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**UNIDROIT Working Group on Collaborative
Legal Structures for Agricultural Enterprises**

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SECRETARIAT'S REPORT

1. The International Institute for the Unification of Private Law (hereinafter "UNIDROIT" or "the Institute"), in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), have undertaken a joint project to develop an international legal guide on [Collaborative Legal Structures for Agricultural Enterprises](#) (hereinafter "LSAE", "the Project", or "the future instrument").

2. This document provides an update on the work carried out by the Working Group established in 2022 and the three informal Subgroups established in 2023. The update is mainly based on the outcomes and developments after the fourth session of the Working Group held on 8-10 November 2023 (see the Summary Report: [Study LXXXC – W.G.4 – Doc. 3](#)) and the intersessional work undertaken between December 2023 - March 2024.

3. This document is mostly aimed at clarifying the scope of the Project and the content of the future instrument. It contains two annexes for the consideration of the Working Group regarding the structure of the future instrument and a draft glossary. This report is accompanied by additional documents, which were sent separately to the members and observers of the Working Group and which will be the main object of discussion at the fifth Working Group session.

- Draft Discussion Paper on Companies;
- Draft Discussion Paper on Cooperatives;
- Draft Discussion Paper on Multiparty Contracts; and
- Draft Discussion Paper on Digital Platforms.

4. Each of the above-mentioned documents contain a description of issues and questions to guide the discussion of the Working Group during the fifth session.

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I. PRELIMINARY MATTERS

A. Background of the Project

5. The development of the UNIDROIT/FAO/IFAD Project on “Collaborative Legal Structures for Agricultural Enterprises” began during the 2020-2022 UNIDROIT Work Programme, initially with a medium-priority level,¹ and was elevated to the high-priority level for the 2023-2025 Work Programme by the UNIDROIT Governing Council² and General Assembly.³ The LSAE Project is the third project undertaken in partnership with FAO and IFAD in the field of private law and agricultural development. It is a follow-up from the [Legal Guide on Contract Farming](#) (finalised in 2015) and the [Legal Guide on Agricultural Land Investment Contracts](#) (finalised in 2020).

6. UNIDROIT’s work in the field of Private Law and Agricultural Development began in 2009 when the Governing Council and General Assembly agreed that UNIDROIT’s broad mandate gave the Institute a wide range of opportunities to contribute to the Sustainable Development Goals (SDGs) and to create new synergies with other Rome-based intergovernmental organisations, in particular those focusing on agricultural development.⁴

7. In 2011, the UNIDROIT Secretariat organised a Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects” (Rome, 8-10 November 2011). The Colloquium focused on the following potential areas of work: (a) title to land, (b) contracts for investment in agricultural land, (c) legal structure of agricultural enterprises, (d) contract farming, and (e) the financing of agriculture.⁵ The tripartite partnership between UNIDROIT, FAO, and IFAD was established after the above-mentioned Colloquium.

8. As a first step for the development of the LSAE Project, the UNIDROIT Secretariat analysed the existing international initiatives to avoid overlap and duplication of previous efforts.⁶ A feasibility study⁷ was prepared for the 99th session of the Governing Council (23-25 September 2020), suggesting that the LSAE Project could investigate and make recommendations on how smallholders and agricultural Micro-, Small-, and Medium-sized Enterprises (agri-MSMEs) can: (i) improve market access; (ii) improve forms of aggregation and coordination of agricultural enterprises through the use of contractual networks, the development of corporate governance rules and the delineation of ownership; (iii) ease access to critical resources and insurance through investment vehicles and (iv) address unfair commercial practices and cases of abuse of power or dominant position through the existing dispute settlement mechanism and other remedies so as to obtain more responsible business conduct.⁸

9. The Governing Council authorised the Secretariat to continue its consultations to identify the main legal issues in which UNIDROIT, in cooperation with FAO and IFAD, could make a meaningful contribution. Accordingly, on 15 and 16 April 2021, a Consultation Webinar was co-organised to

¹ [UNIDROIT 2019 – C.D. \(98\) 14 rev.2](#), paras. 78-82 and [UNIDROIT 2019 – A.G. \(78\) 12](#), para. 51.

² [UNIDROIT 2022 – C.D. \(101\) 21](#).

³ [UNIDROIT 2022 – A.G. \(81\) 9](#).

⁴ [UNIDROIT 2009 – C.D. \(88\) 17](#), para. 88 and [UNIDROIT 2009 – C.D. \(88\) 7. Add.6](#).

⁵ The Acts of the Colloquium were published in the [Uniform Law Review](#), Oxford University Press, Volume 17, Issue 1-2 (2012).

⁶ For more information on the relationship between the LSAE Project and other international initiatives, as well as a description of international instruments that should be taken into account by the Working Group when developing the guidance document see section E of the [Issues Paper](#) prepared for the first Working Group session, paras. 24-31.

⁷ [UNIDROIT 2020 – C.D. \(99\) B.5](#).

⁸ Committee on World Food Security (CFS), [Principles for Responsible Investment in Agriculture and Food Systems](#) (2014), paras. 50-52.

discuss the LSAE Project and, notably, to outline the possible topics to be addressed in the prospective guidance instrument.⁹

10. The conclusions and recommendations of the Consultation Webinar were presented to the Governing Council at its 100th session (22-24 September 2021), which endorsed the LSAE Project and upgraded its priority to high.¹⁰ At its 101st session (8-10 June 2022), the Governing Council was informed by the Secretariat that a Working Group had been established to carry out the Project.

B. Organisation of the work

1. Composition of the Working Group

11. Consistent with UNIDROIT's established working methods, the Secretariat set up a Working Group composed of experts selected for their expertise in the fields of contract law, corporate law, commercial law, property law, agricultural law, digital technology, and sustainability. Non-legal experts, such as economists, have also been invited to participate in the Working Group. Experts participate in a personal capacity and represent the world's different legal systems and geographic regions.

12. The Working Group also includes representatives of the legal departments of FAO and IFAD, as well as technical experts from other departments, such as FAO's "Agrifood Economics Division" and "Food Systems and Food Safety Division" and IFAD's "Research and Impact Division" and "Inclusive Rural Finance, Markets and Value Chains Division." Moreover, a number of international and regional intergovernmental organisations, farmers associations, non-governmental organisations, academic institutions, and private sector representatives have also been invited to participate as observers in the Working Group. It is expected that, in addition to contributing to the discussions of the Working Group, the participation of these stakeholders will assist in the promotion, dissemination, and implementation of any international instrument that is ultimately developed and adopted.

13. Furthermore, within the framework of a Chair Programme in the field of private law and sustainable agricultural development supported by the Directorate General for Development Cooperation (*Direzione Generale per la Cooperazione allo Sviluppo* - DGCS) of the Italian Ministry of Foreign Affairs and International Cooperation (*Ministero degli Affari Esteri e della Cooperazione Internazionale* - MAECI), a senior researcher and a senior legal consultant joined the UNIDROIT Secretariat to assist with the development of the LSAE Project.

14. The complete list of members and observers of the Working Group is available at the [LSAE Project's dedicated website](#).¹¹

2. Methodology and timeline of the Project

15. The LSAE Working Group undertakes its work in an open, inclusive, and collaborative manner. As consistent with UNIDROIT's practice, the Working Group has not adopted any formal rules of procedure and seeks to make decisions through consensus. Working Group meetings are held in English without translation.

⁹ The [Summary Report](#) is available on UNIDROIT's website and a [video](#) recording of both days of the Consultation Webinar is available on UNIDROIT's YouTube channel.

¹⁰ [UNIDROIT 2021 – C.D. \(100\) B.24](#), para. 80.

¹¹ The Secretariat notes that the composition of the Working Group is an open process and additional members and observers may be added as needed.

16. The Working Group meets twice a year for two or three days in Rome, Italy, at the premises of UNIDROIT. Remote participation is possible, although experts are expected to attend in-person if circumstances permit.

17. The documents for the Working Group meetings will generally be distributed at least one week in advance of each session. After each meeting, the UNIDROIT Secretariat will share a summary report with all participants on a confidential basis for internal purposes of the Working Group only. A separate, high-level summary of the meetings is published on the UNIDROIT website.

18. The LSAE Project is a high-priority project on the current UNIDROIT Work Programme for the period 2023-2025. It is expected that the preparation of the LSAE Guide will require six (if needed seven) Working Group sessions, followed by a period of consultations before the complete draft is submitted for adoption by UNIDROIT, FAO, and IFAD in 2025.

C. Working Group sessions and intersessional work

19. This section describes the main topics discussed and recommendations made during the fourth session of the Working Group. For more information on the work undertaken in the previous Working Group sessions and intersessional periods, see the previous Secretariat Reports and Summary Reports of Working Group available on the [LSAE Project's dedicated website](#).

1. Fourth Working Group session (8 – 10 November 2023)

20. The fourth session of the Working Group was held from 8 through 10 November 2023 and was attended by 40 participants. The Working Group discussed general matters regarding the purpose and target audience of the future instrument and also considered the issues raised in three Draft Discussion Papers prepared by the members of the Subgroups.

21. During this session, the experts of the Working Group agreed with the proposal to broaden the target audience beyond legal professionals to include non-governmental organisations, associations, and other intermediaries that often played a more direct role in assisting small enterprises due to their accessibility. Participants observed that defining the “protected interest group” would contribute towards the definition of the subjective scope and content of the future instrument (e.g., development of legal guidance for individual smallholders, agri-MSMEs or the entirety of the agrifood chain). Considering the substantial gap in support for smallholder organisations and the lack of voice and representation of smaller entities despite their substantial contribution to the economy, particularly in the informal sector, participants emphasised the importance of developing guidance which promoted those interests principally. Additionally, the Working Group decided to further consider the needs of the actors on the ground to decide whether it would be necessary to further reduce the broad range of actors considered within the category of the “protected interest group”. In general, the Working Group agreed to develop guidance mainly for smallholders and agri-MSMEs but to also take into account the perspectives of larger enterprises, as understanding their practices would be crucial to creating a Guide that effectively served the needs of smaller enterprises which operated within these value chains.

22. The Working Group discussed the nature, language and level of sophistication of the future Guide. It was recommended that the Working Group review the interchangeable use of terms like smallholder and small enterprise and adopt a glossary with clear definitions. The Working Group was encouraged to adopt a more inclusive approach to acknowledge diverse legal frameworks beyond the scope of traditional state law. In relation to the empirical evidence requested by the Working Group, representatives of FAO and IFAD noted that additional data could potentially be provided by liaising with decentralised offices and by sharing information on relevant publications, technical reports as well as operational guidelines.

23. The Working Group further discussed the working definition of “collaboration”¹² deciding to keep it as proposed during the third session of the Working Group and to further define some of its key elements (particularly concerning the phrases “form of interaction” and “imply an engagement in projects within a value chain”) during the fifth session of the Working Group. In relation to the specific analysis of the three collaborative legal forms considered in the LSAE Project, the Working Group agreed to change the title of the Draft Discussion Paper on Corporations and also, consequently, the name of the Subgroup from “corporations” to “companies”, noting the need to further distinguish the use of certain terms, such as “company”, “partnership” and “corporation”.

24. It was decided that the Subgroup on Companies would continue focusing its work on agricultural enterprises “other than cooperatives” and would further develop the working definition of “agricultural companies”. The differences between horizontal and vertical forms of collaboration in the context of companies would be considered to explain the difference (if any) between a company among farmers and a company among farmers, processors and distributors. Besides developing the core elements of the company-like entity (e.g., legal personality, liability, etc.) the Subgroup would add a discussion regarding collaboration by sole entrepreneurs and corporate groups, as well as reflect on the inclusion of a new section on conversion, merger, and division. Lastly, the Subgroup would consider whether company law might be used to address breach through a specific set of remedies and potential legislative obstacles would also be further evaluated to confirm whether or not contractual remedies would need to be used.

25. In relation to the work done by the Subgroup on Cooperatives, the Working Group agreed to take into account the definition of cooperatives as adopted by the International Cooperative Alliance (ICA) Statement and the International Labour Organization (ILO) Recommendation No. 193, as well as to consider their principles and values when developing guidance on cooperatives in the LSAE Project. It was also agreed that the Subgroup would provide further information on the needs and barriers to joining cooperatives in certain parts of the world, mainly beyond Europe and the global North. Finally, the Working Group acknowledged the need to further elaborate on the questions regarding who determined the needs which cooperatives were required to satisfy and who controlled their fulfilment.

26. The discussion regarding Multiparty Contracts focused on issues related to governance, execution, and remedies for breach. It was agreed that corrective measures should have priority regarding other last-resort remedies, and there was acceptance that the topic of remedies could be further addressed in the Draft Discussion Papers on Cooperatives and Companies. The Subgroup on Multiparty Contracts agreed to tailor the discussions more to the needs of smaller enterprises and to highlight the specificities of multiparty contracts adopted in the agriculture sector.

27. Lastly, three dimensions were discussed to decide whether they could be considered as a taxonomy for comparison between the three collaborative legal forms analysed in the LSAE project: (i) strategic/non-strategic collaboration; (ii) independent/interdependent performances; and (iii) long-term/short-term collaboration. In relation to the impact of digitalisation, sustainability and access to credit, the Working Group decided to consider in more detail the impact that these factors would have on governance and dispute resolution mechanisms, as well as to take into account the digital gender divide. Key questions would include how the different legal forms addressed data rights, ownership control in terms of use of data and transfer of data. Additionally, the Working Group would further consider if a separate chapter was needed to address the issue of electronic platforms.

¹² “a form of interaction among two or more parties with common objectives, overlapping needs, interrelated interests and/or shared risks that may be limited to exchanges of goods and services or imply an engagement in projects within a value chain, with or without shared resources”. See the [Summary Report](#) of the third session of the Working Group, para. 110.

28. For more information, reference is made to the Summary Report of the Working Group's fourth session ([Study LXXXC – W.G.4 – Doc. 3](#)).

2. Intersessional work (December 2023 – March 2024)

29. Pursuant to the mandate received at the fourth session of the Working Group, the Secretariat continued to provide support to the Working Group for the organisation of intersessional meetings to advance the understanding of certain issues and for the preparation of draft discussion papers.

30. With the intention of gathering real-life examples to render the LSAE Guide more practical and user-friendly, additional efforts were made to gather empirical evidence on the use of cooperatives and companies in the agricultural sector. The Rome-based FAO Development Law Service reached out to regional and country-level offices for data and facts regarding people involved in agricultural cooperatives and the advantages and barriers for farmers in joining cooperatives. IFAD shared a database of some private sector and farmer organisations that IFAD has worked with to help the Working Group identify the legal structures commonly adopted.

3. Next sessions of the Working Group and intersessional work

31. The Secretariat suggests that at least one more Working Group session be held in 2024, and if needed another one in early 2025. For the moment, it is proposed that the sixth session of the Working Group take place in October or November 2024.

32. The continuation of the intersessional work is also highly encouraged. For the next intersessional period, the Secretariat suggests: (i) retaining the three Subgroups on Cooperatives, Multiparty Contracts, and Companies; (ii) creating new Subgroups if necessary; and (iii) considering the establishment of a Drafting Committee to prepare the first draft "Master Copy" of the instrument based on the discussions of the Working Group and input collected so far; and (iv) organising virtual intersessional meetings on specific issues, if needed.

Questions for discussion

- The Working Group is invited to agree upon the dates proposed for the sixth Working Group session.
- Does the Working Group agree with the proposed approach for the next intersessional period?

II. GENERAL MATTERS CONCERNING THE GUIDANCE INSTRUMENT

33. The general matters related to the scope of the future Guide have been extensively discussed by the Working Group in previous meetings. For a detailed description of the: (i) purpose of the Project; (ii) target audience; (iii) format and title; as well as (iv) the methodology proposed, please see the previous Secretariat Reports and Summary Reports of Working Group available on the [LSAE Project's dedicated website](#).

III. CONTENT OF THE GUIDANCE INSTRUMENT

34. The Working Group is invited to consider the topics and questions proposed in the Draft Discussion Papers on Multiparty Contracts, Companies, Cooperatives and Digital Platforms sent separately to the Working Group members and observers. In addition, the Working Group is invited to consider the preliminary draft structure of the instrument (Annexe I) and the draft glossary (Annexe II), available to Working Group members and observers only.