract
   i. Parties, formation and form;
   ii. Obligations of the parties
   iii. Excuses for non-performance
   iv. Remedies for breach
   v. Duration, renewal, and termination
   vi. Dispute resolution
1. Regulatory frameworks for contract farming
Benefits of regulatory frameworks

- Recognize and protect people’s rights
- Provide legal security
- Facilitate enforcement
- Solve disputes

Laws are harder to change than policies and are thus likely to survive longer!
Regulatory framework for CF: options

Specific

Non-Specific
Specific CF Laws

Can regulate all use of contract farming

Common features:

- Written contracts
- Minimum content
- Dispute resolution
Non-specific CF relevant legislation can be found in:

- Civil codes and general contract laws;
- Agricultural laws and codes;
- Supply chain legislation;
- Commodity-specific legislation;
- Or any combination of these.
Wider regulatory framework

- Laws relevant for CF
- Self- and co-regulation
- Soft-law instruments
Laws relevant to contract farming

- Human rights;
- Competition laws;
- Input legislation;
- Intellectual property rights legislation;
- Quality standards;
- Food safety;
- Land tenure;
- Environmental rules...
Soft law instruments

**Soft law may also be relevant:** Codes of conduct, good practices, etc.

Ex: UNIDROIT/FAO/IFAD Legal Guide on Contract Farming

FAO Guiding principles for responsible CF operations

- Common purpose
- Adherence to a legal framework
- Contract clarity
- Transparency
- Prevention of unfair practices
- Open dialogue
- Dispute settlement mechanisms
- Force majeure and contractual flexibility
Self- and co-regulation

Cost-effective and flexible

BUT

Needs support and oversight

Codes of practice
Standard agreements
Guidance documents
Example of a legal framework - Belize

- **Contract Farming**
  - **Common law**
    - Rules
    - Principles
    - Doctrine
  - **Constitution**
    - Freedom of contract
    - Freedom of association
  - **Cross-cutting legislation**
    - Fiscal Incentives Act
    - Designed Processing Areas Act
    - Cooperative Societies Act
    - Environmental Protection Act
    - Standards Act
  - **Commodities specific legislation**
    - Sugarcane
    - Banana Industry Act
    - Grain Act
    - Sugar Industry Act
    - Citrus Act
    - Papaya Act
  - **Contract legislation**
    - Contracts Act
    - Labour Act
    - Sale of Goods Act
    - Factors Act
  - **Sectoral agreements**
Which type of regulatory framework works best for CF?

There is no universal need for specific legislation on CF and there is no one regulatory approach to CF that can be recommended as best for all countries.

Countries should look for their best regulatory option in consideration of their legal framework, stakeholders’ interests, system and policy priorities.

Such regulatory option should be developed following participatory process!
2. The contract farming agreement
Contract farming agreement
The negotiation stage

Support from third parties to balance power imbalance

1. Offer
2. Acceptance
3. Contract farming agreement
Contract form

Freedom of contract!

Contracts should:
✓ Be in writing!
_in cases of illiteracy, a neutral third party should read clauses and explain them as needed._
✓ Use simple language
✓ Be fair
Contract content - Parties

Producer, either individually or collectively

Contractor, either a private or public entity

Possible third parties: input providers, service providers, insurers, financial institutions, certifiers...

Legal Guide focuses on the bilateral relationship between two private parties
Contract content - Purpose

Ex: "The farmer commits to grow and sell all produced tomatoes to the company in exchange for payment based on the prevailing market price”

Contract content – Production site

Specifies the size and location of the agricultural production area
May determine the scope of obligations
Contract content – Core obligations

Product

- Quantity
- Quality

Process

- Inputs
- Services
- Standards & certification
- IPR

Payment

- How and when?
- Fixed
- Flexible

Price

Core obligations

Delivery

- Who, how when & where?
Contract content - Excuses

As laws tend to be generic, parties are recommended to agree on specific force majeure or change of circumstances clause to be included in the contract!

- A **suspension** of the parties’ obligations for the duration of the force majeure event.
- The possibility to **renegotiate** the terms of the contract.
- The **right to terminate** the contract immediately.

*Force majeure or change of circumstances*
# Contract content - Remedies

First option should always be to talk things through!

<table>
<thead>
<tr>
<th>In-kind</th>
<th>Withholding performance</th>
<th>Price reduction</th>
<th>Restitution</th>
<th>Damages</th>
<th>Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Achieve the original result or second best alternative</td>
<td>• Refuse to act until the breaching party has performed</td>
<td>• Price to reflect actual value</td>
<td>• Return goods or money to their owner</td>
<td>• Alone or together with other remedies</td>
<td>• Last resort!</td>
</tr>
</tbody>
</table>

Any legal measure provided by law or by contract to protect the interest of one party against the failure of another party to perform properly.
Contract content – Duration, renewal and termination

- Commodity dependent
- Long enough to make *profit*

- Renewal by express agreement
- Automatic renewal

- Same right to terminate for both parties
- Notice requirements for termination
- Clear grounds for termination
Contract content – Dispute resolution

Option 1: Communication

• Resolving difficulties through discussion and re-negotiation directly between parties.

• Help from a trusted facilitator (e.g. government extension agent, NGO, representative from local/national farmers’ associations, etc.)
Contract content – Dispute resolution

Option 2: Mediation
• Parties may agree to use an independent third party to help find a solution.
• The mediator assists the parties in settling their dispute, but does not have the authority to impose a solution.
• Contracts should be specific as to how mediation is to be done.
• Legal systems may regulate this issue.
Option 3: Arbitration
• Refer dispute to a neutral third party whose decision will be binding and enforceable under the law.

OR

Option 4: Legal action
• Costly, time-consuming, bad for the corporate image
• Only a last resource mechanism.
Contract content – Signature

Signed by the farmer undertaking the obligations!

In the presence of witnesses
Some examples from the field
Specific CF Laws - Brazil

- Prior to 2016 Civil Code covered the use of CF
- New law adopted in 2016, process started in 1998!
  - Aimed to defend interests of farmers
  - Scope to cover all agriculture
Specific CF Laws - Brazil

- Contracts in writing and clear language
- Rights and obligations
- Pre-contract information
- National discussion forums
- Differentiate CF from employment
Contract farming as a credit vehicle

Provision of **working capital** by the buyer

- Directly or guaranteeing third-party provision of inputs and services

Use contract and future revenues to acquire or increase **creditworthiness** towards third-party credit providers

**BUT!** Provision of credit can be a source of risk and lead to **indebtedness**
Lesotho: Participatory processes for law-making
Complicated clauses

- Compulsory vs mandatory registration
- Quality determination: how and by whom
Part 1: Why engage in contract farming?
Why is contract farming important today? Contract farming, in many cases, has increased in popularity in recent years. Globalization has brought the agricultural products industry has grown dramatically. As a result, many countries now live on the international market. Consequently, a number of smallholders have been forced to engage in contract farming. In this context, the majority of large-scale buyers of agricultural products are interested in the production of certain crops. These buyers usually issue contracts to the farmers to grow specific crops for a fixed price. The farmers are then paid a predetermined price for their product. This approach facilitates the production of specific crops and helps ensure a steady supply of quality products to the market.

Part 2: What is contract farming? What is contract farming? At the heart of contract farming is an agreement between farmers and buyers. This agreement is often based on the farmer’s ability to produce a certain volume of a specific product. The contract typically includes details on the quantity and quality of the product to be delivered by the farmer. The contract also outlines the payment terms and any additional conditions that apply. These agreements are important because they provide farmers with a guaranteed market for their produce, thus reducing the risk of price fluctuations and market instability. Additionally, contracts can help farmers achieve higher prices and increase their profitability.
Thank you for your attention

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