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

EN

UNIDROIT Working Group on Collaborative Legal Structures for Agricultural Enterprises

UNIDROIT 2026
Study LXXXC - Draft Master Copy
English only
July 2026

MASTER COPY OF THE DRAFT

UNIDROIT/FAO/IFAD
Legal Guide on Collaborative Legal Structures for Agricultural Enterprises

CONFIDENTIAL

TABLE OF CONTENTS

DRAFT PREFACE and INTRODUCTION

TABLE OF CONTENTS

PREFACE

I. PURPOSE OF THE CLSAE GUIDE

1. *Purpose of guidance.* The UNIDROIT/FAO/IFAD Legal Guide on Collaborative Legal Structures for Agricultural Enterprises (CLSAE) provides guidance on collaborative legal structures with a particular focus on smallholders, producers, and agricultural micro, small and medium-sized enterprises ("agri-MSMEs") to support their increased participation in agrifood value chains and to best suit their needs. Greater engagement of these actors should result in more inclusive value chains and, in turn, transformation towards more efficient and resilient agrifood systems, sustainable economic growth, and reduced poverty

2. *Definition of collaboration*. For the purposes of this Guide, collaboration is defined as a stable form of interaction, often long-term, among two or more persons, whether natural or legal, that pursue common objectives, while addressing overlapping needs, interrelated interests, and/or shared risks. Common objectives may be limited (e.g., production and exchange of goods and services) or broadly expansive to imply an engagement in one or more projects within a value chain with or without shared resources (e.g., creation of knowledge networks, social capital, creation of economies of scale or scope, etc). Unlike aggregation, where the participating entities lose their independence to merge into a new legal entity, collaboration maintains legal and at least to a limited extent economic independence of the enterprises engaged in the project.

3. *Collaboration is a process*. Uncertainty and a low level of mutual trust can influence the choice of legal form and its evolutionary path. The evolution of collaboration is a function of knowledge and common trust. It can also depend upon the availability of resources. Parties can start with a light form of collaboration, with limited investments of financial and non-financial resources, and proceed to a more structured project when knowledge and common trust increase. They can, for example, start with a multiparty contract and then turn it into a company or a cooperative. But evolution can also occur within each legal form moving from a low to a high level of organisational complexity. For example, they could start with a simple multiparty contract without governing bodies and common funds to be administered, and then add a board of participants, mandates for acting on behalf of the parties, common funds aimed at supporting the collaboration, etc.

4. *Drivers of collaboration.* Collaborative legal structures can help address some of the needs and overcome some of the challenges that smallholders and agri-MSMEs face in order to participate more equitably and effectively in agrifood value chains. Collaboration can promote sustainable agriculture and play a role in the development of new forms of agricultural enterprises. It differs depending on the size and market power of the participants and more importantly whether it operates within or outside a global value chain. The broadly described objectives and drivers of collaboration listed below are generally applicable to smallholder producers and agri-MSMEs worldwide and have informed the guidance that has been developed. However, this list should not be considered exhaustive since this would overlook other important local context-specific realities that also must be taken into consideration. The main drivers for the use of collaborative legal structures by smallholders and agri-MSMEs covered in this Legal Guide include:[1]

(a) improved access to viable markets, market resources and inclusive financial services;

(b) Improvement of stability and security of agricultural and food supplies in global value chains;

(c) opportunities to access innovative technologies and techniques, including those driven by digitalisation, digitisation, digital platforms, and the use of artificial intelligence;

[1] These drivers of collaboration are further elaborated in paras. […] of the Introduction to this Legal Guide.

(d) increased participation in decision-making within agrifood value chains;

(e) deterrence of unfair commercial practices in agrifood value chains;and

(f) sustainable growth of enterprises.

5. *Legal structures and digital platforms for collaboration.* While recognising that a variety of forms for collaboration exist, and many different types of business organisations and commercial contracts may be used for carrying out activities such as production, processing and distribution in the agricultural sector, the emphasis of the Guide is on collaboration through the use of legal structures and digital platforms. Three categories of legal structures are considered: (i) multiparty contracts, (ii) cooperatives, and (iii) companies. Digital platforms are considered not as a legal structure but rather as an organisational tool that may be used for collaboration purposes by, and thus governed through, these three different legal structures.

6. *Boundary of the collaboration.* The Guide also acknowledges that collaboration may take place outside the legal structures considered, between participants within the legal structure and third parties. Some of these "external" collaborations may be very relevant for the achievement of common objectives (e.g., relationships with financing institutions or data service providers), but parties may prefer to govern these relationships through separate instruments outside the bounds of the collaborative structure. As demonstrated in this Guide, the decision on whether an enterprise should be included in the collaborative legal structure as a participant or should remain outside it is a strategic one, primarily linked with the objectives of collaboration and the type of governance envisaged (see Chapter V for comparative analysis).

7. *Need for the CLSAE Guide*. The Guide explains how the features of selected collaborative legal structures (i.e., multiparty contracts, cooperatives, companies) and digital platforms may help smallholders and agri-MSMEs achieve some of the objectives noted above. The Guide does not favour one structure over another. The Guide aims to promote a better understanding of how collaboration may be structured so as to overcome some of the most salient and pressing needs and challenges of smallholders and agri-MSMEs in their access to and operating in agrifood value chains and agrifood systems. Although work has been done to assess the main opportunities and risks related to certain business models for agricultural enterprises,[2] international guidance on the private-law aspects regarding legal structure was still considered lacking, particularly from the perspective of supporting collaboration.

II. RELATIONSHIP BETWEEN THE CLSAE GUIDE AND OTHER UNIDROIT INSTRUMENTS

8. *Complementarity of Legal Guides*. The CLSAE Guide is a natural follow-up to the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming ("Contract Farming Guide", finalised in 2015) and the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts ("ALIC Guide", finalised in 2021). Whereas the Contract Farming Guide focused on bilateral agricultural production contracts between farmers/producers and buyers, the CLSAE Guide adopts a broader scope by focusing on the multiparty dimension of collaborative structures and by considering a range of collaborative relationships among various actors throughout agrifood value chains. While the ALIC Guide concerns contractual relationships involving land, the CLSAE Guide encompasses forms of collaboration that may include contributions of land but also other inputs, such as capital, physical and intellectual property ("know-how"), or labour. The three international legal guides are complementary and designed to be used in conjunction.

9. *Distinctive comparative approach of the CLSAE Guide*. Unlike other UNIDROIT instruments in the field of Private Law and Agricultural Development, the CLSAE Guide adopts a distinctive approach.

---

2 World Bank Group. Enabling the Business of Agriculture (2019); *[ADD FAO and IFAD references]*

Rather than focusing on the analysis of a single legal structure (such as multiparty contracts), the Guide expands the range to consider cooperatives, companies, and digital platforms. It introduces a comparative analysis of these multiple entities, all examined through the lens of collaboration, with a view to informing the selection and combination of different collaborative structures and underscoring the capacity of their respective features to address distinct objectives and challenges.

10. *Common interest*. The analysis centres on the common interest underlying collaboration and the various ways in which agricultural enterprises may pursue it, including by potentially internalising relevant third-party interests. The common interest informs not only governance structure but also the mechanisms for addressing supervening events and for preventing and resolving disputes.

11. *Value-chain perspective*. As noted above, the analysis taken in the development of the CLSAE Guide recognises collaborative structures as embedded within broader networks of relationships along the agrifood value chain. In this context, the interdependence of enterprise activities becomes particularly significant, which may influence the smallholders, agri-MSMEs and other value-chain actors in selecting one collaborative legal structure over another.

III. TYPES OF AGRICULTURAL ENTERPRISES CONCERNED AND TARGET AUDIENCE

12. *Agriculture is changing*. Production technologies are significantly affecting what and how it is produced and distributed. The relevance of input providers including technologies and know-how is increasing. The division between production and consumption has also changed due to the reduction of transportation costs and the introduction of technologies redefining the role of agricultural work. Climate change and the evolution of environmental conditions are affecting the choice *of* agricultural commodities and their modes of production. Finally, the transformations of the food industry have a strong impact on the evolution of agriculture. These background changes are providing new incentives for collaboration but require new approaches.

13. *Smaller and larger agricultural enterprises.* The focus of the CLSAE Guide is on the needs and challenges faced by smallholders and agri-MSMEs, particularly those operating downstream in agrifood value chains. At the same time, an understanding of the legal rules and principles that govern collaborative economic activities in agriculture, particularly the practices of larger enterprises, has been crucial in order to develop a legal guide that effectively serves the needs of smaller enterprises operating within or aspiring to join these value chains. The vulnerability of smallholders and agri-MSMEs in agrifood value chains, coupled with their substantial contribution to food production and economic activity in many countries,[3] has been a central impetus for the development of the CLSAE Guide.

14. *Smallholders*. For the purposes of the CLSAE Guide, it should be noted that the term "*smallholders*" refers to a category of agricultural producers typically defined by the scale of their operations or resources.[4] Smallholders can be defined as "small-scale farmers, pastoralists, forest keepers, fishers who manage areas varying from less than one hectare to 10 hectares" who rely on family labour and production activities for food security and income generation.[5]

---

[3] IFAD and United Nations Environment Programme (UNEP), *Smallholders, Food Security, and the Environment* (IFAD, 2013). See also: *Small Family Farmers Produce a Third of the World's Food* (FAO, 2021).

[4] Only a few countries have a legal definition of smallholder and family farms, with varying definitions. Latin America and the Caribbean, include seven countries with national legislation explicitly defining "family farmer" or "smallholder". These countries are Argentina (2015), The Plurinational State of Bolivia (2013), Brazil (2006), El Salvador (2021), Panama (2020), Paraguay (2019), Peru (2015)". A legal definition not only improves targeting, recognition, and consistency, but also helps farmers gain access to essential resources and services by making eligibility clear. For more information see: FAO (2021) Legislative and regulatory frameworks for family farming; FAO (2023) Legislating to promote family farming in Latin America and the Caribbean.

[5] For more information see: FAO (2013) Smallholders and Family Farmers Factsheet.

15. *Agri-MSMEs*. The definition of "agri-MSMEs" varies from one country to another and among international organisations. This diversity in definitions illustrates the adaptability needed for agri-MSME classification across different regions, as many countries set lower thresholds to reflect the smaller scale and often informal nature of these enterprises. The term "MSME" includes micro-enterprises, typically low-capital, informal, and locally-oriented, operating with few fixed assets and limited capacity for investment. Because of their micro scale, they are generally unable to perform *more* advanced functions such as grading, packaging, or cold storage, or comply with stringent food safety standards. Conversely, small and medium enterprises are usually characterised as non-home-based, often family-run, but also employing non-family workers, formal or semi-formal, and more frequently found in peri-urban rural towns and urban areas. Compared to micro enterprises, they are more capitalised, more likely to adopt technology, engage in business-to-business contracts, comply with standards, and participate in higher-value and longer value chains.[6]

16. *Agri-entrepreneurs*. The collaborative venture is meant to help smallholders and agri-MSMEs achieve "entrepreneurial" status. For the purposes of the CLSAE Legal Guide, an "agri-entrepreneur" is a farmer – often a smallholder or family farmer – who adopts an entrepreneurial approach seeking, for instance, innovation, efficiency, and value addition in agriculture. "Agripreneurship" involves more than just producing food; it includes accessing or creating markets, improving productivity, and adopting new technologies and sustainable practices. Smallholders who commercialise production or *diversify* income streams (e.g., processing products, selling to niche markets, joining digital platforms or engaging in cooperatives, companies or multiparty contracts) practice agripreneurship.[7]

17. *Actors seeking formalisation*. Despite their substantial contribution, smallholders and agri-MSMEs may not have a specific legal definition or formal legal status. The guidance provided herein is aimed primarily at actors seeking formalisation and that have the potential to develop and to also contribute to rural *and* urban sustainable development. Collaborative structures can provide a pathway for these actors to gain the benefits of formalisation.

18. *Actors in production and midstream segments*. The Guide seeks to provide legal guidance to overcome the challenges faced by actors involved in the production stage but also by those operating in the midstream segment of agrifood value chains, beyond the production stage. Particular attention has been devoted to those *actors* operating in low- and middle-income countries. However, the principles, findings and recommendations in this Guide may apply and be useful for agri-entrepreneurs all over the world.

19. *Horizontal and vertical collaboration.* The guidance was developed considering the differences in horizontal and vertical collaboration. While horizontal collaboration occurs among businesses that operate at the same level of the value chain, such as, for instance, collaboration among agricultural producers, *vertical* collaboration occurs among enterprises operating at different levels of the value chain, such as collaboration between farmers and processors or between input providers and retailers. By focusing on how collaboration operates within value chains, one can observe that horizontal collaboration (e.g., among producers) tends to create more egalitarian, peer-based contractual arrangements, whereas vertical collaboration (e.g., between producers and retailers) may involve hierarchical structures, given the differences in bargaining power and roles.

20. *Targeted audience.* This Guide is primarily intended for those who provide advisory and capacity-building support to smallholders and agri-MSMEs, including those involved in drafting contracts and internal regulations. The Guide will be useful for *local* associations of agricultural entrepreneurs and organisations of producers, alongside non-legal technical experts such as

[6] For more information, see Smallholder and Agri-MSME Finance and Investment Network (SAFIN) & ISF Advisors (2021), *Learning Brief: Agri-SME Taxonomy*, p. 2.

[7] For more information, see: FAO (2013) Smallholders and family farmers; FAO and EcoVentures International (2019), Agripreneurship across Africa: Stories of inspiration.

representatives of non-governmental organisations, international agricultural and food conglomerates, chambers of commerce, representatives of international organisations, and development agencies. The target audience may also include national and *international* legislators and those shaping local policies.

IV. APPROACH AND HOW TO USE THE CLSAE GUIDE

21. *Consistency with international and domestic law.* The CLSAE Guide is designed to be used worldwide, but it must always be applied according to the specific laws of each country. While some variation of the three legal structures and *digital* platforms that are analysed in the Guide are available in most countries, some aspects of each of them may vary considerably from one jurisdiction to another. There may be variations even within the same country. The Guide supports collaboration and the formation of collaborative legal structures insofar as these initiatives are consistent with international and domestic law, and where applicable, local and customary law.

22. *References for good practices*. By covering key aspects of contract and organisational law inherent to the legal structures considered, the Guide serves as a practical reference for good practices in the agrifood sector. It is not intended to serve as a model for, or to promote the adoption of, specific legislation, nor does it seek to interfere with mandatory domestic and/or regional rules. The Guide provides information on private-law aspects that smallholders, agri-MSMEs, and their advisors may use to understand which legal structure is more useful within their context. Certain other factors, namely public-law aspects that often influence such choice – notably tax considerations – are not taken into consideration in the analysis.

23. *Functional approach.* The functional approach as used in the development of this Guide emphasises the importance of understanding how a particular collaborative legal structure operates in practice rather than focusing solely on its formal structure, and by doing so, comparison across different legal systems and between fundamentally different forms becomes possible. For example, while a partnership under many common-law jurisdictions and a multiparty contract under civil law have very different legal structure, in terms of entry and exit of members, they may function very similarly. This approach also recognises that the collaborative legal structures considered in the Guide are constantly evolving and adapting to changing circumstances, in particular to technologies and factors affecting the shape and length of global chains.

24. *Structure of the Guide.* After presenting an overview of the role and relevance of structuring collaboration in agrifood value chains in the Introduction, four chapters are devoted to the collaborative legal structures and digital platforms. *Multiparty* Contracts are examined in Chapter I, Cooperatives in Chapter II, Companies in Chapter III, and Digital Platforms in Chapter IV. While, in general, any of these forms of collaboration may be used as a vehicle to maximise opportunities within agrifood value chains, not all collaborative forms covered in the Guide are appropriate for every situation. This is illustrated in Chapter V, which presents a comparative analysis of these forms and explains how they also may be used at the same time to supplement each other.

INTRODUCTION

I. OVERVIEW AND CHALLENGES POSED BY AGRIFOOD VALUE CHAINS

25. *Scope of the Legal Guide.* The UNIDROIT/FAO/IFAD Legal Guide on Collaborative Legal Structures for Agricultural Enterprises (CLSAE) aims at providing legal guidance to support the increased participation of smallholders and agri-MSMEs in agrifood value chains and to contribute to more efficient and resilient agrifood systems, sustainable growth, and reduced poverty. The first section of this Introduction provides an overview of the challenges posed by agrifood value chains and further explains the agrifood systems approach considered as the basis of the legal analysis undertaken and recommendations proposed for each collaborative legal structure considered in the CLSAE Legal Guide, as well as digital platforms.

26. *Agrifood value chains*. Agrifood value chains are part of the agrifood system.[8] Generally, "agrifood value chain" refers to the coordinated production and value-addition activities that are involved in making agrifood products (including food and non-food items) and encompasses the sequence of related business activities from the provision of specific inputs for primary production, processing and marketing, up to the final sale of the product to the consumer.[9] The various steps include input activities, on-farm production and collection of food or raw materials from the farmer, storage and warehousing, distribution to processors, distribution to wholesalers and retailers, and distribution to *institutions*, restaurants and homes for final consumption.

27. *Agrifood systems transformation.* For the purpose of this Guide, agrifood systems transformation is the process by which agrifood systems are adapted to achieve more sustainability, equity, and inclusivity.[10] Agrifood systems comprise three main components: (i) primary production of food and non-food products; (ii) food distribution, linking production to consumption through food value chains and transport networks; and (iii) household consumption.[11] In addition to primary producers, households, individuals as final consumers, and large agrifood companies, agricultural enterprises fall into one of the *following* categories: providers of input supplies, post-harvest, storage, transport and agrifood processing services or agrifood distributors, wholesalers and retailers. Therefore, agrifood systems include the entire range of actors and their interlinked value-adding activities. The emphasis on "agri" highlights not only food but also the wider range of agricultural products, value chains, and rural livelihoods that are integral to these systems.

28. *Domestic, regional or global value chains*. There is no single global value chain but rather a composite of multiple value chains which operate on domestic, regional and global levels that may or may not be integrated. In regional and global value chains, where collaboration occurs among enterprises located in different States and subject to different regulation, coordination of several legal systems is required and, in some instances, the role of private international law may become relevant (see para. 76).

29. *Transformation of value chains.* Agrifood value chains have undergone significant transformation driven by increased international integration, technological advancements, shifts in

---

[8] Agrifood systems encompass the journey of food from farm to table – including how it is grown, fished, harvested, processed, packaged, transported, distributed, traded, purchased, prepared, consumed, disposed of and reused. These systems also include non-food products that support livelihoods, and all the people, activities, investments and decisions involved in delivering these food and agricultural products. Agrifood systems comprise all agrifood products that originate from crop and livestock production, forestry, fisheries and aquaculture, as well as the broader economic, societal and natural environments in which these diverse production systems are embedded. For more information, see: FAO (2021), *The State of Food and Agriculture 2021: Making agrifood systems more resilient to shocks and stresses.*

[9] IFAD (2020), *Operational Guidelines on IFAD's Engagement in Pro-poor Value Chain Development.*

[10] FAO (2024), *The State of Food and Agriculture (SOFA): Value-driven transformation of agrifood systems.*

[11] FAO (2021), *The State of Food and Agriculture 2021: Making agrifood systems more resilient to shocks and stresses.*

economic structures, and changing consumer preferences. These changes are constant and continue to profoundly reshape the landscape of agricultural production, trade, and consumption on a global scale. Traditional domestic chains are short; involve a small number of small-scale producers, intermediaries and micro to small enterprises; use labour-intensive technology and rely on spot markets; and handle locally-produced food with basic processing, storage, logistics and other post-farm activities. Transnational chains are longer and involve many small-scale producers and small to medium enterprises and intermediaries, such as processors, wholesalers and retailers who are fragmented; product diversification and value-addition are relatively high; and contracts are used, although spot market relations still prevail. Modern chains serve large urban populations; they are short, long or very long (including transnational); dominated by supermarkets and large processors; technology is largely capital-intensive where cold storage, packaging and private quality standards are very common; long-term contracts prevail where spot markets are used for perishables.[12] Understanding the relevance of structuring collaboration within the context of these evolving chains is crucial for addressing challenges related to food security, access to finance, sustainability, technology, and economic development.[13] Smallholders and agri-MSMEs need to respond as these dynamic systems continue to evolve.

30. *Role of smallholders and producers.* Smallholders and producers are indispensable to global agriculture, particularly in low- and middle-income countries, where they comprise a significant share of the agricultural sector. They also play a crucial *role* in value chains as they are responsible for producing a significant portion of the world's food supply.[14] Small farms (those typically under two hectares) comprise about 84% of all farms globally but operate only around 12% of total agricultural land and contribute roughly 35% to global food production.[15] Globally, agri-MSMEs account for over 90% of enterprises and contribute substantially to GDP, although this also varies considerably by country.[16] In recent years, governments, international organisations, and private-sector actors have been working to improve the participation of these smaller actors in the organisation of value chains and local and global trade.[17]

31. *Role of agri-MSMEs in value chains*. The role of agri-MSMEs has also drawn increasing attention from investors, governments, international organisations, and development partners due to their contribution to agrifood systems transformation, particularly in low- and middle-income countries.[18] Key drivers include urbanisation, production intensification and diversification, and greater regional and global value chain liberalisation. Much of the investment for these drivers has come from agri-MSMEs themselves. MSMEs have often been described as the "hidden middle" – large enough to scale upgrading activities that drive transformation but often overlooked in policy debates that focus either on micro enterprises, for their links to household income and poverty reduction, or on large firms, due to their integration with capital markets.

32. *Post-production functions*. Agri-MSMEs perform functions central to agrifood systems in developing countries. One of their most important roles is connecting dispersed *smallholders* to local, regional, and international markets by aggregating, grading, and transporting outputs, thereby lowering transaction costs and expanding reliable market access. MSMEs also invest in storage,

---

12 FAO (2021), The State of Food and Agriculture 2021: Making agrifood systems more resilient to shocks and stresses. Rome.

13 FAO and UNIDO (2024), Developing Sustainable Food Value Chains – *Practical Guidance for Systems-Based Analysis and Design* (SFVC Methodological Brief).

14 FAO (2012), Smallholders and Family Farmers Factsheet.

15 The largest 1% of farms, exceeding 50 hectares, control more than 70% of the world's farmland, with farms over 1,000 hectares accounting for nearly 40% of all agricultural land.

16 FAO (2024), Small and medium enterprises and nutrition: understanding linkages, seizing opportunities – Discussion paper. For example, microenterprises make up 81%, 92%, and 62% of all SMEs in Ghana, Kenya, and Vietnam, respectively, spanning various agricultural subsectors from smallholder farms to processing and retail.

17 IFAD (2015), Sustainable inclusion of smallholders in agricultural value chains – Scaling up Note.

18 FAO (2021), The role of small and medium agrifood enterprises in food systems transformation: The case of rice processors in Senegal. FAO Agricultural Development Economics Technical Study No. 10.

processing, and transport infrastructure, which helps reduce post-harvest losses and stabilise food supplies. These activities improve year-round availability, contribute to lower consumer prices, and support dietary diversification. In addition, post-production MSMEs generate employment opportunities in trading, logistics, warehousing, processing, retail, and food service. These are the sectors where most new agrifood jobs for young women and men are emerging, offering alternatives to farm wage labour and opening entry points for entrepreneurship.

33. *Enabling environment*. The ability of agri-MSMEs to perform these roles consistently, however, depends on the wider environment in which they operate. Infrastructure, regulatory frameworks, economic and social intermediaries, market conditions, and policy support shape whether their potential contributions to agrifood transformation can be realised or remain constrained.[19] Critical to this enabling environment are mechanisms that expand access to tailored *financial* services and safeguards for smaller operators, with support for continuous upgrading and innovation.[20] In the absence of these conditions, agri-MSMEs remain disproportionately exposed to external shocks, regulatory uncertainty, and capital market volatility, constraining their transformational potential.

34. *Informality of agricultural enterprises.* Many smallholders and agri-MSMEs are unregistered and operate outside of the State's legal system. Informality, however, is distinct from illegality.[21] Informal agricultural enterprises have a crucial role to play in providing essential services carrying out and facilitating agricultural production, processing, marketing, and distribution. They also play an important role in supporting farmers and rural communities by providing services and resources that may not be available through formal channels. It is difficult to accurately assess the percentage of agricultural enterprises that are informal because their business activities are not declared or recorded.

35. *Formalisation of agricultural enterprises.* Formalisation usually refers to institutional formality (i.e., whether a business is registered under the requisite State law), but can also refer to transactional formality, (i.e., whether an enterprise keeps a record of its business transactions and documents its activities). Formalisation provides legal certainty, protects long-term investments and the stability of *enterprises*, and can be consistent with flexibility. Formal enterprises are typically registered with the relevant authorities and enjoy status as legally-recognised entities. Moreover, formalisation significantly improves the ability of an enterprise to gain access to markets and access to formal forms of credit (as discussed below). There are many forms of simplified legal entities that can promote formalisation without increasing administrative costs. Promoting collaboration can be a means leading towards a higher degree of formality. There are many disadvantages to businesses that remain in the informal sector (such as falling outside the protection of the law and social services) and disadvantages to society as a whole (informal businesses fall outside the scope of the tax base and the regulation of business activities in terms of health and safety). However, the Guide does not seek to persuade but rather to inform readers of the benefits of formalised collaboration so that those who wish to pursue these advantages may do so in a mindful manner.

36. *Barriers to* collaboration. External and structural barriers systematically prevent smallholder and agri-MSME collaboration across multiple dimensions. Policy and regulatory constraints include

---

[19] FAO, (2019) The State of Food and Agriculture 2019: Moving Forward on Food Loss and Waste Reduction; World Bank Independent Evaluation Group (2022), Toward Productive, Inclusive, and Sustainable Farms and Agribusiness Firms: An Evaluation of World Bank Group Support to Enabling the Business Environment for Agribusinesses.

[20] FAO, IFAD, UNICEF, WFP & WHO (2020). The State of Food Security and Nutrition in the World 2020: Transforming food systems for affordable healthy diets.

[21] The informal economy refers to all economic activities by workers and economic units that are – in law or in practice - not covered or insufficiently covered by formal arrangements and does not cover illicit activities. Informal is not to be equated with illegal but is better considered as "extra-legal" activities that fall outside of the formal economy. ILO, Recommendation Concerning the Transition from the Informal to the Formal Economy (Recommendation No 204, 2015).

outdated legal frameworks unfavourable to autonomous organisations,[22] land ownership requirements that exclude smallholders with small family parcels,[23] and restrictive regulations that hinder private-sector investment.[24] Financial barriers encompass high transaction costs that exclude smaller collective initiatives from accessing financing, requirements for formal collateral that smallholder groups cannot provide,[25] and financial institutions' perception of agriculture as high-risk.[26] Infrastructure deficits include inadequate roads, storage facilities, and energy systems that hamper collective organisation,[27] while market fragmentation and power imbalances create structural disadvantages.[28] Information barriers include poor access to knowledge at local levels and fragmented extension services,[29] compounded by social barriers such as elite capture, gender-based exclusion, and geographic isolation, all creating a "hierarchy of exclusion".[30] Institutional coordination weaknesses, including lack of inter-agency communication and 'silo' approaches to planning,[31] combined with limited political will for cooperative sector reform, create comprehensive structural impediments that require systemic policy, institutional, and infrastructure reforms to enable effective smallholder collective action.

37. *Opportunities and challenges in participating in agrifood value chains*. In developing countries, many smallholders and agri-MSMEs already produce high-quality, diverse and locally-adapted crops, which are an important source of food security and nutrition. However, their heightened participation in global agrifood value chains holds the potential to transform agriculture from subsistence-oriented systems into more market-oriented and productive models. This transition can stimulate economic growth and contribute to sustainable development and increased food security.[32] On one hand, this interaction connects smallholders and agri-MSMEs to global markets and opens new avenues for value creation. On the other hand, it introduces several challenges. Traditional entrepreneurial models, which have evolved to meet local market conditions, may struggle to adapt to the demands of larger value chains. For instance, international buyers may necessitate formal business structures, production concentration, and compliance with strict marketing and quality standards. While these changes can promote development in certain contexts, global value chains may simultaneously diminish the autonomy and resilience of local actors, thereby undermining rural economic structures.

38. *Market concentration and dominance.* While global agrifood value chains provide opportunities for income generation, food security, and productivity enhancement, there are ongoing concerns regarding market concentration and the fair distribution of benefits among stakeholders. The dominance of certain players within the value chain can create power imbalances, potentially marginalising smaller producers and restricting their access to markets.

39. *Imbalanced bargaining power*. A related challenge is asymmetrical bargaining power, which is a key issue when large *traders* act as gatekeepers of the value chain. Downstream actors often

---

22 FAO. 2025. Stocktaking and situation analysis of FAO's work with cooperatives and other forms of collective action in the Near East and North Africa region.

23 FAO. 2025. The Status of Youth in Agrifood Systems.

24 FAO. 2025. Understanding opportunities, barriers and risks for private sector engagement in climate action for agrifood systems. SCALA private sector engagement guidance series.

25 FAO. 2023. Promoting gender-sensitive farm business schools. A companion guide.

26 FAO. 2025. Understanding opportunities, barriers and risks for private sector engagement in climate action for agrifood systems. SCALA private sector engagement guidance series.

27 FAO. 2025. Stocktaking and situation analysis of FAO's work with cooperatives and other forms of collective action in the Near East and North Africa region.

28 FAO. 2013. Linking Farmers To Moving Markets. Food and Agriculture Organization of the United Nations.

29 FAO. 2023. Promoting sustainable land management through evidence-based decision support. A guide with country insights.

30 FAO. 2025. The Status of Youth in Agrifood Systems.

31 FAO. 2023. Promoting sustainable land management through evidence-based decision support. A guide with country insights.

32 FAO (2020), The effects of global value chain (GVC) participation on the economic growth of the agricultural and food sectors – Background paper for The State of Agricultural Commodity Markets (SOCO) 2020.

exert disproportionate influence over pricing, contractual conditions, and standards compliance, leaving upstream producers and smallholders with limited negotiating capacity. More recently, the growing weight of input providers is redistributing power between the upstream and the downstream segments of the chain. The middle segment – comprising intermediaries like cooperatives, producer organisations, and local processors – plays a pivotal but precarious role. Without an enabling environment, and infrastructural pillars such as institutional capacity of farmer organisations to be able to provide services and act in the interests of smaller actors, the imbalance in bargaining power has increased. Additionally, the increasing role of technology providers and the use of digital platforms has also shifted power allocation. Strengthening horizontal and vertical collaboration among midstream actors is crucial to counterbalance the market power concentrated at the chain's apex and to foster more equitable, inclusive, and sustainable agrifood systems. However, collaborative forms are compatible with highly asymmetric power distribution. Hence the governance of collaboration becomes a key variable of power distribution among the enterprises within the chain.

II. DRIVERS OF THE USE OF COLLABORATIVE LEGAL STRUCTURES

40. *Global perspective demands local context*. Collaborative legal structures can help address some of the needs and overcome some of the challenges that smallholders and agri-MSMEs face in order to participate more equitably and effectively in agrifood value chains. Even though these needs are broadly shared, the local context shapes the *needs* of particular actors. Accordingly, the objectives and needs described in paragraph 2 of the Preface of this Legal Guide should not be considered exhaustive since this would overlook other important local context-specific realities that also must be taken into consideration.

41. *Internal and external drivers of collaboration*. Drivers for the use of collaborative legal structures may relate to the participants' interests (internal) and factors related to other actors and/or the legal system and the business culture (external). The most relevant drivers of collaboration for smallholders and agri-MSMEs may not coincide with the interests of external actors who influence the *choice* of legal structures (see Chapter V). Although many of these drivers can be considered as cross-cutting and of importance to motivate collaboration, only some are further explained below.

A. Internal drivers of collaboration

42. *Formalising collaboration*. Many smallholders and agri-MSMEs already engage in collaboration, for example, by sharing knowledge of best practices and techniques and other *information*, as well as sharing inputs such as seeds, livestock, or equipment. The Guide can be used to formalise collaboration or to create more stable and sophisticated forms suitable for global chains.

43. Collaboration may be informal or it may be more structured and formalised. This Guide provides guidance relating to whether and how to structure and formalise a collaboration depending on the objectives of smallholders and agri-MSMEs. Formal collaboration is necessary to access strategic resources that may be individually inaccessible. Formalising collaboration for micro and small enterprises may be *required* to access larger and, *a fortiori*, international markets. Formal collaboration is also very relevant for micro enterprises engaging in processes of upgrading their skills and growth opportunities through collaboration; here, formalisation of even simple organisational structures may ensure clarity of commitments and effective planning of common activities.

44. *Reluctance to collaborate*. Some smallholders and agri-MSMEs may be reluctant about collaboration and may prefer to work independently and not participate in domestic, *regional* or global value chains or engage with large agrifood enterprises. Collaboration may be perceived as risky because it deprives an operator of full control over the entrepreneurial decision-making process. Small-scale farmers are characterised by great diversity in their production, often resulting in

different and even conflicting interests and priorities,[33] and building necessary trust is difficult. Some resistance may be cultural; in some countries or regions, smallholder farmers may be more accepting of collaborative initiatives in general or may be more willing to consider a wider range of prospective collaborators from varied backgrounds, not to mention women.

45. This Guide illustrates that a well-designed legal structure can limit or eliminate common risks. As noted in the Preface, the main drivers for the use of collaborative legal structures by smallholders and agri-MSMEs include: (i) improved access to viable markets, market resources and inclusive financial services; (ii) opportunities to access innovative technologies and techniques; (iii) increased participation in decision-making within agrifood value chains; (iv) deterrence of unfair commercial practices in agrifood value chains; and (v) sustainable growth of enterprises. Some of these drivers of collaboration are further explained below.

1. Improving access to markets and finance

46. *Improving access to viable markets, market resources and inclusive financial services*. One of the first challenges for smallholders is to reach a scale of production that allows their participation in commercial agriculture, which could be achieved by pooling resources and products together with others. As a smallholder starts to produce surplus for sale and begins to grow, gaining access to viable markets may become the next challenge. Horizontal collaboration with other producers (e.g., through farmer organisations) can gain such access also in this second case, even in the simplest manner of shared transport. Vertical collaboration with processors and/or distributors can also be a key to access markets. Collaborative legal structures offer a mechanism to formalise and expand on this concept in order to gain access to market resources and inclusive financial services.

47. *Importance of aggregation and collaboration to financing*. While it can be difficult and costly for financial institutions to lend to individual farmers, it can be easier to lend to a group of individuals. Collaboration increases accessibility to resources, in particular to capital. This can be achieved through different types of collaboration: (i) aggregation of various agricultural products to *improve* access to finance by having a larger pool of agricultural assets; (ii) aggregation of assets ; and (iii) more intense organisational forms that aggregate enterprises for specific objectives, leaving them independent for every other aspect. Thus, it is necessary not only to examine how to finance collaboration, but also whether and how collaboration serves as a driver to enable financing.

48. *Importance of access to credit*. The terms "access to credit" and "financing" are used interchangeably in the CLSAE Guide. Credit is key for all businesses, irrespective of type, size and industry, but it can be particularly difficult for smallholders and agri-MSMEs to obtain. Because of the nature of agricultural production, *supply* is variable and prices are volatile. At both national and international levels, specialised credit institutions have been created to provide agricultural enterprises with the necessary financial resources. Equity and debt represent complementary instruments to finance enterprises and their growth. Without credit, smaller operators are often forced to sell their crops immediately upon harvest in order to pay debts and/or buy inputs for the next season. The abundance of product at harvest, however, typically forces prices to their lowest levels. In order to obtain liquidity to continue business operations or cash to survive in times of crisis, smallholders and agri-MSMEs who lack credit may have to resort to selling off their business assets, such as equipment, inventory, seeds or livestock. Credit enables smallholders and agri-MSMEs to weather price volatility, respond to emergencies, access viable markets, and seek opportunities to expand in value chains.

49. *Commercial credit and access challenges*. In this Guide, "commercial credit" refers to secured and *unsecured* credit provided by banks or other accredited financial institutions primarily based on the overall creditworthiness of enterprises, with their expected future cash flow usually considered as the main source of repayment. Most often, commercial credit is secured by assets of the borrower that the financer can seize if the borrower defaults. Commercial lenders generally require collateral

[33] FAO (2017), State of Food and Agriculture: Leveraging Food Systems for Inclusive Rural Transformation.

to secure a loan since they reduce the financer's risk in lending and thereby usually allow for more favourable loan conditions. In the case of agrifood operators, this requisite collateral is most often land or large equipment. Producers without such assets or who are not allowed to use such assets as collateral are either unable to access commercial credit at all, or only in an "unsecured form" at very high rates of interest. Other challenges that limit smallholders' and agri-MSMEs' access to commercial credit in many countries relate to the difficulties that financiers encounter in assessing and monitoring the creditworthiness of such enterprises. In some countries, certain segments of the population, such as women in rural areas, face special challenges in accessing commercial credit, both on the demand side (women's access to credit is often constrained by sociocultural, economic, legal and educational barriers) and the supply side (financial institutions often lack understanding of rural societies). Given their difficulty in accessing commercial credit, many resort to non-commercial forms of credit to support their activities. Such informal sources of credit, however, are frequently offered at much higher rates of interest and fall outside the protection of the law.

50. *Differentiation by legal structure*. Collaboration can improve the chances of a project to access credit. Chapter V examines the ways the legal structure chosen may impact the *collaboration's* financing options. Specific features might make a difference, such as the existence of a common fund and the type of resources conferred to it (whether pecuniary or intangible resources), limited liability, or separate legal personality, among other things. The main focus of whether and how the collaborative legal structure could influence access to credit is also considered within each Chapter.

51. *Importance of formalisation to financing*. The perspective shared by international financial institutions is that institutional lenders are generally less concerned with the legal structure of an enterprise and more focused on its formality, as informal businesses are less likely to provide financial statements and a business plan, and less likely to have assets to pledge as collateral. Many small farmers are unable to access credit as they often have no paper trail. While a lender can take a security interest over a future crop, if that crop is sold for cash, then the cash cycle of the asset-based lending methodology is broken and the fungibility of cash plays a role in making that security interest ineffective over the proceeds of the sale. Moreover, lenders are more likely to provide short-term loans (under a year) for working capital rather than long-term financing, as the maturity of those loans carries greater risk. The possibility to use movable property (such as cash flows, inventories, raw materials, crops, etc.) to collateralise loans has become increasingly important in recent decades. The self-executory nature of some of these secured transactions facilitates collection on the part of lending institutions, which in theory increases access to credit and reduces interest rates.

52. *Public and private sources of credit*. Given ongoing challenges for credit in the agricultural sector, it is common for the State to step in with public assistance. It should be noted, however, that while State guarantees can act as a significant driver of financing for smallholder producers, this can also create an over-*dependence* and exclusivity over the small producer markets that financial institutions are trying to enter.

53. *Financial support through family and friends*. Financial support from family, friends, Rotating savings and credit associations (ROSCAs) and crowdfunding is a key source of financial support for small businesses. These sources often provide *flexible*, unsecured funding with fewer requirements than commercial lenders. They can also guarantee loans and are particularly important for financially vulnerable groups, including women, youth, and ethnic minorities.

54. *Size and access to credit*. Another consideration is the size of borrowers. For example, once a smaller entity has grown to a certain size, it might fall outside the scope of microfinancing institutions that lend not against collateral but rather on capacity of repayment. Thus, there is a continuum in the type of available financing, and the CLSAE Guide considers how to differentiate ways of accessing credit based on size within each of the three collaborative alternatives. It is also valuable to bear in mind the differences along this continuum between access to banking finance, alternative mechanisms of finance, commercial finance (suppliers, etc.) and possibly even corporate finance.

55. *Legislative responses to credit needs*. Recognising the importance of financing, international and regional organisations have developed a variety of instruments to address the need for improved access to credit for enterprises of all sizes.[34] National governments have also responded, in turn, by adhering to international guidance in the development of their own domestic legislation. While *the* CLSAE Guide acknowledges the need to improve credit access, this is not its primary goal; instead, it seeks to outline considerations for access to credit in the context of decisions made in the agricultural sector when evaluating alternative forms of collaborative legal structures. Accordingly, reference is made where appropriate to other instruments that do seek to improve credit access, but without extensive discussion on their content.

2. Access to innovative technologies and techniques

56. *Innovation opportunities*. An important component of increased efficiency is innovation which may include organisational, technological, social and financial innovation. Innovation can be accessed in markets or public institutions or can be created by the enterprises. In both instances individual enterprises may face unsurmountable barriers. For smallholders and agri-MSMEs, exposure to new methods and innovative applications can be enhanced through the use of collaborative legal structures. Innovation includes both product and process, and it is ever more connected with sustainability. Collaboration enables achievement of the necessary scale for market participation, which can then foster innovation, facilitating adoption of technology and knowledge.[35] Specific opportunities and risks offered by digitalisation, digitisation and digital platforms are discussed below in Section […].

3. Participation in decision-making

57. *Participation in decision-making and addressing power imbalances*. Trading in global chains defines not only prices of services and commodities but also regulatory features concerning products and processes. Smallholders and agri-MSMEs are often powerless in negotiations with large buyers. Intermediaries play a significant role in promoting fair and equitable negotiations. They differ *between* domestic and global value chains. They can promote collaboration among the enterprises within the chain. Certifiers of products and processes represent an important category of intermediaries in promoting and designing collaborative forms. Use of collaborative legal structures is one way to address power imbalances and increase participation in decision-making by enabling smallholders and agri-MSMEs to pool their negotiating power. Collaboration may increase bargaining power, decrease technological and financial dependence and increase access to strategic resources.

B. External drivers of collaboration

1. Sustainability

58. *Sustainability as a driver of collaboration*. The circumstances calling for the sustainable operation of agrifood enterprises are ever-increasing and diverse. For example, *as* climate change increasingly affects agricultural production across the world, farmers may be inclined to explore more sustainable farming practices. Similarly, as retailers and consumers become increasingly discerning with respect to environmental and social sustainability standards, additional demands may be placed on smaller enterprises in the form of investments in better technology, fair working conditions, and the training or recruitment of more highly-skilled employees. Sustainability concerns may also present opportunities as new markets emerge in response to consumer and industry expectations, environmental, social and governance (ESG) standards, sustainability legal requirements, and

---

34 Instruments include the UNIDROIT-UNCITRAL Model Law on Warehouse Receipts (2024), UNIDROIT Model Law on Factoring (2024), Convention on International Interests in Mobile Equipment (2001)("Cape Town Convention") and its protocols, specifically the Protocol on Matters specific to Mining, Agricultural and Construction Equipment ("MAC Protocol"), UNCITRAL Guide on Access to Credit for MSMEs (2023), UNCITRAL Model Law on Secured Transactions (2016) and accompanying legislative guides, among many others.

35 FAO (2017), *State of Food and Agriculture: Leveraging Food Systems for Inclusive Rural Transformation.*

increasing interdependence among value-chain actors. Irrespective of the circumstances, the desire, need, or requirement to conduct agrifood activities in a manner that is socially, economically and environmentally sustainable may be a significant driver for engaging in a collaborative endeavour.

59. *Sustainable development goals (SDGs)*. Collaborative legal structures may contribute to the achievement of certain SDGs, particularly SDGs 1 (No poverty); 2 (Zero hunger); 5 (Gender equality); 8 (Decent work and economic growth); 12 (Responsible consumption and production); 15 (Life on land); and 17 (Partnership for the goals). Collaborative legal structures may contribute indirectly towards the reduction of poverty through more direct effects on alleviating hunger by improving agricultural productivity and livelihoods of smallholders through improved access to value chains and access to credit. They may contribute towards gender equality since the legal and digital structures can foster women's full and effective participation in agrifood value chains. They may contribute towards decent work by encouraging legal formalisation of agri-MSMEs and towards economic growth by establishing the foundations for improved innovation. They may encourage more responsible consumption and production through better management of resources as a result of collaboration. The extent to which they may do so depends on a variety of factors, including the choices regarding different legal features and internal organisation. Conversely, the SDGs can have implications for the legal structure of an agricultural enterprise, for example, by encouraging inclusiveness and diversity. Accordingly, social, economic, and environmental sustainability is taken into account throughout the CLSAE Guide.

60. *Sustainable outcomes and collaborative operations*. The impact of collaboration on sustainability can be viewed from different perspectives. Sustainability may be the very object of a collaboration or may have an impact thereon. The CLSAE Guide demonstrates how multiparty contracts, cooperatives, companies, and digital platforms may help pursue sustainable outcomes. In certain cases, the Guide demonstrates how sustainability may entail changes in *the* features of the collaborative legal structures considered. Collaboration can foster sustainability in terms of practices and outcomes generated, for example, by rendering the adoption of better technology more feasible through economies of scale, as in the case of collaboration among a group of producers with a digital service provider for the adoption of precision agriculture technology that enables more efficient use of water and agrochemicals. Collaboration can also encourage awareness of, and compliance with, sustainability standards within the governance of the legal structure by embedding sustainability provisions throughout the foundational documents and internal organisational rules. For example, a company might require a gender-balanced board of directors or adopt an ESG policy, a cooperative might adopt internal regulations on organic produce specifications, or a multiparty contact might require that all those who perform services under the agreement must be party to the contract, regardless of gender or social standing.

61. *Bearing the costs of sustainability*. An important question for consideration is who bears the risk and cost of transitioning to sustainable practices within the agrifood value chain, with respect to both negative and positive externalities. This entails not only higher costs of the transition itself, such as the introduction of new technologies and training, but also the costs associated with monitoring sustainability performance. Also to be considered when discussing the costs of implementing sustainable practices are the incentives, profitability, and returns on investment for smallholders and agri-MSMEs. The Guide has been designed to assist smallholders and agri-MSMEs to address sustainability challenges from institutional, organisational and transactional perspectives by considering the role of multiparty contracts, cooperatives, companies, and digital platforms to support compliance with sustainability standards and fairly distribute allocation of the costs of compliance.

62. *Policy decisions for early adopters*. Differentiating legally mandated and voluntary sustainability goals is *necessary*. A collaborative legal structure would most likely be legally bound to comply with mandated goals or face repercussions; in pursuing sustainability goals on a voluntary basis, the enterprise might be considered an "early adopter", with its attendant risks. For example, in order to become environmentally sustainable, it might be necessary to incur costs that make the enterprise economically non-viable, especially if its competitors do not introduce similar changes.

Although this conflict between business viability and environmental sustainability may dissolve over time if the competitive divergence eventually disappears through the introduction of mandatory sustainability requirements, this dilemma raises an important policy decision.

63. *Sustainability and access to credit*. Financial institutions are increasingly developing frameworks for so-called "green finance", which entails investment in economic activities that meet given environmental and social requirements. A comprehensive assessment of costs and benefits can also help businesses mobilise financial resources for the transition to sustainability, opening up opportunities for new investment and upscaling.[36] Collaboration that enables sustainability will then, in turn, also facilitate access to finance. *Financial* institutions may be more inclined to finance collective rather than individual projects that generate higher impact for communities and on the environment.

64. *Sustainability and digitalisation*. Digitalisation may facilitate efficiencies and at times contribute to sustainability through the introduction of improved technologies, data collection, etc. Sustainable process requirements may be facilitated by precision farming. While intangible digital assets might seem of immaterial impact, it is becoming apparent that digital platforms and artificial intelligence can be used to enhance oversight and compliance. They permit compliance control and corrective actions at much lower costs than centralised control by chain leaders through intermediaries.

65. *Corporate sustainability due diligence.* In recent years, efforts have been made at international,[37] regional[38] and national levels[39] to impose a general duty on businesses, specifically incorporated companies and their directors, to identify actual or potential adverse impacts on human rights and environmental adverse impacts arising from a company's own operations, or those of their *subsidiaries*, or established business relationships (direct and indirect suppliers). Most of these initiatives – to impose standards beyond the legal minimum – are directed at large companies; however, there can be a trickle-down effect on smallholders and agri-MSMEs operating in the value chain of the companies concerned and a cascading effect of breaches of sustainability obligations along the value chain. Although one of the objectives of the CLSAE Guide is to improve access to value chains, the focus of sustainability should be understood in relation to the collaborative legal structure itself, rather than the value chain.

66. *Sustainability and self-regulation*. In response to sustainability concerns, those interested in structuring a collaboration may consider one of the certification schemes that already exist, such as the certification provided by the International *Organization* for Standardization (ISO) or the B-Corp Certification. Self-regulation may help ameliorate the adverse impacts on human rights and the environment by providing stakeholders with an overview of an organisation's operations and risks. Third-party accountability is thus provided by creating standardised practices, enabling value chain governance, facilitating internal culture change, and encouraging enterprises to set standards beyond legal minimums.

---

[36] FAO (2023), The State of Food and Agriculture: Revealing the true cost of food to transform agrifood systems.

[37] OHCHR (2011), Guiding Principles on Business and Human Rights; OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct; ILO (2022), Declaration on Fundamental Principles and Rights at Work and its Follow-up; ILO (2016), Resolution concerning decent work in global supply chains; ILO (2022), Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

[38] European Parliament and Council. (2024). Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. Official Journal of the European Union.

[39] For example, the California Transparency in Supply Chain Act of 2010, the United Kingdom's Modern Slavery Act of 2015 and Australia's Modern Slavery Act of 2018. Although these initiatives require companies to disclose their efforts, usually through annual statements, they do not create any substantial obligation, and non-compliance results mainly in reputational risk. By contrast, the 2017 Duty of Vigilance Law adopted in France establishes an obligation for companies to implement a "vigilance plan" to identify risks and prevent serious violations to human rights and the environment.

2. Digitisation and digitalisation

67. *Growing reliance*. Collaboration is also driven by the technological transformation of agriculture. Similarly to sustainability, digitisation and digitalisation have contributed towards the reorganisation and centralisation of value chains. In addition, the possibility to market products through digital platforms may exclude or reduce the role of some traditional intermediaries while allowing new enterprises to emerge, such as digital service providers. The question of whether *disintermediation* is modifying the legal structures for collaboration and if digitalisation is favouring the creation of a specific legal structure and/or the emergence of new digital intermediaries that directly connect input providers and farmers is a notable development explored in the CLSAE Guide. Along with the inputs traditionally employed in the agrifood value chain (seeds, agrochemicals, fertilisers, agricultural machinery, etc.), data is gaining importance as a new production factor capable of changing the structure and operational routines of agricultural enterprises. This is due to the fact that farming is becoming increasingly reliant on the digitisation of data and the digitalisation of its processes and operations. In this context, the adoption of collaborative legal structures which take these new trends into account is essential.

68. *Impact of technology on collaborative legal structures*. Information and communication technologies (ICT), digitised data, and digital platforms represent an important motivator for collaboration in agriculture. International organisations operating in the agricultural sector, such as FAO and IFAD, are promoting ICT for Development (ICT4D) to foster rural development. Accordingly, the CLSAE Guide includes the role and impact of digital technologies, data, and digital platforms in its analysis of the collaborative legal structures. The Guide describes the risks, challenges, benefits, and opportunities that can derive from taking part in collaboration with rights over or access to data.

69. *Digitisation, digitalisation and digital platforms*. While digitisation refers to the process of converting analogue data into a digital format, digitalisation involves the integration of digital technologies into business operations to optimise processes, enhance customer experiences, and drive innovation. A digital platform is a two-sided or multi-sided online marketplace which facilitates value-enhancing transactions between two or more groups. Analysis of the legal issues related to these aspects will not be exhaustive in the Guide; rather, it will be limited to those issues and factors that can affect the operation of the legal structures that are considered , while adopting a risk-mapping approach.

70. *Extent of digitisation and digitalisation and among smallholders.* Although digitalisation of agriculture has increased considerably over the past decade, adoption rates vary significantly by region and demographic group.[40] In sub-Saharan Africa (SSA), 84% of digital agriculture solutions target smallholders, with mobile-based advisory platforms, mobile money, and e-commerce playing a central role. This growth is driven by strong government support, partnerships with mobile network providers, and targeted initiatives for youth, making SSA a leader in digital adoption rates among rural farmers. Nonetheless, barriers persist, including high data costs and limited access to advanced tools *such* as blockchain, which are more accessible to larger agribusinesses than smallholders. In Southern Asia, digital agriculture solutions have expanded as well, but with lower engagement from smallholders, who represent only 33% of users. The region's digital growth has been concentrated among larger, wealthier farmers, who benefit from emerging technologies like data analytics and AI for farm management, while smallholders face greater access and affordability challenges. In Latin America and the Caribbean (LAC), over half of digital agriculture users are smallholders, though the adoption of advanced digital tools remains limited, and disparities persist. West and Central Asia, Oceania, and Northern Africa show smaller digital footprints but use the few available tools exclusively for smallholders. Across regions, female participation is highest in Southern Asia and

[40] GSMA AgriTech and Digital Agri Hub (2022), Assessment of Smart Farming Solutions for Smallholders in Low and Middle-Income Countries

Northern Africa, while SSA leads in youth involvement, attributed to government-backed youth initiatives and a demographic push towards a younger workforce.[41]

71. *Policy support for equitable access*. Since the COVID-19 pandemic, digital solutions have accelerated globally, especially as physical agricultural support services became restricted. This shift saw increased use of SMS advisories, mobile money transactions, and remote e-commerce access, especially for input supplies, highlighting the versatility of digital tools in bridging information and service gaps. Although the rate of new digital solutions has slowed in *recent* years, digital adoption continues to expand as farmers increasingly depend on these platforms for critical agricultural needs. The varied rates of digital adoption underscore the importance of policy and infrastructure support in promoting equitable access to digital tools for all smallholders.

72. *Digital inclusion*. To bridge the digital divide and promote digital inclusion, cooperatives and companies involving smallholders have increasingly adapted traditional legal and organisational structures.[42] They focus on people-centred design, gender responsiveness, and accessible digital solutions to ensure that marginalised groups also benefit from technological advances. For example, some cooperatives have introduced internal regulations mandating *gender* mainstreaming in digital initiatives, which includes integrating cultural and practical considerations into digital platforms to support women's roles in rural economies. Additionally, to protect data privacy, some regions have enacted normative requirements for secure data handling, where cooperatives must implement reporting protocols and business tools specifically designed to safeguard the data collected from smallholders, ensuring compliance with international data protection standards.

73. *Evolving normative requirements*. Another significant development is the establishment of offline service delivery options and support for digital intermediaries, such as telecentres, that offer rural communities access to digital services and skills training. To address potential data misuse, these frameworks increasingly include remedies and dispute resolution mechanisms that allow smallholders to act in case of unauthorised data usage. These evolving normative requirements and legal adaptations ensure that digital advancements *reach* marginalised groups, fostering greater equity in the agricultural sector and supporting rural transformation through inclusive digitalisation.

74. *Coordination of diverse users and large numbers*. Digital platforms are also increasingly effective in addressing the practical challenges of coordinating diverse and geographically dispersed smallholders.[43] These platforms improve communication, streamline logistics, and enhance access to market information, crucial for smallholders who face challenges due to remote locations and limited resources.[44]

III. THE COLLABORATIVE LEGAL STRUCTURES COVERED IN THE GUIDE

75. *Legal structures and digital platforms*. This Guide analyses three categories of collaborative legal structures, namely multiparty contracts, cooperatives, and companies. Additionally, digital platforms are also considered as a tool increasingly used for *collaboration*. These structures are not exclusive options in competition with each other. Instead, they are a suite of solutions that smallholders and agri-MSMEs may use both individually and in combination.

76. *Multiparty contracts*. In this Guide, a multiparty contract is defined as a contract concluded by three or more parties (enterprises)[45] for collaborating for the fulfilment of common objectives,

---

41 ILO (2023), *Women and men in the informal economy: A Statistical Update.*

42 FAO (2024), Towards digital inclusion in rural transformation.

43 FAO (2024), Towards digital inclusion in rural transformation.

44 An example of this is the "Smart Milk" platform launched in Kazakhstan by FAO and the European Bank for Reconstruction and Development (EBRD), a platform that allows dairy farmers, milk collectors, and processors to share essential information on production practices and food safety, thereby promoting higher standards across the value chain. It is discussed in the Chapter on Digital Platforms.

45 For the purpose of this Guide, a contract between two parties that provides rules for the entry of additional parties is also considered a multiparty contract.

the realisation of common project(s), and (or) for carrying on common activities. Participating enterprises can be natural or legal persons. This contract should be distinguished from agreements between enterprises and stakeholders (for example, NGOs). Two main features of multiparty contracts derive from this definition: (i) it is a contract that has at least three parties,[46] and (ii) it serves the purposes of *establishing*, developing and facilitating collaboration among parties to pursue common objectives. A multiparty contract can be concluded among only private entities or among private and public entities.

77. *Cooperatives*. This Guide uses the term "cooperatives" as defined by the International Cooperative Alliance (ICA) Statement on the co-operative identity and the 1995 International Labour Organization (ILO) Recommendation N°193 on the Promotion of Cooperatives, as "[…] an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically *controlled* enterprise".

78. *Companies*. In this Guide, companies are those business organisations that operate under a legally recognised form the foundational objective of which is to generate profit. This category also includes public benefit companies and other hybrid forms where profit-making is associated with the pursuit of social and environmental objectives. Although it is nearly impossible to define and categorise the various legal forms available to profit-oriented business organisations in a clear and universal manner that would satisfy all legal systems and national laws, most jurisdictions offer a choice of legal structure that includes some variation of the following: (i) general and limited partnerships, (ii) limited liability companies, and (iii) corporations.

79. *Digital Platforms*. The digital platform is a tool of collaboration which is functionally distinct from multiparty contracts, cooperatives, and companies. While digital platforms can be developed and used by these collaborative legal structures, they perform functions that merit separate, additional analyses. In this Guide, digital platforms are defined as online infrastructures within which individuals and organisations can interact, making possible the exchange of goods and services (transaction platforms) or the development of new digital products and services (innovation platforms).

80. *Legal complexity, applicable law*. Collaborative legal structures operate within complex sets of laws and regulations. These legal frameworks are particular to each form. Legal complexity is amplified for those collaborative entities that seek access to cross-border value chains due to the different jurisdictions of the actors *involved*. One of the key issues to be addressed in such circumstances will be the applicable law (i.e., participants will be required to determine which jurisdiction's laws will apply to various aspects of their collaborative endeavour, including succession law, land law, etc.). A legal entity, such as a cooperative or a company, must usually be created according to the law of the State where it seeks registration and will be domiciled. Depending on the circumstances, it might be more appropriate for the applicable law governing certain activities of a legal structure to be that of another jurisdiction (e.g., the State where the product is being processed). As noted above, agricultural enterprises operate within the agrifood system with its legal complexities that include laws governing food safety, phytosanitary measures, etc. Many of these issues are covered under international legal regimes and trigger application of international law, such as the laws of international trade. Another aspect of the application of international law is extraterritoriality and the reach and effect of domestic law in relation to global value-chain governance (e.g., human rights and environment).

81. *Similarities and differences of legal structures.* The fundamental similarities and differences between the legal *structures* for collaboration covered in the Guide are explained by considering, among other things, their objectives, formation and entry requirements, governance and management, financing and distribution, decision-making procedures, scope of liability, remedies and sanctions for non-performance, the requirements for exit and dissolution, termination and

[46] *Id.*

mechanisms for dispute prevention, and resolution.[47] These topics are developed in the Chapters that consider each legal structure and digital platform (see Chapters I-IV) and are also considered in the comparative Chapter V.

82. *Complementarity of legal structures for collaboration.* The legal structures for collaboration examined in the CLSAE Guide may operate individually or be combined. For example, a multiparty contract can be combined with a company to manage common resources. A company can use agreements and contracts among the members to govern specific collaborative projects, whilst the main infrastructure remains regulated by company law. The combination of legal *structures* increases complexity, but it can maximise the advantages associated with each legal structure.

[47] These topics reflect the main sections developed in each Chapter devoted to the legal structures in the CLSAE Guide and the comparative variables considered in Chapter V on comparing and choosing the collaborative legal structure.

CHAPTER I

MULTIPARTY CONTRACTS

TABLE OF CONTENTS

I. INTRODUCTION

A. Overview

1. *Scope*. Agri-food value chains, both domestic and global, contain a variety of contracts. Different types of contracts govern processes from input provision, production, processing, and distribution. These contracts may include linked bilateral contracts or multiparty contracts (MPC). However, analysis of collaborative forms rarely includes the entire chain. Accordingly, this Chapter aims to identify the main issues concerning the use of multiparty contracts as a legal form for collaboration across agri-food value chains.

2. *Contents.* The first section of this Chapter introduces the multiparty contract and explains its unique characteristics as distinct from other contractual forms, the function of collaborative MPCs in global value chains, and regulation. The second section outlines the design and content of MPCs, with a focus on choice of terms and obligations. The third and fourth sections review entry requirements and formation, governance, management and decision-making. The fifth *section* explains contractual execution, with details on independent and interdependent performance, resource-sharing, use of a common fund, and performance monitoring. The sixth section considers non-performance, followed by the seventh section on joint and several liability. The eighth section reviews remedies for non-performance, including a hierarchy of choices that include correction, restitution and compensation (damages). The final section explores the options of voluntary and forced exit, dissolution of the MPC and post-contractual obligations.

3. *Definition and main features.* In this Guide, an MPC is defined as a contract concluded by three of more parties[48] for collaborating for the fulfilment of common objectives, the realisation of common project(s), and (or) for carrying on common activities. This type of contract should be distinguished from partnerships[49] and *agreements* between enterprises and stakeholders (for an explanation of the differences between exchange contracts and MPCs, see Section D). Two main features of the MPC derive from this definition: (i) it is a contract that has at least three parties,[50] and (ii) it serves the purposes of establishing, developing and facilitating collaboration among parties to pursue common objectives. An MPC can be concluded among only private entities or among private and public entities.[51]

4. *Long-term, oral or written*. An MPC is usually long-term in order to allow the parties to pursue their common objectives. This affects the governance and execution of the *contract*. An MPC, as any other contract, may be concluded orally or in writing; however, written form is advisable.

5. *Additional features*. Beyond the long-term perspective, MPCs are suited to establishing and governing collaboration, including strategic collaboration. MPCs have: (i) a *collective* structure, usually with regulated entry and exit; (ii) a governance structure to enable participation in decision-making, to allocate management power internally, and to monitor cooperation; (iii) mechanisms for sharing physical and intangible assets; and (iv) mechanisms for sharing risks, profits and liabilities.

6. *No separate legal entity*. The MPC does not usually constitute a separate legal entity and consequently it requires fewer formalities than cooperatives and companies. With the *exception* of specific kinds of MPCs,[52] or contractual joint ventures for which some jurisdictions have specific

---

[48] For the purpose of this Guide, a contract between two parties that provides rules for the entry of additional parties is also considered an MPC.

[49] For more information on the distinction between multiparty contracts and partnerships see the Chapter on Companies paragraph […].

[50] Id.

[51] Although the focus of the Guide is on collaboration among private parties, involvement of public entities may be relevant in practice as regards their role as financiers or for capacity building services, training, etc.

[52] An example is the network contract, which is legally defined in certain jurisdictions.

legislation, the MPC is governed largely by general contract law, which usually enables greater party autonomy to determine the definition, scope and structure of the mechanism.

7. *Agricultural or food contracting.* This Chapter covers MPCs throughout the agri-food sector, encompassing agricultural commodities, as well as food products and activities in the field of production, processing, and distribution (see Introduction, para. […]). Nonetheless, it is important to acknowledge that the environment of agricultural contracting usually differs from that of food contracting. *These* differences may be reflected in the degree of formality and incompleteness of the contract. Informal and incomplete contracts in agriculture call for different enforcement strategies. Enforcement with reputational mechanisms, for example, may have greater influence in small communities where micro and small agricultural enterprises operate. Hence, whether the content concerns an agricultural or a food contract does matter in terms of defining the business and social environment within which collaboration takes place.

B. Differences between horizontal and vertical contracts

8. *Horizontal and vertical contracts distinguished.*[53] Multiparty contracts may be either horizontal or vertical.[54] Horizontal contracts coordinate parties operating at the same level of the chain (for example, agricultural producers). They are often constructed as MPCs, such as, for instance, strategic alliances, contractual joint ventures or consortia. Vertical contracts coordinate parties operating at different levels of the chain (for example, a vertical MPC could be undertaken between producers and one or more of the following: input providers (products or services), certifiers, utility *providers*, processors, traders, distributors, retailers, financial institutions, insurance companies, NGOs, municipalities or governments, digital service providers). Vertical contracts are often bilateral contracts between any two parties along the chain. By coordinating parties from different segments they may reduce the length of the chain. However, vertical contracts can be structured as an MPC involving two or more parties within the same contract. A vertical MPC can include several producers and a buyer or several producers and an input provider or an input provider, a producer and a processor. Multiparty contracts may be linked to bilateral contracts.

C. Differences between multiparty and bilateral contracts

9. *Multiparty or linked bilateral contracts as alternatives*. A collaborative contractual relationship can be constructed either as an MPC or as a set of bilateral contracts that are linked when the performance by one party is conditional on that of a party privy to the contract. For example, the growing of coffee beans could be organised around an MPC among several parties that include various input providers (of seeds, *fertilisers*, robots), the producer, processor and trader. Alternatively, a set of bilateral contracts could be concluded: one between each input provider and the producer, one between the producer and processor, and one between the processor and trader. These bilateral contracts could be linked using contractual terms, for example, terms that impose compliance with a particular set of standards incorporated into each bilateral contract (known as contractual "cascading").[55] The choice between these two alternatives may be influenced by the factors discussed below.

---

[53] The horizontal and vertical contracts under consideration are collaborative horizontal and vertical contracts. A standard sale between a farmer and an input provider with no long-term perspective and no collaborative content would be an example of a vertical contract outside the scope of analysis.

[54] For example, a vertical MPC could be undertaken by four parties operating in the cotton production sector among a farmer committee interested in the production of high quality raw seed cotton, a bank willing to provide financial assistance, a National Cotton Development Authority willing to provide logistical and technical support, and the so-called "ginners" willing to provide a market for the seed cotton. An example of a horizontal MPC would be one undertaken among the farmers themselves.

[55] On the role of bilateral contracts as means of cooperation in the agricultural chain, see UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, presenting the characteristics of contract farming as a paradigm bilateral agreement between a producer and a buyer.

10. *Coordination*. The choice may depend on the need to coordinate based on interdependence among various actors (input providers, technology providers, farmers, financial providers, local indigenous communities, etc.). The requirement to comply with quality, safety and sustainability standards along the entire chain intensifies interdependence and may serve as a driver for the MPC. Increasingly, the need to coordinate multiple actors along the chain prompts the choice for collaborators between *several* bilateral connected contracts, each dealing with a single aspect of production (or processing and, to a large extent, distribution), or a multiparty contract. However, governance of an MPC comes with a "cost"; the parties must agree on the standards to be used.

11. *Coordination and governance costs*. In general, MPCs are used when the costs associated with coordinating several bilateral transactions are high and the costs associated with governing the participation of multiple *parties* are low. Conversely, linked bilateral transactions are more often used when coordination costs are low and governance costs are high.

12. *Contractual power*. MPCs tend to be used when power is allocated relatively evenly, whereas linked bilateral contracts tend to be preferred when power is asymmetrical. An even distribution of decision-making power may facilitate governance in a multiparty relationship, where consensus must be reached among several *parties* based on the principle of "one party, one vote", whereas in an asymmetrical power relationship, the party with more power might be able to exercise it more easily in a bilateral contract.

13. *Comparative advantages*. Contractual performance and implementation can be easier in MPCs than with linked bilateral contracts because the former offer governance structures for collective decision making and monitoring. Moreover, it may be easier to modify a single MPC should unanticipated circumstances arise as opposed to amending several bilateral contracts, which may require more time and higher *coordination* costs. MPCs may also provide better responses to individual non-performance and identify remedies that ensure the continuity of production, processing, and distribution (see Comparative Chapter […]).

D. Differences between exchange and associative multiparty contracts

14. *Exchange and associative contracts distinguished*. Many legal systems draw a distinction between exchange contracts and associative contracts. Exchange MPCs focus on the organisation of exchanges of goods and services among contractual parties. Associative MPCs imply a common project usually supported by financial and non-financial resources. The distinction is made according to the circumstances of the *contract*. Parties either only exchange goods and services, or they collaborate in the execution of one or multiple projects. This distinction may be relevant but is not decisive to regulate the contract and the performances.

15. *Connection with horizontal and vertical collaboration*. Exchange MPCs usually involve vertical collaboration (i.e., between different actors along the value chain), while associative MPCs can involve both vertical and horizontal collaboration.

16. *Exchange contracts*. Exchange MPCs are usually contracts employed by multiple parties for complex exchanges of goods and/or services. A common example is in contract farming when farmers exchange their produce for other physical or intangible assets, such as know-how or the licence to patents. Another example might be a vertical MPC among four parties operating in the cotton production sector –national regulators, farmers, ginners, and financial institutions.[56] Yet

[56] In this contract, the National Cotton Development Authority provides the planting seed to the farmers, whose duty is to grow the cotton and sell it to the ginner companies, who, in addition to buying the produce, are required to provide extension services. The bank is required to open individual accounts and loans to individual farmers who qualify. The National Irrigation Board maintains the irrigation infrastructure.

another example might be a tripartite loan agreement between farmers, a bank, and a processing company.[57]

17. *Associative and network contracts*. Some legal systems recognise several forms of associative MPCs. For example, the Italian network contract is an MPC where two or more entrepreneurs try to individually and collectively increase their innovative capacity and competitiveness. On the basis of a common network programme, the entrepreneurs cooperate in predetermined forms and areas relating to the exercise of their respective businesses; and/or exchange information or services of an industrial, commercial, technical or technological nature; or jointly exercise one or more activities that fall within the scope of their business.

18. *Overlap with other legal forms.* In certain legal systems, associative MPCs are partnerships, cooperatives or companies, instead of contracts. For example, farmers may jointly acquire a machine for use on their own farms. Depending on the legal regime, such a "machinery pool" might be a community of property, a civil law company similar to the general partnership under English law, a cooperative, or any other kind of company. However, when such a machinery pool exists only among the parties without the formation of a separate legal entity,[58] it falls within the definition of the MPC as adopted in this Guide.

E. Using multiparty contracts for collaboration in agriculture

19. *Specific features of the MPC*. As outlined in the Introduction to the Guide, collaboration may be driven by various needs: to combine skills; to share resources; to implement common standards along the value chain to achieve systemic goals – such as access to international markets; or to coordinate the providing of technology (See Preface, para. 2). The MPC form has certain specific features that can help achieve these collaborative goals, as explained below.

20. *Aggregation of skills and inputs.* A vertical MPC enables micro and small farmers to aggregate their access to skills, know-how, technologies, or machinery and seeds. Access to these resources can be encouraged by including the commodity or service provider in the MPC as a party, or by arranging a procurement contract with multiple buyers and one seller. An arrangement with higher levels of complexity may require that the buyers (farmers) be able to source multiple services using the same contract, and be able to directly coordinate with the services' suppliers.

21. *Resource sharing.* The MPC also facilitates resource sharing, either as the primary objective of the contract or as the mechanism used to pursue another common objective. For instance, a vertical MPC arises when several parties collaborate to purchase tractors using a contract that both regulates the purchase of the tractor and the use of the tractor by the contracting parties. A horizontal MPC concerning resource sharing arises when parties share a common technology that both ensures proper water treatment and allocates the treated water fairly among different users.

22. *Considerations in resource sharing.* There is an important distinction between sharing strategic resources, which are irreplaceable and indispensable to perform the collaborative endeavour (as in the examples in above paragraph), and non-strategic resources. In principle, resource-sharing may also be linked with better access to finance, given that common resources become security for financing. However, the use of common resources as security may conflict with the need for the resource to further the collaboration.[59]

---

[57] Under this agreement, the bank and the company jointly select the farmers that would be beneficiaries of the loan. The bank lends the selected farmers the necessary funds to develop a plantation, while the company provides extension services and other technical advice and assistance to the farmers, who develop the plantation, sell the product to the company and repay the loan.

[58] See also the considerations regarding "partnerships" in Chapter III on Companies.

[59] For example, a creditor's seizure of the technology would undermine rather than support the execution of the common project. Moreover, a financing party may prefer to obtain priority over general creditors by means of a lien against individually owned assets (as opposed to common property) or against assets that are segregated

23. *Implementing common standards*. Many agri-food products require coordination across the value chain to ensure that the final product meets specified standards for food safety, quality control, certification and, increasingly, sustainability. Accordingly, coordination of different stages in the value chain has become extremely relevant since compliance with transnational standards is determined by the interdependence of each party's performance. As was noted above, the MPC form can be selected to ensure such coordination and compliance with transnational standards by producers, processors, and distributors. MPCs can be especially useful when the implementation of the standard requires performance interdependence among the parties.

24. *Achieving systemic goals.* The use of an MPC may be appropriate when a concerted effort is required by multiple parties to improve an overall systemic or structural change, as opposed to achieving a specific, individual outcome. For example, where a plant disease is affecting a given area, rather than using an agrochemical, farmers may decide to use an environmentally friendly alternative that requires participation of all farmers; failure by one will lead to proliferation of the disease to the detriment of all. In order to ensure compliance, an MPC could be used to create a consortium of farmers and to enact an internal regulation that addresses both the need for technical support and monitoring. This could be achieved by providing recourse to internal advisors, public bodies, or external experts. Oversight could be undertaken by an internal supervisory committee, through controls performed by a third party such as a certification body, or through platforms that collect data in the field. The actors involved in providing both technical support and monitoring might also become parties to the MPC.

25. *Coordinating technology provision.* An MPC can help with coordinating the provision of technology to a large number of farmers that operate in the same area and are subject to similar risks. Parties along a supply chain - for instance, input providers and farmers with complementary knowledge and skills - may need to collaborate to improve production and reduce risks of natural events that may negatively affect the final result (i.e., harvest). It is important to consider in this context how digitisation is influencing both the scope and intensity of collaboration (discussed below in section V.C).

F. Regulation of multiparty contracts in agriculture

26. *Domestic or cross-border*. An MPC can be concluded between parties that are located within a single State or in multiple States. Contracting parties will need to consider the relevant domestic legal framework as well as party *autonomy when drafting an MPC. If the parties are located in more than one jurisdiction, parties will also have to make decisions concerning applicable law and the lex fori is generally allowed under relevant private international law.*

27. *Domestic legal framework.* At the State level, regulation of the MPC form may fall under general contract law, and/or agricultural or rural law. Whereas general contract law most often devotes very little attention to MPC, their use is well known in business practice, e.g. in the form of contractual joint ventures, strategic alliances, pooling agreements, economic interest groupings, networks contracts. In some jurisdictions these forms have been regulated by specific statutory norms, normally applicable across sectors. When an MPC is concluded outside a specific legal framework that is provided by law for that particular multiparty collaboration, parties should verify whether, under applicable law, a court could ex post qualify that collaboration as a partnership or a de facto company for the purpose of applying partnership or company law as a consequence (see Chapter III on Companies). As regards the distinction between general contract law and agricultural/rural law, many legal systems differentiate between agricultural contracts (used by agri-entrepreneurs) and general commercial contracts for the supply of goods and services (used by other enterprises such as input producers or distributors that do not qualify as agri-entrepreneurs). For the purpose of the CLSAE Guide, this distinction is not considered necessary and the broader scope

from the debtor's personal assets, as occurs in limited liability companies (see chapter on Companies, section IV). These limitations may be partially overcome through the creation of (trust-like) segregated funds within the MPC.

is assumed to include all commercial contracts that can be used to engage in both horizontal and vertical collaboration as applied to agri-food businesses*.*

28. *Freedom of contract and its limitations.* Freedom of contract characterises MPCs. Parties may normally choose the contractual scheme to be used for collaboration (whether a joint venture, a consortium, a network contract or any other available form under domestic contract law or autonomously designed by the parties), the number and type of parties, the rules on entry and exit, the rights and obligations for the parties, the risk and liability allocation, and the like. The principle of freedom of contract can be limited by legislation, such as mandatory rules and general clauses. It can also be limited through private rules, for example, a contractual obligation that all participants in the value chain must use the same standard terms and conditions imposed by the lead firm through a supplier code or the like.

29. *Limitations in an agricultural context.* The parties' freedom of contract is often more limited for agricultural contracts than under general contract law because domestic legislation tends to protect farmers, especially MSMEs. Parties with weaker bargaining power can be protected either through mandatory rules (e.g., requirements of written form, minimum content) or general clauses (e.g., fairness and good faith). Consequently, contracts among producers may be different from contracts between producers and other entrepreneurs along the value chain. Limitations of freedom of contract usually occurs when contractual power is unevenly distributed*.*

30. *Standard terms and conditions.* The content of a contract within a GVC is often determined by the chain leader in its Standard Terms and Conditions (STCs). The chain leader is usually the buyer of the final product or service but it can also be an input provider, especially in the case of precision farming. The content of the chain leader's STCs may include performance and price definition criteria. These STCs may also cover safety, social and environmental aspects of production, which may be regulated by separate instruments. These aspects may be regulated by international instruments on human rights and corporate sustainability, as well as private codes of practice, or supplier codes. However, the question of who controls private regulatory power arises when the content of a contract is not determined by agreement of the contracting parties, but rather by private instruments such as these Standard Terms and Conditions.

II. DESIGN AND CONTENT

31. *Analytical perspectives*. MPCs can be analysed from either a structural perspective or a functional perspective. The structural perspective concerns the number of parties, what constitutes a "party", whether bilateral *contracts* are open to the participation of more than two parties, and whether the contract is open or closed. The functional perspective considers the MPC as the setting for long-term collaboration rather than mere exchange of performances, project-based cooperation, and long-term multi-project cooperation. This Chapter considers both perspectives since they can complement one another.

A. Factors affecting design and choice

32. *Factors affecting design*. The following are factors to consider when designing an MPC: the number of participants; the size of participating entities; the market power of each participant; the contractual power of each participant; the nature *and* quantity of contributed resources (i.e., assets, knowledge, services, etc.) and whether these resources are irreplaceable (i.e., land); the ownership of contributed resources whether individually owned or shared; and, the control over innovation, where applicable (i.e., intellectual property, technology, trade secrets, etc.)

33. *Factors affecting choice of legal form*. The following factors can influence the choice of an MPC as the legal form for *collaboration*.

(a) *Number of parties*. MPCs work best with a limited number of parties. The form is not as effective at coordinating a large number of parties. However, an MPC can in effect coordinate a large number of participants when the parties to the MPC are themselves entities (e.g. cooperatives or companies).

(b) Regulatory flexibility and contract completion. MPCs offer parties considerable freedom to shape the content. Whereas cooperatives and companies often have structures that are pre-determined by law, the content of an MPC is determined by agreement of the parties. MPCs offer flexibility when the collaborative vehicle has to be incomplete, as is often the case when the collaboration involves innovation.

(c) Nature of shared resource. The MPC should make a distinction between monetary and non-monetary resources and another between strategic and non-strategic resources. A strategic resource is not readily available in the market and/or has unique features (e.g. know-how). Collaboration in strategic projects often requires sharing of knowledge and/or access to critical resources (e.g., technology). The need to share strategic resources among collaborators affects the decision to use an MPC to formalise the collaboration. Within an MPC, the nature of the shared resource, whether it is tangible or intangible, shapes the specific features of the contract. For example, intangible resources (e.g., a patent, plant variety certification or trade secret) usually require more sophisticated forms of coordination as well as governance of parties' performances, particularly in circumstances where the interdependence of contractual performance is more complex. For instance, when a contract seeks to regulate the use of a shared resource like a patent-protected plant variety. The shared resource needs to be controlled at various stages from cultivation through production and to sale. Thus, the actors involved at each stage - the breeder, the nurseries, the farmers, and the processors - need to coordinate their interdependent performances.

(d) Network externalities. In order to protect a name, regulate its use, or if a particular product becomes more widely known incentives emerge to establish some form of MPC, as opposed to several bilateral contracts. An example is the Geographical Indication (GI), which has at the core a common resource (i.e., a geographic name and associated reputation). Protection of the name and reputation is a common objective of multiple actors in a GI territory. Participants in the value chain usually protect the GI through compliance with common standards. Farmers/producers can collaborate to avoid problems of moral hazard and opportunistic behaviour by using MPCs, such as consortia, or by creating private associations, public/private bodies or unions.

(e) Governing interdependence. Interdependencies result from the performance of one party depending, either partially or entirely, on the performance of others. Interdependence can happen in both horizontal and vertical MPCs. Interdependence is strongest when resources are shared. But it can occur even in circumstances with no sharing (e.g., where operators have no choice but to cooperate in order to limit the spread of a certain disease). Interdependence of actors calls for coordination and cooperation along the chain. The greater the interdependence, the more likely it is that chain actors will benefit from MPCs aimed at governing interdependence.

B. Terms and content

34. *Types of content*. An MPC usually sets out objectives of the cooperation/project, defines the activities of common interest to the parties and contains the financial commitments of the parties. The terms of an MPC lay out the obligations between the parties; allocate tasks among the parties; establish the governance rules for the collaboration, as well as the rules for entry and exit of the collaborators; and divide liability among the parties. An MPC can contain further safeguards, such as

commitments on exclusivity, non-competition, confidentiality of information and business secrecy, data protection, or compliance with safety/sustainability standards.

35. *Incorporation by reference.* As previously mentioned, in an international value chain, contractual content is often determined by standard terms and conditions imposed by the chain leader(s). Hence, these terms, such as those related to quality, food safety and sustainability are often incorporated by reference into the contract.

36. *Internal regulations.* These standard terms and conditions are often employed to create uniformity along the chain through interdependent obligations. One option to incorporate these standards into the terms of an MPC is through the use of internal regulations. These internal regulations, often adopted by a chain leader to be applied along the whole value chain, may limit parties' contractual freedom while concluding an MPC.

37. *Framework and execution contracts.* Incorporation of terms may also involve the use of framework and execution contracts. A framework contract among two or more businesses or organisations establishes the general terms that govern any contracts that may be awarded during a given period, including an MPC. It might include more specific clauses for execution, or determine the price or quantity of goods to be delivered. An execution contract is stipulated within the framework agreement and governed by those general terms. Both the framework and the execution contract may be an MPC for collaboration within agri-food chains.

38. *Sustainability provisions.* Sustainability provisions that require compliance with environmental or social protection standards can be included in all types of MPCs, including those involving production or distribution, whether horizontal or vertical. Sustainability obligations may apply only to the contracting parties or, when the activity is within the scope of the chain, they may reflect a broader commitment by parties not in privity, for example related to a greenhouse gas emission target. Conventional instruments are often based on cascading techniques that mirror the same commitments in each linked bilateral contract along the chain. By contrast, the MPC structure may be more inclusive when it is open to the participation of an indefinite number of agents along the chain. MPCs may also provide a more effective monitoring system to ensure that all parties are in privity with each other. Although interested parties such as workers or local communities usually stand outside the contract, an MPC may establish a coordination unit to which third parties may refer in case of disputes.

C. Obligations and interactions with third parties

39. *Obligations among the parties*. Each party to an MPC has obligations to all other contracting parties. These obligations include the duty of good faith and loyalty, the duty to promote collaboration, and the duty to preserve the results of the collaboration (see discussion below on good faith at V.B).

40. *Obligations towards third-parties.* The parties to an MPC can be jointly obligated towards third parties when the execution of the contract depends upon the involvement of third parties, for instance, in the case of input provision, when the input provider is not party to the contract. The parties can also be obligated to third parties in cases where the collaboration is aimed at addressing third parties' interests in addition to the interests of the contracting parties (e.g., protecting the environment, creating job opportunities for local workers, ensuring fair wages to employees, etc.). Another form of obligation to third parties occurs when enterprises commit to environmental standards for processes or products. The role of good faith and fairness in MPCs should also be taken into account in respect of these obligations.

D. Modifications

41. *Modification over time*. As MPCs are usually long-term agreements that are frequently incomplete, parties should be able to modify an MPC to complete it and to adapt to new circumstances (rise or fall of prices, drought, trade tariffs, etc.). The default rule should be that the contractual terms can be modified by majority vote, but specific strategic matters may require unanimity.

42. *Minority protection.* The minority should be protected from contractual modifications that benefit only the majority, particularly in circumstances when participants hold unequal power. The dissenting minority should at least be able to exit the MPC (see discussion below on exclusion at […]).

III. ENTRY REQUIREMENTS AND FORMATION

43. *Identity of parties*. Entry requirements for an MPC include the definition of who may be a party to the agreement and whether there are any restrictions imposed by the original parties on future entries. Contracting parties can be limited to a particular category and/or size of enterprise. Perhaps parties may only *include farmers, agricultural entrepreneurs in a particular sector, entrepreneurs having a certain legal form, or entities with a certain qualification or certification (e.g., compliance with safety or environmental standards, etc.).*

44. *Entry regimes.* Entry usually occurs at the initial stage or later, once an MPC has already been concluded. An MPC can regulate entry through the following regimes: a) free entry; b) limited entry (e.g., based on specific requirements); or c) no subsequent entry after the contract is concluded to preserve the allocation of power and tasks designed by the initial contract.

45. *Factors influencing choice of entry regime.* When selecting the entry regime parties should consider the homogeneity or heterogeneity of participants, their contractual power, and the existence and nature of shared resources. Parties may also consider the uptake of certain technology to enable control or monitoring of members' activities. For example, if the collaboration intends to promote collective action to achieve a systemic goal, entry could be conditional on the adoption of specific technological solutions (limited entry). Similarly, entry could be conditional on the ability to comply with certain standards. The MPC could require compliance with the sustainability standards demanded by global value chains, in which cases entry into the MPC becomes an enabling factor to gain better access.

46. *Governance of entry.* When forming an MPC, parties should consider how and by whom future applications for entry will be reviewed. The decision to admit new contracting parties could be made by: a) the participants, either unanimously or by majority; b) only one participant assigned to the task; c) a board or committee of a few participants; d) a third party; or e) no one (in the case of free entry regimes). In designing the regime, parties should consider whether these decisions can be challenged and reviewed, either by the participants or the rejected party.

47. *Oral or written form.* An MPC may be in oral or written form (including the provisions on consent and time of formation). Oral contracts are more informal than written contracts, usually incomplete, and are more common in the agricultural sector. In the food segment of the agri-food chain, contracts are usually written and more formalised. However, they are also often incomplete and need mechanisms to adjust for contingencies that concern market and institutional factors. Whether at the agricultural or food processing level, the use of the written form for MPCs may help parties jointly design core aspects of their collaboration The written form can add transparency and facilitate concrete planning. It can also provide explicit mechanisms to address supervening unforeseen circumstances and, at a later stage, to fill in gaps left during the early stage of contract formation. In addition, a written agreement can further facilitate relationships with third parties.

48. *Stages of formation.* Formation of an MPC usually includes a precontractual stage, which may be followed either by a preliminary agreement and then a final agreement, or directly by a final contract. The precontractual stage may entail precontractual liability, if before concluding the

contract one party fails to provide due information, unfairly withdraws from negotiation, or causes another party to consent to an unfair contract or contractual term. Preparatory or preliminary agreements, usually define the path toward collaboration and commit the parties to making investments that are intended to verify the costs and benefits of the collaboration. When parties have verified the advantages of collaboration they can move to the final stage and conclude the contract. The extent to which preliminary or precontractual agreements are binding is a matter of domestic law.

49. *Role of digital tools in formation.* Digital technologies can facilitate contract formation by making the process more rapid and cost-effective. However, this ease might create issues concerning transparency and may lead farmers with low levels of digital literacy to enter into an MPC without fulsome appreciation of the contents and their implications.

50. *Digital adoption as pre-requisite.* Digitisation can meaningfully increase levels of monitoring, both quantitatively (e.g., many different variables/functions can be monitored simultaneously) and qualitatively (e.g., data can be measured in real time, data can be stored, for example, to elaborate performance statistics). If monitoring is crucial for the collaborative project, then the adoption of given technologies to enable such monitoring might represent a pre-requisite for becoming party to the contract.

51. *Digital platforms.* Use of digital platforms may impact the contract formation process. In particular, digital platforms provide the options of (i) sequential entry, (ii) entry at time of conclusion and (iii) subsequent entry (see Chapter on Digital Platforms).

IV. GOVERNANCE AND DECISION-MAKING

52. *Need for governance.* As an MPC can be a complex arrangement, often involving multiple projects realised over time, an extensive governance infrastructure may be required, one that is usually absent in bilateral contracts. Governance of an MPC concerns completion, execution, and dissolution of the contract, as well as dispute resolution arising from non-performance and impossibility of performance, and the post-contractual obligations of the parties. Governance provides mechanisms that allow the parties to modify the contract in response to both market changes and external crises. As MPCs among individual entrepreneurs are significantly different from those among legal entities (e.g., cooperatives), their governance structure will also differ.

53. *Participatory or delegated governance.* Allocation of decision-making power determines the governance features of MPCs. Decision-making power can be distributed among the parties in relation to various criteria such as the parties' contribution in kind, financial contribution, involvement in the implementation, or the size of participant. Decision-making can be participatory or concentrated. Participatory governance is based on collective decision-making by all the parties to the contract. Concentrated governance is the delegation of decision-making power to an individual, such as a project manager, or to a small group, such as a board. The parties delegate decisions related to governance to the individual or board and contract implementation to management. In this model, there is a general meeting and managerial governance of the contract such as the type deployed in cooperatives and in companies. Between the two extremes of participation, where all parties have equal power and where only one party holds all the power, there are many intermediate solutions where decision making power can be distributed or allocated to a board representing the various enterprises. The higher the degree of power concentration, the more necessary it becomes to protect the parties from power abuse. This protection can be achieved by using minority rights to oppose decisions or to ensure exit in case of disagreement with the majority.

54. *Board governance*. When the complexity of governance of the MPC so requires, the parties can create a board of directors responsible for contract execution. The members of the board have the legal power to make decisions and to engage in relationships with third parties. They owe the contracting parties a fiduciary duty, the breach of which can lead to liability (see discussion below, para 105).

55. *Project manager*. Execution of the MPC may require the parties to appoint a project manager, either for a single project or the entire MPC. The project manager can coordinate the parties and ensure that potential failure/non-performance is promptly and effectively addressed and resolved. The project manager can be an independent party or one of the contracting parties appointed by one or more of the other parties. In the latter case, a conflict-of-interest policy is strongly recommended to avoid situations where, in executing the MPC, the manager pursues its own interest rather than that of the collective.

56. *General or specific governance.* Parties may decide to collaborate for one or several projects, and for multiple objectives ranging from sharing resources to innovation. They may use an overarching MPC that distinguishes between general governance of the MPC and specific governance of individual projects, which may be governed through ad hoc committees and/or ad hoc managers. When only a few parties to the MPC decide to participate in an individual project, a specific governance mechanism may be designed for that project, even if the decision to engage in the project was made by all parties to the MPC.

57. *Voting.* Voting power can be allocated in various ways and can affect the choice of projects, resolution of conflicts among contracting parties, selection of remedies, and dissolution of the MPC. Possible alternatives and their correlation with decision-making could be as follows:

(a) each party has one vote regardless of the resources each has provided;

(b) voting power is allocated in proportion to the resources provided by each party;

(c) voting power is allocated on the basis of criteria other than resource contribution (e.g., contribution to the project, competence, market share, size, etc).

58. *Minority protection*. Voting and the distribution of decision-making power should take minority protection into account, especially when decisions are made by majority rule rather than by unanimity. *Protections* can include compensating dissenters, offering other types of benefits, or preserving the right of withdrawal from the MPC should a majority decision generate negative consequences for the minority.

V. CONTRACTUAL EXECUTION

59. *Preconditions*. Contractual execution entails performance by the parties of their contractual obligations however, execution extends beyond individual or joint activities. It also requires strategic planning, resource sharing, and collection of data, all of which are preconditions for contractual performance. As MPCs are long-term, they are often incomplete (especially if made orally) and thus, changes or additions to any preconditions to performance may be required over time, depending on the objectives of the collaboration.

60. *Impact of contingencies.* As the execution of a long-term MPC takes place under changing circumstances, it may necessitate new or redefined tasks that could not be anticipated at the time of contract conclusion. Agricultural contracts, particularly those that involve production, can be subject to multiple contingencies largely *outside* of the parties' control, such as natural events and market volatility. The parties can factor such contingencies into an MPC using pre-determined indicators or an algorithm that regulates the parties' performance.

61. *Definition or delegation of completion*. When the complexity of the collaborative project is such that it requires gradual completion, or where the instruments of collaboration cannot be fully elaborated at the outset, the parties can complete the MPC at a later stage. The parties can define a mechanism that enables *completion* as soon as the necessary information is acquired. Completion can either be implemented by the parties or delegated to an independent project manager that can supervise the execution of the project.

A. Independent and interdependent performance

62. *Core distinction*. A core *distinction* is to be drawn between independent and interdependent types of performance:

(a) *Independent performance.* Independent performance does not depend upon the activity of any other contractual participants. For example, where several producers have agreed to sell their produce collectively, delivery by one does not depend on delivery by another.

(b) *Interdependent performance.* Interdependent performance occurs when the performance by one party depends on performance by another. This is common in vertical agreements, such as those between producers and processors. For example, in the production of olive oil, if the producers do not harvest the olives in a manner compliant with process and product standards, then the processors might not be able to perform or they may have to correct the defects caused by the producers' failure to perform in order to perform themselves. Similarly, the relationship between input providers (e.g., seeds) and producers implies interdependent performance; performance of producers depends on performance of input providers (seeds or fertilizers). Horizontal agreements may or may not feature interdependencies.

63. *Implications of interdependent performance*. The interdependencies of contractual performance affect the following: (i) contract execution; (ii) definition and consequences of non-performance; and (iii) dissolution of the MPC. Accordingly, execution of interdependent performance requires much more coordination than independent performance. The degree of interdependence has an impact on the modes of coordination and monitoring of the different actors involved in execution. Greater interdependence is more likely to require a governance mechanism to coordinate and/or monitor activities.

64. *Degree of interdependence*. There are two factors in the interdependence of performance for a collaborative project first, is the number of parties involved - the higher the number, the greater the interdependence; second, is the impact of failure to perform the interdependent obligation on the final product or service to be delivered. By way of illustrative comparison, in one case failure to comply with food safety standards leads to the result that the product cannot be sold at all, whereas in another case, failure to comply *with* organic certification leads to the result that the product can nevertheless be sold, albeit as non-organic. The second factor is key; the number of parties do not have as much of an impact on the degree of interdependence but rather, on the consequences of interdependence and the complexity of its control mechanism.

65. *Services*. A service provider's failure to perform an interdependent obligation usually affects multiple actors. For instance, when technical assistance is not provided to a group of farmers engaged in an MPC, the non-performance *prevents* the farmers from executing their own performance and thereby undermines the collaboration. Many parties could be harmed by a single non-performance, and the anticipated remedies must not only redress the harm caused by the non-performance but must also ensure that the provision of the service is guaranteed.

66. *Governing interdependent performance*. Different contractual architecture may be required to govern interdependent performance. It may be part of the general governance structure of the MPC through which decisions are taken (e.g. the same person to whom decision-making power is delegated is also in charge of governing and monitoring interdependent performance), or it may operate next to it (e.g. through a contract manager). The following are some contractual mechanisms that can be used to monitor interdependent obligations:

(a) set up a body, members of which are appointed by MPC parties, with responsibility for coordinating interdependent performance;

(b) delegate to a third-party responsibility for assisting the MPC parties with performance of their interdependent obligations (e.g., a consultant) and/or for monitoring the different elements of interdependent performance (e.g., a certification body);

(c) set up a peer review evaluation among the MPC parties to mutually assess performance; and/or

(d) set up a platform for sharing information and collecting data about individual performance in the MPC.

B. The role of good faith and fairness

67. *Basic concept*. Parties have a duty to collaborate to execute an MPC and to ensure that its objectives are achieved. The duty to collaborate must be carried out with good faith and fairness and it persists even after an MPC is terminated, when post-contractual obligations can arise.[60] The duties of collaboration and good faith are particularly relevant in MPCs that require strategic collaboration. Strategic collaboration often *requires* the parties to make specific investments and there are limited opportunities to redeploy such investments easily. Interdependent performance makes the duty to collaborate more relevant because the parties must ensure that common objectives are pursued effectively. Accordingly, the MPC should include a specific term or requirement to execute the contract in good faith, as well as a good faith renegotiation clause to address unanticipated circumstances that may change the premise of the collaborative project. These contractual terms would play an important role, particularly in those systems where good faith and related duties, such as the one to renegotiate in good faith in case of unforeseen circumstances, are not recognised as general duties within applicable contract law.

68. *Duty of good faith*. The duty to maintain the ongoing collaboration and the duty of good faith should affect remedies for breach chosen by the parties. Furthermore, the duty of good faith also affects the choice of exclusion and dissolution of the contract. For example, parties to an MPC should share information related to *the performance of individual obligations which are interdependent with other obligations to be performed under the contract.*

69. *Fairness.* Fairness is particularly important when the distribution of contractual power is unequal. The contract should contain remedies against unfair behaviour. The remedies should lead to correction or modification of performances that were not defined in the contract and were unilaterally imposed on the parties by either the chain leader or by one of the parties.

70. *Timeliness.* In some jurisdictions, legislation related to long-term contracts provides that time is of the essence to define collaboration duties. This ensures that, while the explicit contractual terms may not regulate all possible future circumstances, the objective of the contract can be fulfilled and the effects desired by the parties will be achieved.

C. Digitisation and digitalisation

71. *Contract completion*. Digitisation[61] can assist with contract completion, publicity and record keeping, as well as reduce some of the completion costs. For example, digitisation can facilitate price discovery. Digital monitoring of contract performance generates a lot of data. The parties can then process the data using algorithms that account for all variables that impact price, eventually allowing automatic price determination. Digitalisation can also have an impact on contract completion. Parties cannot fully anticipate contingencies, thus completion always requires some degree of renegotiation. For example, the incompleteness of a contract might be related to the parties' need to exchange

[60] The nature of any such obligations may vary depending on the jurisdiction and whether one is dealing with a common law or civil law system.

[61] Digitisation and digitalisation are two different concepts. While digitisation focuses on converting and recording data, digitalisation develops processes and changes workflows to improve manual systems.

information. The use of digital technology in agriculture may help farmers monitor the impact of their activity on the environment (e.g. greenhouse gas emissions). This could trigger specific collaboration duties, e.g. to comply with sustainability standards agreed upon in the MPC among farmers. Digitalisation can facilitate such information exchange.

72. *Contract design and execution*. Digitalisation has significantly changed the way contracts are executed. As a consequence, contract design has changed as well. Digitalisation changes the way parties coordinate multiple performances, as well as the way they monitor and solve problems arising from non-performance. Digitalisation, and in particular surveillance agriculture, is redistributing the decision-making power between farmers and technology providers and data management enterprises. Digitisation could facilitate automatic information transmission by specifying, for example, the type of pesticide and quantity to be applied. Finally, it can circumvent product rejections and/or notification of contractual non-performance, for example, by automatically flagging produce that has pesticide content that usually should not be present in organic produce.

73. *Precision farming.* Precision farming uses digital technology to enable operational decisions. It can bypass the farmer to some extent, by using of passive drones and sensors to collect field data, or to a larger extent, by using artificial intelligence. For example, a tractor could be equipped with sensors that collect data about soil characteristics; such data could be sent to a platform that might elaborate statistics the farmer could use to identify the most optimal strategy to address soil deficits. The platform might propose recommendations to the farmer, or it might order the tractor to automatically make the recommended additions. The introduction of precision farming has concentrated performance monitoring in the hands of the data-holder. Information about potential defects is important when performance is interdependent and implemented at different stages of production. Precision farming can be used as a tool to improve contractual execution.

74. *Implications for farmer autonomy.* The redistribution of power triggered by digitalisation can have different effects which depend not only on technology, but also on how power is distributed among the parties. For example, digitalisation can make it possible for chain leaders to impose their requirements directly on farmers, even if these chain leaders are not party to the MPC, to monitor in real time whether farmers are performing in accordance with agreed contractual terms, to require farmers to justify decisions not to follow the recommendations generated by precision farming applications or to completely substitute farmers by AI for some activities. As a consequence, farmers risk losing their autonomy and becoming agents of the chain leader, thus exacerbating power dynamics that may already exist. On the other hand, digitalisation might improve cooperation and farmer autonomy; chain leaders might rely on real-time monitoring, leave farmers "more space", and focus instead on surveillance and the final output.

75. *Reduced autonomy due to third-party control. Farmers' autonomy may also be reduced because of their reliance on the entities who own or control digital technology, which is outsourced to third-parties. In the case of digital agriculture, the distribution of power is tripartite: some power might be left with the farmer; some power remains with the chain leader or with third parties like certifiers; while the initial source of power is* in the hands of the owners or providers of the technology, who thereby control access to data and technological functions and can therefore influence the choices of both farmers and chain leader(s). Data, once collected, could be used for multiple purposes. For example, data about the average yield of a given field could be used not only to better program or control production, but also to determine the price of an agricultural plot (e.g., data on soil fertility), or the insurance premium (e.g., data on yields affected by adverse atmospheric conditions). These various uses for data have implications from a legal point of view. Tools and principles such as the portability of the data from one technology provider to another and/or the openness of technical solutions/infrastructures are impacting the distribution of power.

76. *Modification of structure and relationships*. MPCs may feature different architecture depending on the type of collaborative endeavour concerned. Digitisation can build an architecture that allows coordination between parties and prompt reactions. These features depend upon the degree and the level of interdependence of *performance*. Digitisation often results both in changes

in the relationships among contractual parties and reallocations in the power of decision-making. Therefore, digitalisation can partly substitute for governance arrangements, or, at a minimum, it can shape them. The changes to the governance arrangements caused by digitalisation become even more important when the activity under an MPC is part of a process that takes place within a chain.

77. *Facilitate exchange of information*. Digitalisation can have an impact on the performance of interdependent obligations in different ways. Digitalisation can facilitate feedback on the modalities of performance by enabling technical devices to trace communications in real time. In turn, improved communication might allow for more efficient management of production and supply, for example, by allowing parties to share know-how on agronomic activities or advise of changes in agronomic practices due to external events. Technical devices might also enable the chain leader to give real-time instructions to farmers or other professionals, thus directing their activities through a top-down approach.

78. *Price setting.* Digitalisation can define prices, especially when prices change over time on the basis of factors exogenous to the relationship. Digitalisation can help to set prices and allocate costs related to the performance of interdependent obligations by allowing the parties to monitor the input and output of each participant. This might be valuable for incomplete contracts where it is often impossible to determine ex ante how to calculate prices and costs.

79. *Correct deficiencies or non-performance.* Digitalisation might make it possible to correct deficiencies in the performance of obligations that emerge during the monitoring phase. In circumstances when the level of automation is high, direct intervention by a machine can fix a problem before the product reaches market. For example, a drone or tractor could address a deficiency automatically while the crop is still growing. Cure by spraying serves as a sort of automated corrective remedy. In other cases, digitalisation might facilitate cooperative remedies, where the non-breaching party gives instructions and/or shares know-how to cure a given non-performance.

80. *Monitor performance.* Digitalisation can offer technical tools to monitor performance and determine if activities within the execution of the contract are being carried out properly (See also discussion on Performance below at Section VI). Digital monitoring might also enable other participants to start operating or providing services. For example, where one of the parties to an MPC is a financial institution who wishes to lend money to an operator, but only when such operator has achieved given sustainability goals, digital monitoring might signal to the bank when the funds can be transferred. In other words, digitalisation allows the traceability of performance, which is important in the context of interdependent obligations.

81. *Improved coordination.* Digitisation allows for better coordination in cases of resource sharing. Digital technology does so in different ways. For example, it may facilitate the apportionment of benefits and costs deriving from the use of a given resource. The ability to monitor the use of the resource in real time allows the parties to calculate benefits and costs for each of them in a more precise way than by estimating forfeit as occurs in a non-digital context. In addition, if there are limits to the use of a shared resource, digitalisation can help control violation of those limits. Another example might be the direct control of a shared resource through a digital application. For instance, an automated tractor might be equipped to spray pesticide only when given conditions are met or only when the controller so decides.

82. *Non-perfomance detection.* Digitalisation can also facilitate non-performance detection by monitoring the production process in real time (See discussion on Non-perfomance below at Section VI). For example, there might be sensors that collect field data on the agronomic practices, which is sent to a data-processing station that automatically compares this data with given standards. In the event of a discrepancy, the data-processing station might automatically signal this to the farmer who might need to provide additional data to better assess if there indeed has been a non-performance. Moreover, digitalisation can also help provide solutions for the problems that have been detected. In particular, it is possible that, as a sort of extension of the non-performance detection function, data-processing stations could:

(a) recommend to the farmer implementation of corrective remedies to fix the non-performance, with three further possibilities:

(i) the farmer is free to accept the recommendation or not;

(ii) the farmer is expected either to implement the recommendation or justify why it was not followed;

(iii) the farmer is required to follow the recommendation, failing which will amount to contractual non-performance; or

(b) ask farmers to provide data on which solutions they are going to adopt to fix the problem and then assess if such solution is compatible with the standards; or

(c) automatically implement the corrective measures, for example by sending instructions to a tractor to fix the problem (e.g., to spray crops with a chemical product).

D. Resource management and asset partitioning

83. *Types of resources shared*. As mentioned above (see para. 22), an MPC often requires resource sharing. The resources can be material, such as real estate, inputs, and machinery, or intangible, such as know-how and data. In order to fulfil an MPC, the parties may choose different mechanisms to share common resources. Property regimes and contractual obligations govern common critical resources. Parties should clearly establish whether these means are being used to share existing resources; allocate rights, powers and costs of these resources; produce common resources to be shared; or to purchase resources.

84. *Ownership options for shared resources.* Parties can own their shared resources collectively (co-ownership), or they can create a company to own the resource. When parties share ownership, each party holds a share of the same right to ownership (e.g., shared piece of agricultural equipment). Such shares may be divided equally among the parties or unequally, usually based on a party’s contribution in the creation or purchase of the resource. Depending on applicable law and the type of co-ownership, the share may be disposed of in favour of third parties. The rules of the contract or certain co-ownership regimes may, however, limit the right to freely dispose of one’s share and restrict the common use and enjoyment of the shared asset to the co-owners only. When a company is created to have ownership of the resource, two parallel governance structures exist: that of the MPC, and that of the company. A company that is created to manage a common resource is an instrument used to pursue the collaborative project and must be governed accordingly. The life of the company and that of the MPC should be strongly coordinated. Moreover, different liability regimes may apply depending on whether shared resources are commonly owned within the MPC or by a company in which the same parties are members. Indeed, depending on the applicable law, a corporate structure may shield the shared assets against seizure by creditors differently from a liability regime whose rights are linked to the management of the shared assets. The end of the contract is usually associated with the end of the company.

85. *Data as shared resource.* Special attention should be devoted to data as a shared resource, including its creation and management. Complex contracts likely require a large quantity of data to execute performance. Parties should consider the data ownership and data management during the lifetime of an MPC and after its dissolution. Some of the legal issues for MPCs that involve data creation and management might arise in the following areas: a) personal data protection laws; b) use of intellectual property; c) data cooperatives; and d) use of the MPC to control data collection and access to data by individual parties.

86. *Land as shared resource.* Parties may or may not pool land as a common asset. If pooled, land may become object of common and undivided ownership, as owned by shares by all participants. This choice will limit individual freedom not only in managing the land well beyond the purpose of the collaboration but also in disposing of it through sale or transfer upon death. Moreover, being part

of common assets, land could be easily seized by creditors, whose rights have arisen from the collaboration, and, if these assets are not 'legally separated' by parties' personal assets (see next par.), they may also be seized by personal creditors of individual parties. Alternatively, land may remain object of individual ownership without being conferred into the common pool. In this case, still parties may contractually commit to use individually owned land in certain ways (e.g. avoiding over-exploitation of natural resources or abstaining from the use of additives that may be harmful for the environment, etc.) but these obligations will not change the land's ownership status, neither expose the land to additional risk of creditors' seizure.

87. *Options for separation of assets.* An MPC usually requires financial resources to carry out the activities. The creation of a "common fund" under an MPC requires consideration of the allocation or separation of assets between the individuals contracting and the community of parties. The applicable law and the specific legal regime for MPCs determine the way these funding mechanisms are structured. In some jurisdictions, such law provides that resources contributed by the parties become joint assets of all parties and that the parties shall keep resources constituting the common fund as undivided for the duration of the MPC to preserve its dedication to achieving the common objectives. As to the effects of the creation of a common fund on creditors, several models can be identified, as follows:

(a) *Full separation*. When there is full legal separation between the resources necessary to perform an MPC and the parties' individual assets, individual creditors of the parties may not seize the common fund and the MPC creditors may not seize the individual assets of the participants.

(b) *Partial separation*. When there is partial legal separation of an MPCs' resources and the parties' assets with some residual liability for the parties, the individual creditors of the parties may not seize the common fund, but the MPC creditors may seize the personal assets of the participants if the common fund is insufficient.

(c) *No legal separation*. When there is no legal separation of the common fund apart from separate accounting, the individual creditors of participants may seize that portion of the common fund allocated to the relevant participant and the MPC creditors may seize personal assets of participants in accordance with the share of the debt for which each participant may be responsible. Depending on applicable law and the nature of debts, each participant may be liable only for a specified share of the debt or, jointly with other participants, for the whole of the debt attributable to the MPC activity.

88. *Jurisdiction-dependent*. This area of the law is heavily influenced by domestic legislation; party autonomy is often limited within pre-defined schemes that provide for different degrees of separation and liability shields. In most cases, party autonomy may best be exercised through the choice of a specific scheme within the menu provided by applicable law, rather than through adaptation or modification of existing legislative schemes.[62] The use of companies and cooperatives to separate assets and liability is rather common throughout the world. However, legal systems greatly differ in the use of asset partitioning within MPCs.

89. *Insolvency.* Some jurisdictions distinguish between voluntary and involuntary creditors in terms of who may seize the parties' individual assets. If one of the parties is a company limited by shares that may create trust-like funds. If the segregated fund's original destination has the same scope as the MPC's programme, then the MPC creditors may enjoy exclusive rights as to the whole fund, including the segregated fund. However, if the segregated fund's destination is more specific than the contractual programme, then creditors' rights for obligations contracted in relation to this segregated fund (a sub-fund within the common fund) will be the only ones able to seize the

---

[62] Selection of the preferred scheme may be by means of the choice of law applicable to the MPC. Moreover, the choice may be between different types of MPCs or between a MPC and another form, such as a cooperative, where these options have different degrees of asset segregation and because the chosen scheme offers a certain type of liability shield.

segregated fund, while other network creditors may only seize other assets within the common fund. For example, a network contract is established among five farmers and a wine producer, having exclusive intellectual property rights over grape varieties forming a "segregated fund" destined for research and development ("R&D") programmes in the field of organic wine production. The segregated fund is conferred into the common network fund, which is destined for the execution of the network programme including but not limited to R&D in the field of organic wine production. A bank, financing R&D activity in this field, will be able to seize the segregated fund unlike other creditors, e.g., those financing the network's activity in conventional wine production. In several jurisdictions, the creation of a fund within an MPC does not limit liability to the fund's boundaries; creditors may also seize parties' personal assets or at least the assets of those parties who acted as managers, while "mere participants" could be shielded. Conversely, the law more often shields the common fund from parties' personal creditors.

90. *Impacts of segregated common fund.* Shielding personal assets from claims related to the MPC encourages participation in the MPC collaboration and facilitates financial risk management for each party. The same is true from the point of view of creditors whose claims relate to the MPC's execution, when the common fund is shielded from the parties' personal creditors. When the common fund established under the MPC is sufficiently solid and not subject to substantive risks of loss or deterioration, it may also improve the project's access to finance, at least in principle. Nonetheless, by contrast with an incorporated company, the common fund established within an MPC that is not qualified as a separate legal entity is subject to seizure against all participants as co-owners. Moreover, in practice the common fund could be composed of limited monetary conferment rather than conspicuous endowments of money or instrumental goods. If instrumental goods are ever conferred, the risk of seizure by financing parties runs against the fulfilment of the common objectives. For example, should a high-tech machine be conferred to the common fund, the seizure of the fund would run against the common objective of the fund, which is having the machine in full operation. All the above could make access to finance rather challenging, especially when, as seen above, by law the fund is not coupled with a limited liability regime for participants. In this case, access to finance may be easily subject to the assignment of distinct security on participants' or third parties' assets, including those of public entities or development banks.

91. *Creation of company.* The parties can create a company to manage the fund and/or the shared resources, thereby shielding the financial and intangible assets with limited liability. This combination may allow governance of the collaboration through the MPC and, at the same time, would limit the liability to ensure financial accountability.

92. *Distribution of risks and costs.* The contract can be performed in various ways. Each party can be responsible for part of the implementation or parties can collectively perform the contract. The independent or interdependent nature of performance may influence the parties' choices about the distribution of risks and costs. The burden of individual performances may vary and consequently the costs and benefits may be allocated differently. However, performance is not the only factor that defines risk and cost allocation among contracting parties.

93. *Equality or proportionality in the allocation of costs and revenues.* Execution of an MPC requires the parties to allocate costs and revenues among the participants. The same principles of distribution do not necessarily have to apply to both. Unless prohibited by the applicable law, parties may, for example, freely agree to distribute costs according to financial availability and benefits according to each party's contribution to the project's execution. There are several ways to allocate profits among the participants. First, the costs and benefits may be distributed equally among the parties. Second, the costs and benefits may be born in proportion to the amount of resources provided by the parties (both financial and non-financial resources, e.g. workforce, know-how, etc.) and/or the efforts in contributing to the achievement of the objectives. Third, the distribution of costs and benefits may follow some other criteria such as a goal to promote economic growth of micro and small enterprises, in which case, the micro and small enterprises might gain more than they confer.

E. Involvement of third parties

94. *Execution of the contract through third parties*. Parties to an MPC may be required to engage with third parties to perform the contract. Three main factors may need to be considered: i) the degree of dependence on third parties to carrying out the underlying obligation of an MPC; ii) how MPCs behave when contracting bilaterally with a third party; and iii) ways that the MPC can protect the underlying collaboration when they have to rely on a third party to perform part of the MPC.

95. *Partial or total execution.* There is a difference between partial execution of the contract by third parties or total execution by third parties. Since an MPC is made up of several enterprises grouped to act as one party in a bilateral contract with a third party, the parties to that MPC may need to organise their collective interest. The parties, or their agent, represent the collective in negotiations with that third party. For example, the parties to an MPC might set up mechanisms to validate third parties before they become involved in contractual performance. The parties to an MPC may also use confidentiality clauses, especially in MPCs involving intangible resources (e.g., trade secrets, sharing of know-how, etc.).

F. Monitoring contractual performance

96. *Impacts of complexity*. MPCs may require more complex monitoring systems than those used in bilateral contracts. Prompt information sharing about failure or defective performance is important, especially for the party(ies) whose performance depends on the actions of another. For example, if a raw agricultural product is defective, this information is relevant to enable the processor to decide whether the goods can be processed or if alternative delivery of produce should be pursued. Monitoring can lead to detection of failures that the parties can correct before they amount to a non-performance or even after the non-performance. Monitoring interdependent obligations allows the parties to understand the situation in real time and to suspend activities that can negatively affect other, subsequent activities, thereby saving resources, improving their efficient use, and enabling better planning.

97. *Options.* In an MPC, parties monitor each other's performance and the governing body oversees overall contractual execution. Complex projects might necessitate a committee whose responsibility is to ensure compliance and solve problems concerning failure to perform or misfeasance. As was noted above (para. [80]), digitalisation offers technical tools that can greatly assist in monitoring performance and interdependent obligations. The technological advances that now enable remote monitoring, have made collaboration among parties located in different jurisdictions much more feasible due to the deployment of platforms and blockchain.

98. *Lock-in effects and hold-up risks.* The possibilities of delays and opportunistic behaviour at the expense of other parties increases when performances are interdependent. Indeed, both strategic investments and interdependence among performances may generate "lock-in effects" (e.g. when a farmer becomes dependent on a technology developed within an MPC and finds it difficult or costly to switch to an alternative outside the collaboration with the other farmer parties) and "hold-up risks" (e.g. when the technology provider takes advantage of the farmers, raising its fees, once they have all made irreversible investments in the developed technology). The design of an MPC, the sequence of performance, the duty to correct and mitigate failures to perform, and the systems of compensation associated with mitigation ensure fair allocation of risks, costs and responsibilities among the participants in the MPC. Hold-up problems can be addressed by appropriate terms that detect opportunism and mitigate its consequences.

G. Change of circumstances and supervening impossibility

99. *Distinctions*. Because MPCs are generally long-term, the circumstances that exist at the beginning may change over the course of the contract's *execution*. Such changes may affect either

individual performance or the entire project. It is important to distinguish between the impossibility of individual performances and the impossibility of the MPC. The distinction between independent and interdependent performance is also relevant for deciding appropriate remedies in a change of circumstances.

100. *Individual impossibility*. Impossibility of individual performance, such as delivery of inputs or agricultural products, should only lead to the dissolution of an MPC when it makes achievement of the contractual objectives impossible. Impossibility of individual performance should lead to renegotiation when alternative performances are available and the party whose performance has become impossible can engage in different conduct that can ensure ongoing collaboration. If performance of an individual can be excused, or if the performance can be replaced or substituted, the MPC should not be terminated and the obligations of the other parties should remain in force. In such cases, the party excused from performance should not receive remuneration. Furthermore, the other parties might ask the party whose performance has been excused to return resources to the common fund (see discussion below on exit and dissolution). Alternative performance may be sought first among the parties and if not available, then in the marketplace.

101. *Independent and interdependent performance.* When performance is independent, impossibility does not influence the other parties' ability to perform. When performance is interdependent, the impossibility may have consequences for the ability of other parties to perform their obligations. When impossibility of performance/s leads to the impossibility of achieving the objectives of the contract, then dissolution should take place.

VI. NON-PERFORMANCE

A. Overview

102. *Basic concepts*. Non-performance of an MPC occurs when one party, or more fails to fulfil their obligations, such as performance or payment. For example, a party might deliver inaccurate quantity or poor quality of product. The non-performance might cause harm to only one party, several parties, or the entire group. The harm might even extend to third parties. Non-performance leads to liability and responsibility for the *harm* caused. If the non-performance is individual (committed by one party), the breaching party is liable towards the other contracting parties. If the non-performance is collective (committed by several), the breaching parties are jointly and severally liable towards the other parties.

B. Fundamental non-performance

103. *Basic concept*. Non-performance of an MPC is fundamental if it harms the collective interest and impairs the collaborative project to such an extent that it becomes significantly more difficult, or impossible, to achieve the objectives envisaged. Unlike in a bilateral contract, a fundamental (or material) non-performance of an MPC includes harm to both collective and individual interests. For example, this might involve critical resources for the group being endangered, confidential information being shared with third-party competitors, or an innovative instrument, purposely designed for the project being irreversibly damaged by the negligent use of one party. Fundamental non-performance concerns the party who committed the non-performance, those harmed, and whether the non-performance has disruptive effects on collaboration. Non-Performance by one party that harms only one other party is not usually considered fundamental.

104. *Defined by the parties*. To signal the relevance of certain elements of performance, parties may define "fundamental non-performance" in their *contractual* terms. For example, parties may agree that violating workers' rights in the context of project execution is a fundamental non-performance.

105. *Non-performance of sustainability provisions*. Non-performance can be considered fundamental not only for the non-performance of obligations concerning quantity or quality, but also when process obligations are breached, such as in the case of sustainability violations. Hence, when parties consider the materiality of non-performance, they should consider not only the interests of the parties to the contract but also the interests of third parties. For example, the use of child labour or violation of environmental standards leading to substantial harm may constitute fundamental non-performance. Sustainability violations frequently harm the collective interest.

106. *Consequences.* Qualification of a non-performance as fundamental affects the decision to continue the collaborative relationship. It affects the choice and content of remedies. For example, the determination of a fundamental non-performance enables the non-breaching parties to terminate the MPC and seek remedies for contractual termination. The determination affects the nature of correction in case of continuation by re-establishing the conditions for effective collaboration.

VII. JOINT AND SEVERAL LIABILITY

A. Liability of contracting parties towards each other

107. *Basic concept*. When there has been a non-performance of an MPC by one or more parties, liability can be joint, several, or joint and several. When liability is several, each party is liable for its share. When liability is joint, each party is *fully* liable and can then seek indemnification.

108. *Different contexts*. Joint and several *liability* for non-performance of an MPC may occur in different contexts:

(a) several parties fail to execute the same obligation (e.g., defective products are delivered by several farmers);

(b) several parties fail to execute different but interconnected obligations that produce an individual collective harm (e.g., input provider fails to deliver safe inputs to farmer and farmer fails to deliver safe produce to the processor);

(c) one party fails to monitor another party's conduct that results in a non-performance-unlike (a) and (b) with different obligations within a single contract, in this case there are different obligations in different contracts;

(d) if the MPC is governed by a board or a committee, the members of the board owe a fiduciary duty to the contracting parties. If this fiduciary duty is breached, each board member is jointly and severally liable towards the contracting parties.

109. *Vertical MPCs*. In vertical MPCs, joint and several liability might occur if the same obligation is breached sequentially by several parties. For example, if a sustainability standard (e.g., prohibition to use a certain chemical) is violated by more than one party, all breaching parties could be liable towards those that did comply and/or to those that were unable to comply because of the failure to perform by other parties. By comparison, if the non-performance is committed only by one party and the other parties fail to mitigate the negative consequences, joint and several liability does not arise because the failure to mitigate precludes the non-breaching parties from full recovery for the harms suffered but it does not make them liable towards the other non-breaching parties.

110. *Complexity in horizontal MPCs*. In horizontal MPCs there are situations where several parties (i) make a joint promise to perform a joint activity together; (ii) make the same promise to the other parties to individually and distinctively perform the same activity in accordance with the same standards; or (iii) make different yet interdependent promises within the same contract. In the first case, in the event of non-performance, joint and several liability arises. In the second case, joint and several liability arises if there is a single harm caused by multiple non-performance. In the third case, it depends. Each party has connected *obligations* to achieve a common result. Whether joint and several liability arises in the case of multiple non-performance within the same contract for different

obligations depends on the degree of the obligations' interdependence and on the nature of the harm that stems from the multiple non-performance. Hence, there might be joint and several liability for breach of different but interdependent obligations. If the obligations are independent, individual liability arises for each breaching party.

B. Liability towards third parties

111. *Alternative sources of liability toward third parties*. Liability towards third parties may arise in one of two ways. One is where non-performance of one or more of the obligations under the MPC that contracting parties owe to each other also results in harm to a third party. This usually arises as a claim in tort (negligence). For example, a contracting party (producer) delivers contaminated produce to another contracting party (processor) who then processes and sells a contaminated product to a third party, who sues. Secondly, the parties to an MPC may also conclude contracts with third parties and those subsequent contracts, which are also subject to non-performance, should also be considered with a view towards evaluating potential liability, which may arise out of a contractual and/or tort claim.

112. *Liability to third party for non-performance of MPC.* The law may apportion the "liability" (i.e., the legal responsibility for the harm) among parties to an MPC in a particular way. For example, if two parties are each responsible for 50% of harm, the law might require each party to pay 50% of damages. However, under the MPC, depending on the rules of party autonomy under the applicable law, the contracting parties might be able to apportion the "liability" (i.e., the payment or indemnification) differently. For *example*, liability could be apportioned in proportion to the share of risk of harm borne by each party. The criterion for sharing liability may also vary, depending on whether strict liability or negligence applies to the particular type of breach.

113. *Liability for non-performance of contract between MPC and third party*. When there is a non-performance of the contract between an MPC and a third party, e.g., a supplier who is not party to the MPC, the parties to the MPC can be individually liable; and jointly and severally liable. Under the legislation in several jurisdictions, *the* latter most often occurs when parties act on behalf or in the interest of the common project.

VIII. REMEDIES FOR NON-PERFORMANCE

A. General principles

114. *Basic concept.* In broad terms, remedies are any type of measure that may be sought, under the applicable law, by the aggrieved party(ies) against the party(ies) for redress of non-performance of an MPC. This may include monetary and non-monetary measures and may or may not interfere with the continuation of the MPC.

115. *Judicial and extra-judicial remedies*. This section focuses both on remedies that are both imposed by a court (judicial) and self-enforcing remedies or remedies designed by the parties in amicable settlements arranged outside of court (extra-judicial). Depending on the applicable law, most remedies are sought within the *framework* of judicial enforcement. This section provides guidelines on the choice of remedies and who can seek them. It does not cover administrative or criminal enforcement in relation to agricultural MPCs. The analysis assumes that legal systems define remedies through default rules that can freely be changed by the parties.

116. *Preserve the MPC*. The choice of remedies should reflect the objective of keeping the long-term contract operational despite a single non-performance because MPCs are long-term agreements that pursue common needs and objectives through collaboration. Remedies should aim to preserve the stability of relationships, *promote* the collaboration among parties even after non-performance, and avoid disruptive termination. Should termination be necessary for one of the parties, cooperation

should be preserved to the extent possible for the remaining parties in order to enable execution of the common project and achievement of the contractual objectives.

117. *Cause of non-performance*. Remedies should focus not only on the consequences for the party that caused the injury, but also on the causes of non-performance. Hence, remedies should aim to correct or eliminate the causes of the non-performance and focus not only on redressing the losses. This approach is necessary when contracts are among parties operating in global value chains. In ordinary contract law, *when* bilateral contracts are considered as distinct from a chain approach, the cause of the non-performance is not usually relevant in determining the remedy. Only by addressing both the cause and the consequences can long-term collaboration be maintained.

118. *Direct and indirect effects*. As MPCs often operate in global value chains, which are complex trading infrastructures it is necessary to *account* for both direct and indirect effects of non-performance. Such chains require stability and often cannot tolerate disruptive events. Hence, the remedies should be seen in light of the overarching governance architecture of the entire chain.

119. *Contractual remedies*. To the extent possible, parties should try to find an amicable solution using remedies defined in the contract. An MPC can provide for an internal committee, one that might include independent third parties, that can *assess* whether non-performance has occurred, whether and how it can be remedied or, if corrective measures are not possible, whether to proceed with contract termination and assessment of damages. Indeed, the internal governance mechanism should be the first option with judicial intervention considered as a last resort.

120. *Dispute prevention and resolution*. Although remedies are in response to contractual non-performance, they should also be viewed in combination with contractual governance as instruments to prevent and resolve problems that may arise during contractual execution. Thus, collaborative governance not only fosters cooperation in the execution of the contract, but also mitigates the negative consequences of a non-*performance*, especially when the collective interests of contracting and third parties are harmed. For these reasons, an MPC should always include a duty to collaborate between breaching and non-breaching parties, and governance mechanisms that require the parties to do so.

121. *Collective and individual harm*. The distinction between individual and collective interests affects the selection of remedies in the contract. The parties should determine whether the remedy can only be sought by the group of non-breaching parties or whether individual parties that suffered harm can also seek redress. If the non-performance has an impact on the collective interest, decisions concerning remedies belong to the group of non-breaching parties. If the collaboration falls apart, all parties suffer harm, but the *measure* of harm may vary for each party. Hence, when both collective harm and multiple individual harm occur, parties may seek redress for both. There may also be claims for the gains that were expected by each party and by the entire group (expectation damages).

122. *Collective interest and sustainability non-performance*. A non-performance of sustainability obligations often harms the collective interest. On the other hand, a non-performance that concerns quality and quantity of goods may *only* affect the collective interest if the obligations are interdependent. For example, it may undermine the certification of the entire project if there is an obligation to deploy an environmentally friendly technology in the production process and only some parties deploy that technology, if the contract presupposes that every party uses the technology. Similarly, in respect of social standards, if some parties violate an obligation to refrain from using child labour, the harm that stems from employing children is collective.

123. *Nature and extent of non-performance*. A significant factor in determining available remedies is the nature of the non-performance. Some remedies are only available when the non-performacne is fundamental (discussed above at section VI.B); *this* usually applies to disruptive remedies, such as termination, and sometimes to remedies that generate high costs for the obligee, such as product or service replacement.

124. *Independent or interdependent performance*. non-performance of independent performance does not impact the ability of other parties to perform under the contract. Interdependent performance requires much more collaboration; failure to collaborate may aggravate the consequences of non-performance in such a way that mitigation becomes difficult or impossible. Performance is almost always interdependent in vertical MPCs. For example, when producers fail to deliver, processors are unable to process the goods. An appropriate remedy would aim to ensure delivery of the final product (or service) despite non-performance by intermediate parties. Such corrective remedies could include the identification of alternative sourcing.

125. *Remedies, contractual environment, and enforcement regimes*. Remedies should not be defined with primarily judicial enforcement in mind. Access to judicial enforcement may be limited and usually ends the long-term relationships that are characteristic of MPCs. Hence, remedies considered should be those that are self-*enforcing* and subject to a duty to collaborate with fair distribution of the costs associated with the non-performance. More generally, especially for MPCs in agriculture, the degree of informality is high, and the role of local communities and networks within which farmers operate is relevant for the resolution of disputes. The environment of agricultural contracting differs from that of food contracting, and enforcement may reflect these differences. Mechanisms based on reputation might have a higher level of influence in small communities where micro and small agricultural enterprises operate. Hence, whether an MPC involves an agricultural or food product might matter in defining the business and social environment within which collaboration takes place.

B. Type of non-performance and affected interests

126. *Affected interests*. As the remedies required are dependent on the interests affected by the type of non-performance, these should be *distinguished*, as follows.

127. *Non-performance affects the interests of a single party*. Some instances of non-performance affect the interest of a single party, without having any significant consequence for other parties. For example, in an MPC to develop digital infrastructure among several farmers, a supplier of digital devices, a digital service provider and a bank, one of the farmers may default on payment to the bank without impacting the performance of the contract for the other farmers. Alternatively, if one device provided to a single farmer is defective, the defect does not interfere with other devices or the digital infrastructure.

128. *Non-performance affects the interests of more than one or all parties*. A non-performance may affect the interest of more than one party, or even all of the parties. In some cases, the collective interest may be directly impaired. For example, a digital service provider may fail to develop the digital infrastructure and as a result, the collective will not be able to collect accurate data. In other cases, the non-performance may impact an *interdependent* obligation in the MPC and generate a “cascade” down the chain making it difficult for parties with subsequent roles to comply with the terms of the contract. For example, a supplier of digital services may have an impact on the performance of the digital service provider and therefore impact the project as a whole.

129. *Non-performance involving standard, strategic or specialised resources*. Non-performance may involve standard, strategic or specialised resources in any type of MPC. Non-performance that only affects the interest of a single party usually happen in MPCs where the shared resources are standard, for example, inputs that are easily *accessible* through market transactions. Non-performance that affects the interests of multiple parties tend to arise in MPCs that involve the sharing of strategic and non-standard (specialized) resources requiring strategic investments. A single breach in horizontal MPCs tends to impair the interests of all parties while in vertical MPCs a single non-performance tends to cascade through the performance of subsequent parties.

130. *Non-performance affecting third party interests*. When the MPC concerns a segment of a production process, the question arises as to whether a third party along the chain may make claims for non-performance of contract against the MPC. Usually, *the* requirement of privity of contract

prevents such third parties from seeking compensation. However, contractual terms may be inserted into an MPC to ensure that, should the negative consequences of the non-performance extend beyond the parties, remedies will be granted accordingly. While some legal systems provide the possibility to seek contractual remedies from the breaching party even if the complainant was not party to the contract, most legal systems offer protection to third parties via extracontractual liability

C. Decision-making on choice of remedy

131. *Non-Performance affects single party*. When a non-performance affects the interests of only one party, the function of contractual remedies remains, as in bilateral contracts, to redress the harmed party. The injured party can usually choose the *appropriate* remedy without consulting the other parties. The non-injured parties can not ordinarily oppose the choice without demonstrating that the remedy might undermine execution of the MPC or violate the principle of proportionality. Nonetheless, the injured party should consider the impact of their chosen remedy on the collective interest (e.g., contract termination) and on other participants.

132. *Non-performance affects multiple parties*. By contrast, when a non-performance affects multiple parties, either because it directly impairs the collective interest or because it relates to interdependent performances, then the function of contractual remedies should instead provide redress against the violation of the collective interest. All *affected* parties should be involved in the choice of remedies related to the collective interest, particularly when there is a risk that the chosen remedy might, itself, disrupt the collective project, such as termination of the MPC. For example, should the delivery of a defective device to a farmer disrupt the entire digital infrastructure of a project, not only should the farmer who received the defective device be able to seek redress for the individual harm, but all contracting parties should also be able to seek remedies. This default rule can be modified: depending on the governance model, the power to choose a remedy can be delegated to an appropriate entity.

133. *Non-performance that affects both individual and collective interests*. Non-performance might cause both collective and individual harm. In such instances, the non-breaching parties collectively choose the remedy for the collective injury and each injured party chooses the remedy for their individual injury. Where there is a conflict between parties as to the chosen remedy, a difficult issue can arise if, for example, some parties wish to terminate the collaboration while others wish to continue. Choice by majority vote can be an undesirable method in such circumstances, especially because the majority may not duly take into account the interests of the minority. On the other hand, a requirement of unanimity creates the risk of abuse on the part of the minority.

134. *Right to choose remedy*. Decisions on the choice of remedies depend on the interests violated by the non-performance. In practice, however, the applicable contract law may be unsuitable to deal with this case since "standing" for contractual remedies in MPCs is rarely regulated by national contract laws. When this is the case, parties may refer to rules of collective organisations, such as companies, but they may also create remedial rules themselves *by* adopting a special procedure for internal dispute resolution. In these circumstances, whether decisions about remedy are made by majority rule or by unanimous decision of the aggrieved parties depends on the applicable law and on the choice made by the parties in the contract.

D. Parties seeking remedies

135. *Single aggrieved party seeks remedy*. Where the non-performance only affects the interest of a single party, only the affected party has the interest and power to seek remedy from the breaching party. The situation is relatively similar to that of a bilateral contract. Depending on the type of collaboration envisaged by the MPC, the aggrieved party could seek remedy not only from the party in non-performance but also from the other parties. There are various circumstances under which a single injured party can seek remedy from multiple parties to an MPC, for instance, whenever

the MPC requires all parties to monitor one another's performance or when some parties are guarantors for the payments of others. It is also necessary to consider the ways responsibility will be apportioned, both as may be outlined in the contractual provisions and in any legislation applicable, for example, to consortia or network contracts.

136. *Several aggrieved parties seek remedies*. Where non-performance affects several or all parties, the collective interest underlying the collaboration is harmed either by a direct non-performance or indirectly through breach of an interdependent obligation. Since multiple parties are affected by the same non-performance, *they* are all entitled to seek remedy from the party in non-performance. Aggrieved parties in an MPC may be in a stronger position than they would be had they chosen to use separate or linked bilateral contracts to organize the collaboration. Moreover, an MPC facilitates access to contractual remedies for those parties that operate at levels distant from the chain leader and who, in the absence of an MPC, would have no contractual right to bring a contractual claim against the party in breach. For example, a digital service provider may have an interest in seeking remedies from a digital device supplier who delivered a defective device to a farmer. The provider is only considered a contractual party vis à vis the party in breach within an MPC but not along the lines of bilateral contracts, even if the bilateral contracts have been linked.

137. *Parties seeking remedies for non-performance of sustainability standards*. Non-performance of sustainability standards usually affects the collective interest of parties to an MPC. Non-breaching parties may seek corrective remedies against those who committed the violation and force them to submit remediation plans. In these cases, multiple aggrieved parties can seek recovery to repair both the collective and individual harms. Nonetheless, the *principle* of proportionality (discussed below in para. xxx) also applies to the remediation of violations of sustainability obligations.

138. *Advantage of MPCs for third parties seeking remedies*. When the performance of a third-party is affected by the execution of an MPC, the third-party beneficiary doctrine can apply, i.e., when third parties (e.g. workers and workers' families, local communities, etc.) may show that the MPC was meant to generate benefits directed to them (e.g. preservation of water safety for household consumption). Hence, by taking into account the collective interest, all parties affected by the same non-performance, including the third-party external to the MPC, would be able to seek redress within the same dispute; this would be impossible, or extremely difficult, in an arrangement of separate bilateral contracts.

139. *Disadvantages of MPCs for parties seeking remedies*. Conversely, there might be situations in which the collective dimension of a claim under an MPC creates additional burdens. As discussed below, the affected *interests* may not necessarily be *homogenous*, the collective interest may conflict with individual interests, different individual interests may collide, or majority and minority interests within the MPC might be opposed.

E. Choice of remedies

140. *Categories.* Non-perfomance of an MPC usually triggers an extensive menu of remedies that can be distinguished on the basis of the type of non-*performance* and its consequences, as follows:

(a) remedies that require the contractual relationship to remain in place (specific performance, corrective remedies);

(b) remedies that bring the contractual relationship to an end (contract termination); and

(c) remedies that can operate in both cases of persisting or terminated relationships (damages and other remedies, such as restitution).

141. *Menu of options*. Depending on the applicable law, non-breaching parties usually have several options to remedy their injury. These include *injunctions*, corrective remedies, restitution, compensation, or contract termination – either termination of the relationship with the party in non-performance, or termination of the whole MPC.

142. *Remedies prescribed by contract*. Limitations on both party autonomy and the range of available remedial options that might be imposed by the applicable law must be considered by the contracting parties. However, contracting parties are generally free to include provisions to regulate their choice of remedies. Specific clauses, such as those *that* establish a hierarchy of remedies (discussed below in section VII.J), can add certainty, prevent litigation, and foster cooperation whenever incidents occur or mistakes are made. Such clauses could include terms to ensure the hierarchy is consistent with the principles of contractual stability and proportionality.

F. Corrective remedies

143. *Corrective remedies preserve collaboration*. Given the long-term nature of MPCs and a desire to continue the collaboration, parties to an MPC generally *prefer* remedies that ensure performance. Corrective remedies focus not only on consequences but also on the causes of non-performance. An MPC could establish this priority and identify preferred remedies, which might include injunctions for specific performance, adoption of corrective plans, replacement of defective inputs, products or services, suspension of pending activities, etc.

144. *Injunctions and corrective plans*. The non-breaching parties can seek an injunction to secure payment, certification, data transfer, repair or *replacement* of defects. The non-breaching parties might also require a corrective plan where the party in breach addresses the causes of non-performance and defines mitigation strategies should the harm occur again.

145. *Corrective plans for sustainability*. When non-performance of sustainability provisions occurs, the breaching party must submit a remediation plan to redress social and environmental harms. Such a plan must be approved by the other parties. If the *collaboration* operates within a chain, the approval of the chain leader is frequently also required. The corrective action will have to be monitored according to objective indicators, and, in the event of continued non-compliance, additional measures will be required.

146. *Particular importance for MPCs*. MPCs enable contracting parties to establish and exploit a form of strategic collaboration that cannot be easily replaced by standard market transactions. Parties to an MPC make specific investments and co-design and perform strategic activities to pursue common goals. The common goals set out in an MPC depend on the performance of each party and on the combined efforts of the parties, even if efforts are not evenly distributed among the parties. For example, investments made by a specialised digital device supplier can hardly be replaced by equivalent goods and services accessible on the market. In an MPC, relationships among the parties are very important. It is very costly for all parties to seek *remedies* that would terminate the relationship. For these reasons, specific performance and corrective remedies are more important in collaborative MPCs than in bilateral contracts. This is even more relevant when smallholders are involved, whose ability to invest in alternative ventures may be very limited.

147. *Support from non-performing parties*. Corrective remedies are usually sought from the single party in breach. However, one or more parties may have to support the implementation of corrective remedies. For example, adoption of a corrective plan to ensure compliance with environmental standards could call for the sharing of information or best practices among parties. Whereas costs for corrective remedies are normally borne by the party who is responsible for the non-performance, some sharing of costs may be agreed among the parties in the interest of collaboration. This sharing could be highly relevant when smallholders are involved and they may not afford unanticipated costs.

148. *Replacement performance*. In some cases, non-performance by one party that jeopardises the common objective can be corrected through a replacement performance by a non-breaching party. For example, if one farmer is no longer be able to supply produce compliant with contractual standards, other parties may increase their deliveries. Cooperation like this could be factored against the party in breach when liquidating damages. As explained below, this approach can help the parties prevent the use of a more disruptive remedy, such as the exclusion of a breaching party, especially when individual exclusion may lead to total contract dissolution.

149. *Duties of cooperation*. Duties of cooperation are in effect during contract execution and after the non-performance in the administration of remedies. Correction of the harmful consequences may require the parties to cooperate to replace defective performance or to repair harm to the environment and the community. Parties may be required to cooperate in order to address the causes of non-performance and modify the execution of performances accordingly. Collaboration is crucial when there are multiple non-performance of the same obligation or a non-performance of a joint obligation that two or more parties must perform.

G. Restitution

150. *Basic concept*. Restitution is a remedy that is intended to prevent unjust enrichment. Parties can seek restitution where non-performance involves misappropriation of common resources or misuse of shared resources that lead to harm of the collective interest. For example, in a research and development strategic alliance or joint venture, where one party has either misused the product of the research or transferred the resource to third parties, restitution would require that any gains resulting from the misuse be turned over to the non-*breaching* parties.

151. *Stand-alone remedy or combined*. Restitution can be a stand-alone remedy, or it can be used in combination with other remedies. For example, *restitution* might be sought to restore the balance in the parties' interests, possibly in combination with compensation or even punitive damages. Parties may be asked to return material or financial resources provided to perform contractual performances.

H. Partial or complete termination

152. *Alternatives for termination*. There are two different sets of relations that contract termination might dissolve; the individual relationships that link each party to the group, and the collective relationship among members of the entire group. Termination of an individual relationship, the exit of the party in non-performance or the exit of the aggrieved party, may occur without necessarily interfering with the collective relationship. The MPC can remain in force without the excluded party or the aggrieved party. There are three different scenarios for termination of an MPC.

(a) An MPC should be terminated when the non-performance is so fundamental that it prevents the continuity of the project's execution and long-term collaboration. For example, the common digital infrastructure is irreversibly damaged, or the violation of sustainability standards is such that the project has irreversibly failed.

(b) The contractual relationship between the breaching party and all other parties should be terminated when the non-performance is fundamental but does not prevent collaboration to continue among the non-breaching parties. For example, the digital infrastructure may be restored, or the project may continue through the enactment of a corrective sustainability plan involving the remaining parties and possibly new parties. This type of termination may be called "exclusion" or partial termination from a subjective point of view (or "pro quota termination"). It plays an important role in MPCs since it enables the continuity of the whole contract while addressing the non-performance of a single party.

(c) The contractual relationship between the aggrieved party and all other parties should be terminated when the non-performance primarily affects one party to the MPC who then exits the contract due to the non-performance. For example, the financier who exits an MPC due to severe delays in payment, or the farmer who exits an MPC after receiving a defective instrument. This type of termination may be called "voluntary exit" or "withdrawal from the MPC"; unlike other forms of withdrawal, it serves as a remedy for the non-performance.

153. *Complete termination*. Complete termination as a remedy should be carefully considered when choosing contractual remedies. Not only should termination be a remedy of last resort, but its effects should also be limited, to the extent possible, to the single relationship between the group and the party in non-performance, while preserving the MPC. Moreover, especially when exit or exclusion may lead to contract dissolution for all parties, the party in non-performance should always be given a chance to cure the non-performance and, if this is not possible, all parties should adopt any measure aimed at preserving cooperation.

154. *Exclusion or exit leading to MPC termination*. Exclusion of the party in non-performance or voluntary exit of the aggrieved party may also lead to the termination of the entire contract. Such is the case, for example, if a digital service provider who is in non-performance is not replaceable, or if a farmer who fails to transfer data is also *the* party who conceived the whole project. Similarly, a financier exiting a contract as a result of a farmer's default with no existing, or potentially new, party capable of providing new financing could endanger the project's continuity

155. *Considerations*. Parties interests may diverge around the question of contractual termination. Some might prefer to continue the collaborative project, while others might prefer it terminated. The decision to terminate has economic *consequences* that may not be identical for each party, which give rise to distributional issues. Even if the MPC is terminated, in part or entirely, both breaching and non-breaching parties may face different consequences that should be addressed by individual remedies.

156. *Issues to address*. MPCs should address several issues in advance of non-performance that include the following: (i) when can a breaching party be excluded (forced exit); (ii) when can an aggrieved party exercise the right to exit (voluntary exit); and (iii) can the right to exit be limited to preserve the collaboration. In principle, the right to exclude and the right to exit should be granted. However, when the exit, whether voluntary of forced, has disproportionate consequences and undermines the collaboration among the remaining parties, exit should be limited to the occurrence of serious or material non-performance. An MPC can regulate the use of termination (in particular, exit and exclusion) to ensure that collaboration is *preserved* to the extent possible. In particular, the contract can specify which type(s) of non-performance justify the aggrieved party's exit or the exclusion of the party in breach. The agreement could determine whether the exit should be subject to the completion of certain degrees of performance. For example, exit might be conditioned on contribution to the common project activities. It could also determine whether exclusion should be approved by the majority of non-breaching parties, or all of them. Due process safeguards might apply to the exclusion mechanism, including information and motivation duties, right to be heard, review by independent bodies or courts. Damages or restitution might be used as a complement to termination in the agreement.

157. *Strategic party.* Contracting parties should be aware that, when exclusion applies to a party that is not easily replaceable (also known as a strategic party), or when the aggrieved party who wishes to exit is a strategic party, termination of the entire contract is hardly avoidable. Depending on the applicable law and different legal traditions, the proportionality principle could be invoked to support an approach whereby exclusion of a strategic party, which entails a substantive risk of total termination of the whole MPC, should be sought only if the non-performance is of such severity that the multi-party collaboration is due to fail and cannot be *preserved*. Similarly, the withdrawal of a strategic party, aggrieved by a fundamental non-performance, should be limited, for example by postponing the effects of withdrawal so as to enable the remaining parties to identify substitute parties or similar adjustments.

I. Compensation or damages

158. *Basic concept*. Damages are monetary payments awarded to a party who has suffered a loss due to another party's non-performance. The objective is to compensate the non-breaching party and put them in the position they would have been in had the MPC been fulfilled as agreed. Damages

may play either an alternative or a complementary role to *other* remedies, such as correction or termination, but are the only available remedy when correction and or restitution is not possible and no termination is sought.

159. *Compensatory role*. Damages can be requested to *compensate* for the following:

(a) violation of the collective and the individual expectation interest(s) harmed by the non-performance, or both. For example, common equipment, such as digital infrastructure, might malfunction and require costly maintenance for the group as a whole and as a result of the malfunction, the individual parties may also suffer additional losses that vary with each farmer. If the non-performance has caused damage to physical or intangible assets (e.g., tractors or data, respectively), the economic value of such losses should be considered as the basis for the calculation of damages.

(b) reliance interest (e.g., the expenses and losses incurred in the expectation that the MPC will be performed) and expectation interest (the anticipated benefits from an MPC). When there is uncertainty over the results of collaboration, reliance damages may be easier to ascertain than expectation damages.

160. *Complementary role*. Damages may also complement other remedies. When combined with corrective remedies, such as specific performance or the like, damages can compensate the aggrieved party for the remaining losses and *additional* costs that remain, as well as any costs generated by correction – e.g. the expenses generated to secure performance from third parties. For instance, damages can be combined with specific performance to compensate for the losses caused by delayed performance. Precisely because correction facilitates continuity of the cooperation, the costs of correction should be calculated and included as damages for breach of MPCs.

161. *Combined with partial termination*. In cases of forced or voluntary exit, damages should compensate the non-breaching parties for the costs borne to replace the excluded parties/their performances and other consequences of their exit. Again, any additional costs incurred to facilitate the continuity of collaboration among remaining parties should be factored into the calculation of damages.

162. *Combined with complete termination.* If the entire MPC must be terminated, damages could include compensation to cover reliance interest – lost investments that cannot be used in alternative projects – or expectation interest – loss of profits reasonably expected from the project's execution. In the majority of legal systems, it *would* only be possible to recover both in exceptional circumstances. In the event of complete termination, the contractual rules on damages should coordinate with the contractual rules on restitution, in order to avoid duplication (see discussion above on restitution).

163. *Calculation of damages*. As noted above, damages can be designed to redress both the parties' reliance interest and their expectation interest. Reliance interest includes the expenses the parties incurred while relying on the agreement. It should include the economic value of any damage the non-performance has caused to physical or *intangible* assets. Expectation interest, on the other hand, includes any future benefits the parties intended to gain from the collaboration. Expectation interest include lost profits and missed performance. Lost profits should be calculated both for the group and for the individual parties, should they differ. Missed performance includes the value of workers' training services that have not been provided. This forces the parties to secure replacement services from other sources and continue the collaboration

164. *Digital tools to calculate damages*. The use of digital devices in contract execution could ease the task of assessing parties' contributions and *determining* damages in the event of non-performance (see above Section V.C).

165. *Special loss on non-performance of sustainability standards*. Lost profits may be particularly relevant when a party to an MPC violates sustainability standards. In the event of a non-performance of sustainability standards, third parties may discontinue their contractual relationship with parties

to the MPC, including the parties who did not, themselves, violate the standards. In these circumstances, that party's expected income decreases and these lost profits are included in the calculation of damages. To prevent this scenario from ruining the breaching party, the parties might anticipate such losses and mitigate by adopting a corrective plan, the costs of which may also be factored into the calculation of damages (although some MPCs exclude specific types of loss from the duty to mitigate).

166. *Liquidated damages and penalty clauses.* Parties to an MPC can use a liquidated damages clause to predetermine the value of contractual interests. Liquidated damages clauses are particularly useful when the interest is critical, intangible, and difficult to put a value on, e.g. data. Depending on the applicable law and parties' choice, such clauses define the value of damages due in the event of non-performance without any *requirement* for proof of loss. A liquidated damages clause avoids litigation costs and signals the importance of the performance of certain obligations in the MPC to discourage their non-performance. Penalty clauses can also prescribe the actions that are to be taken by all parties should non-perfromance occur, thereby avoiding transaction costs over the definition of desired behaviour by non-breaching parties. They are particularly useful when the interests of non-breaching parties differ or conflict.

J. Hierarchy of remedies and principles of stability and proportionality, and dispute resolution mechanism

167. *Rationale*. As parties may have different interests and conflicting views upon non-performance, remedies can be used to protect these *different* interests and objectives. The parties can preserve the collaborative endeavour by defining a hierarchy of remedies in accordance with the principles of stability and proportionality.

168. *Principle of contractual stability*. Parties should insert a term concerning the hierarchy consistent with the principle of contractual stability. Namely, the hierarchy should preserve the life of the MPC and the possibility for some parties to continue *execution* of the contract despite the non-performance while leaving individual participants the freedom to exit.

169. *Principle of proportionality*. The availability and hierarchy of remedies should take into account the nature of the non-performance and whether the non-performance is considered fundamental (as explained above in Subsection VI.B.) The principle of proportionality should be applied when designing the contractual terms for *remedies*. Even beyond proportionality, other considerations require distinguishing between a fundamental non-performance and others. Proportionality may also require that correction precedes compensation.

170. *Hierarchy of remedies*. The hierarchy should be structured to prioritise those remedies that redress without terminating the contract and, among these, those that correct the effects rather than simply compensate for the losses. Hence, priority should be given to corrective remedies aimed at removing the causes of non-performance, to re-establish *the* conditions for collaboration and to reduce or eliminate the negative consequences of non-performance. Corrective remedies could be combined with specific performance, especially in the case of interdependent performances where the search for alternatives may prove ineffective.

171. *Sequence of conflict resolution*. A system to resolve conflicts should be in place before non-performance occurs. A committee with representatives of the parties in the contract can be an effective way to solve problems in contractual execution. Next, there can be dispute resolution mechanisms internal to the contract with specific terms *regulating* their functioning. Mediation and arbitration can be useful tools to solve disputes among the parties; the identification of mediators and arbiters, their role, the rights of the parties during the procedures, the type of decisions that may be reached and the possibility to challenge them should be defined in the contract within the limitations provided by applicable law. Finally, judicial intervention should only be used as a last resort.

172. *Impacts on third parties along the chain*. Remedies should not only account for the interests of the parties to the MPC but also for the consequences of non-performance along the chain. Termination of the contract creates a hole in the chain that can hardly be filled in a short time interval, thereby exacerbating and increasing the overall negative consequences of non-performance. Hence, a hierarchy of remedies related to the non-performance of the MPC where parties operate in a more complex chain should also consider the systemic consequences of the non-performance and the choice of remedies.

K. Duty to mitigate

173. *Basic concept*. An MPC includes a duty to mitigate the consequences of non-performance, as with a bilateral contract. However, given that MPCs are based on the duty of cooperation, the duty to mitigate may play an even greater role in MPCs than in *bilateral* contracts. The duty to mitigate is required and regulated by international commercial contract law[63] and also many national laws. The terms of an MPC should specify how parties should mitigate the consequences of non-performance.

174. *Who has duty*. All non-breaching parties have a duty to mitigate the losses stemming from non-performance and should take action to reduce negative consequences. Non-breaching parties are required to continue to *cooperate* and resolve problems created by the non-performance. The duty to mitigate has specific features in MPCs. The parties must consider whether the non-breaching parties should mitigate jointly or individually and also consider how the mitigation obligations should be allocated. The collaborative framework implies that parties should collaborate in mitigation and agree on actions to reduce the consequences of non-performance.

175. *Scope of duty*. Mitigation in MPCs is focused primarily on protecting the collective interest underlying the collaboration. This is distinct from mitigation in a bilateral contract, where mitigation is aimed at reducing the harm of the *aggrieved* party as an individual interest. Accordingly, not only should non-breaching parties take action to reduce negative impacts of non-performance on the MPC but also take steps to reduce any potential systemic consequences of non-performance on third parties along the chain. Thus, the scope and extent of the duty to mitigate can extend beyond the immediate parties to the MPC.

176. *Type of non-performance and duty*. Mitigation is closely correlated with the type of remedy associated with non-performance. Although *particularly* relevant when the MPC continues to operate after non-performance, mitigation is also relevant when damages complement termination; parties are required to take action and limit any losses stemming from termination.

177. *Failure to mitigate*. When mitigation is collective, contractual parties may play different roles in mitigation depending on both the party's position within the MPC and the chain, and available resources. Consequently, the costs of mitigation may be distributed unevenly. Failure to mitigate may constitute non-performance of the MPC and may *not* only preclude the non-mitigating party from recovering damages but may also require indemnification of the additional expenses of those who did mitigate. The failure to mitigate by an individual contracting party bears effect only on that party and does not preclude expense reimbursement for those who mitigated.

IX. EXIT, DISSOLUTION AND POST-CONTRACTUAL OBLIGATIONS

178. *Overview*. Whereas entry into an MPC signals the beginning of a long-term relationship, exit is the moment the relationship may come to an end. *Governance* of exit and the dissolution of an MPC have implications for the incentives of the parties to engage in common-interest activities and collaboration. At the same time, options for exit and dissolution provide parties with flexibility, particularly where there has been a change in either a party's interest in collaboration or ability to contribute. Only in exceptional circumstances should exit (in the form of exclusion) be viewed as a

---

[63] See UNIDROIT Principles and CISG.

penalty for severe non-performance of the MPC. In these circumstances, due safeguards should apply to the exclusion, as described below.

A. Exit

179. *Basic concept*. Exit is the termination of the single relationship between one of the parties and all other parties to the MPC. Exit usually entails exit from the entire MPC, but when the MPC is internally structured as multi-project, the *exiting* party may choose to exit from a single project while remaining party to the MPC. Unless otherwise specified, this section considers exit as termination of the whole relationship between the outgoing party and those remaining.

180. *Importance of clear terms*. While preserving the collaboration should be encouraged, it is essential to outline in the MPC the options for exit, whether voluntary or forced, and their restitutionary effects. In both forced or voluntary *exit*, termination of the single relationship with the group may or may not lead to complete termination of the MPC (dissolution); this depends on the role played by the outgoing party.

1. Voluntary exit

181. *Basic concept*. Exit from an MPC is voluntary when initiated by an outgoing participant However, provisions of the MPC might impose certain limitations on exit and might in exceptional circumstances assign veto power to the remaining parties in order to avoid disruptive consequences. Voluntary exit from MPCs in agriculture can have *different* consequences depending on the content and objectives of the collaborative contract, the degree of uncertainty of the outcome, and level of interdependence.

182. *Possibility of exit*. A general principle in most legal systems is that a contract for an indefinite period may be terminated by any party by giving the other parties notice a reasonable period of time in advance. Pursuant to this principle, a complete ban against voluntary exit would not be possible. Although voluntary exit may be discouraged by the MPC, whether it may be completely precluded will depend on the applicable law.

183. *Reasons for liberal exit regime*. When the outcome of collaboration is uncertain, a free exit regime may encourage parties to enter the MPC without fear of lock-in. For example, parties know they will not be stuck in an MPC even though *they* cannot foresee whether co-investing in research will increase productivity, or reduce carbon emissions. If the objective is to encourage entry through a "liberal" exit regime, the parties should consider providing some remuneration to the outgoing party for investments they made, the benefits of which will be directed to the remaining parties only. This remuneration is particularly important for exiting smallholders, that may wish to reinvest such resources in alternative ventures. This approach may be beneficial when collaboration from several participants could maximise the collective interest, but participants are easily replaceable and no one is essential while interdependence is low.

184. *Reasons to restrict exit*. Exit plays a different role when performance is interdependent. When the outcome strongly depends on the collaboration of the parties, the exit regime does not encourage entry. Rather, exit is designed to induce all participants to collaborate and preserve contract continuity in order to prevent each other's exit. For example, within an MPC aimed at the production of organic products compliant with strict standards along the entire chain, limitations on voluntary exit provide all parties with incentive to cooperate in order to achieve the common objectives. The limitation discourages participants from voluntarily exit. Exit *remains* possible but with negative economic consequences for the exiting party. Of course, exit should be designed to prevent abuse, as described below.

185. *Uncertainty and interdependence*. When there is both uncertainty as to the outcome, and interdependence among parties is high, the exit regime should seek to harmonize ease of entry and protection of the collaboration. In such circumstances, voluntary exit should be allowed, but specific

investments should be protected, not only for the exiting party but also in favour of those remaining. A balance should be struck, e.g. combining limited restitution rights for the exiting party and some post-contractual duties, as described below. This balance is particularly important when specific investments have been made by smallholders as parties to *the* contract. Their ability to reinvest these resources out of the collaboration may be even more limited, which may suggest to favour continuity over freedom to exit and anyway to limit restitutionary rights and insist on post-contractual duties even further.

186. *Regulating voluntary exit regimes*. Regimes for voluntary exit may differ significantly. Depending on the applicable contract law, parties are *usually* able to regulate such regimes by including the following provisions:

(a) defining the instances in which exit is possible;

(b) setting a period during which exit is not allowed (usually at the beginning of the MPC when specific investments are made);

(c) defining whether economic contributions may be returned to the outgoing party

(d) defining whether the outgoing party may be entitled to the collaboration's proceeds or intellectual property rights arising from cooperation;

(e) determining when the exit becomes effective after the outgoing party makes its request;

(f) establishing whether the outgoing party will remain subject to certain obligations after the individual relationship is terminated and/or the entire MPC is dissolved (post-contractual obligations, see below); and

(g) setting penalties for early exit (in money or in kind).

187. *Liberal or limited exit*. A "liberal exit regime" is one in which there are few restrictions on the circumstances of exit; the outgoing party preserves the economic rights over contributions, rights and proceeds raised during the time of *participation*; the exit is immediately effective; there are no substantive obligations imposed on the outgoing party. A "limited exit regime" is one in which one or more of the above restrictions are foreseen in the MPC. Based on the considerations above, a "liberal exit regime" may be preferable when entry needs to be encouraged, interdependence among participants is low and parties are easily replaceable; a "limited exit regime" may be more appropriate when interdependence is higher, specific investments are more relevant and parties are less easily replaceable.

188. *Restricted exit to prevent opportunism*. Restrictions may be placed to regulate exit, or to prevent or limit opportunistic behaviour. Limitations on the outgoing party's access to intellectual property rights, post-contractual obligations, and penalties for early exit may prevent or at least discourage opportunistic behaviour from the outgoing *party*. These protections are particularly important when contract parties have different economic power and different capacity to reinvest resources conferred in the collaboration in alternative ventures, which may be the case when smallholders collaborate with larger enterprises.

189. *Veto or compensation to prevent voluntary exit*. An MPC may validly assign the remaining parties the power to veto voluntary exit if such exit would prejudice the pursuit of common objectives. The most common technique to vest the parties with such power is to pre-determine the instances in which voluntary exit would be permissible, taking the collective interest into account. For example, an MPC among farmers engaging in a common project for the development of an irrigation system could establish that voluntary exit is not allowed until the system is established, unless such early exit does not cause substantive harm to the other parties. In such a case, the remaining parties may be granted veto power if they can demonstrate such harm. Alternatively, a different technique to discourage voluntary exit would be to vest the remaining parties with the right to compensation rather than veto power.

190. *Transfer of participation on voluntary exit*. A party to an MPC may "transfer" its participation in the MPC, thereby enabling continuity through replacement. For example, in an MPC for the development of new irrigation technology, a farmer *intending* to leave the collaboration due to financial difficulty might wish to transfer participation to another farmer. Such transfer without any assessment from the remaining parties might be prohibited either by law or by the MPC due to the trust that is necessary to collaborate. A party to an MPC might also seek to transfer that party's business or land to a third party. Under national legislation in some jurisdictions, in such a case the third party would be permitted to enter the MPC unless the remaining parties oppose.

191. *Consequences of voluntary exit on collaboration*. In most cases, if a party exits the MPC in accordance with the contractual rules, the other parties may not oppose. The detrimental effects of voluntary exit, however, are often such that the collaboration might not be able to continue as it was originally designed. In such circumstances, the remaining parties will need to consider whether to modify the terms and re-allocate tasks and *responsibilities* among themselves, to find a replacement for the outgoing party, or to accept that the MPC is dissolved. The parties decide how to respond to the exit based on internal rules set out in the MPC.

192. *Consequences for exiting party*. Depending on the contractual rules, the exiting party may (or may not) be entitled to restitution of its own contributions intended for future use in the collaboration, the proceeds and revenue from projects and activities to which this party contributed, and/or the resources conferred to a common fund or to the group. If any of the exiting party's contributions are considered *critical* resources upon which the success of collaboration is dependent, the parties could agree *ex ante* to limit the exiting party's restitution rights in order to preserve the continuity of the common interest project. Thus, limitation of restitution rights could act as another deterrent to voluntary exit. A more nuanced approach would for the MPC to deny restitution in kind and substitute monetary restitution. This would allow the MPC to still access the exiting party's intellectual property or physical equipment for example. The parties may also impose post-contractual duties on the exiting party. (see discussion below on post-contractual obligations).

2. Forced exit (exclusion)

193. *Basic concept*. Forced exit is a mechanism through which a party to an MPC is required to leave the collaboration based on the decision of the remaining parties, either as a result of a (severe) non-performance or objective impediments that prevent the party from continuing (e.g., bankruptcy, death or the like). In the latter case, exit may occur with or without a decision from the remaining parties. Some MPCs provide for immediate termination upon bankruptcy or death. Forced exit should be considered with caution as it occurs under exceptional circumstances, usually with disruptive consequences.

194. *Remedy and penalty*. When forced exit occurs due to supervening events (such as bankruptcy or irreversible land loss), its governance is intended to address the consequences of such exit possibly by releasing the outgoing party from certain obligations or reallocating tasks among the remaining parties. When forced exit occurs due to (severe) non-performance, it acts both as a remedy and as a penalty: Forced exit is a remedy for the remaining parties because the latter are released from obligations towards the excluded party. The *remaining* parties become free to continue collaborating among themselves without the excluded party, who may be additionally obliged to pay damages and/or provide restitution. Forced exit is a penalty for the excluded party because the latter is no longer entitled to participate in the common project and could lose all specific investments with no return. The excluded party could also be subject to additional penalties.

195. *Principle of proportionality limits use of forced exit as a penalty*. MPCs should carefully define when forced exit may be used. The agreement should consider whether the party being forced to exit plays an essential role in the collaboration. When *deciding* on a party's exclusion in the case of non-performance, the non-performance must be fundamental, final, and not curable. The principle of proportionality dictates that forced exit should only be used when strictly necessary. In the case

of multi-project collaboration, exclusion could be limited to a single project, while the party remains involved in all other activities.

196. *Principle of due process limits use of forced exit as a penalty*. Decision-making about forced exit is of particular importance. The MPC should include provisions to ensure that due process is respected, that the party to be excluded has the right to be heard and the right to cure non-performance. Opportunistic decision-making over *forced* exit may also be addressed through the selection of the voting mechanism used when deciding to exclude a party, by either unanimity rules or super-majority voting.

197. *Harms and remedies of excluded party*. Forced exit from an MPC may harm the excluded party. For example, the party may suffer due to i) being unjustly barred from access to strategic resources (e.g., data, knowledge about innovative agricultural practices, new technologies, etc.); ii) unsold produce grown or processed in *accordance* with commonly-agreed standards; or iii) restrained access to finance or to global value chains. The excluded party should be able to challenge the decision on the basis of breach of good faith and collaboration duties within the MPC to address these consequences.[64] Whether the excluded party may seek annulment of the decision or only damages, depends on applicable law in the given system.[65]

198. *Penalties and damages paid by excluded party*. Forced exit may also necessitate contractual adjustments, such as replacement of the outgoing party or reallocation of tasks among the remaining parties. In addition, the MPC should answer the question of whether the outgoing party is entitled to any restitution or subject to any post-contractual obligations. As discussed above, restitution may be limited by MPC rules to facilitate the continuity of the common project despite an individual exit. When forced exit is based on fundamental non-performance by the excluded party, a partial or total denial of restitution rights may be justified by the penalty function of exclusion and the need to mitigate the damages caused by non-performance. Moreover, in case of exclusion based on fundamental non-performance, payment of damages may complement the protection of the remaining parties. Penalties (in kind or in money) could also be added to reinforce deterrence. For example, five farmers use an MPC to set up a sustainable development project aimed at certification for compliance with social and environmental standards. A party is excluded for severe non-performance of human rights in the production process. Upon exclusion, the financial contribution paid by the excluded party towards the project is retained by the other parties. In such case, not only is the excluded party not entitled to restitution of such contribution, but it must also pay damages to compensate for losses stemming from non-compliance with the certification, or pay additional penalties.

B. Dissolution of the contract

199. *Reasons*. Complete termination (or dissolution) of an MPC occurs if the contract comes to an end. In most cases the end of an MPC also implies the end of collaboration. This may happen if the parties have agreed to collaborate for a definite period and such time has elapsed. Dissolution may also occur if the parties decide to end the collaboration because the objectives have been achieved, if the collaboration is no longer beneficial (e.g., demand for a *product* has drastically decreased), or if there are new circumstances that make the collaboration impossible or too burdensome for most participants. Lack of trust among the parties may also be a cause for dissolution or, among other instances, if through voluntary exit participation in the MPC has been reduced to one party. As discussed above, both voluntary and forced individual exit can prompt dissolution of the MPC, if the outgoing party is essential.

---

64 Whereas this matter is addressed in 'organisational law' (e.g., law of associations, corporations and the like), it is not usually considered in contract law, other than through the lens of general principles, such as good faith.

65 The invalidity of decisions is usually acknowledged in company and association law.

200. *Incentives to prevent dissolution*. Except where collaboration comes to an end because the objectives have been achieved, dissolution of an MPC remains a serious event with severe consequences. Specific investments may be lost when investments used to develop resources cannot easily be redeployed into alternative projects (e.g., investments into research for the development of a new crop variety). The higher the specificity of the investments, and the more interdependent the roles of contracting parties, the stronger are the incentives for preventing dissolution and ensuring continuity of the MPC. Agreeing *ex ante* on a limited list of events that may cause contract dissolution can help provide the correct incentives for specific investments during the collaboration.

201. *Decision-making process*. The parties may adopt an *ad hoc* decision-making process to verify that the conditions that trigger dissolution are met, and that dissolution is not being opportunistically used by contracting parties. Establishing that the *decision* to dissolve an MPC should be approved by a majority or by all parties may further help contrasting the risk of abuse.

202. *Impacts of dissolution on third parties*. These decision-making processes could, in principle, include consultation with third parties (e.g., employees, financing parties) who may suffer important consequences from the dissolution. Including third parties in the process of dissolving an MPC could serve as a relevant mechanism for those projects that contain social and environmental commitments with strong implications for third parties. *An* MPC might also be liable towards third parties due to the dissolution and the failure of the underlying project. For example, if producers use an MPC to collectively commit to complying with social and environmental sustainability standards in order to move towards certification, a question may arise as to whether NGOs may seek damages for the environmental drawbacks coming from the parties' decision to discontinue the project.

203. *Payment of liabilities*. Once the MPC has been dissolved, liabilities and any remaining resources should be allocated using a liquidation procedure. Common resources should be used first to pay any debts owed to third parties like *financiers*, licensors, suppliers, and anyone entitled to damages. If common resources are insufficient, parties could be called upon for any shortfall and their personal funds could be seized to cover the remainder. This (unlimited) liability of contracting parties could be excluded, however, should applicable law allow the parties to create a trust-like and separate fund to pursue the common objectives underlying the MPC or a sub-project within the MPC. In such cases, only the fund (or trust) resources may be seized by creditors and not the personal assets of each MPC party.

204. *Liabilities of contracting parties towards each other*. Contracting parties may be liable towards other MPC parties at the time of contract dissolution. For example, a participating farmer could owe pending fees for services or goods, or a party could owe damages for non-performance. All such liabilities should be discharged before any remaining assets are distributed.

205. *Distribution of assets*. The remaining resources should be divided equally among the parties, unless different shares have already been agreed. For instance, shares may be based on different contributions to a common fund, or to *common* expenses. In the case of indivisible resources, (such as new equipment or new technology), the parties could agree to assign the asset to one party with compensation paid to the others.

C. Post-contractual obligations

206. *Basic concept*. Post-contractual obligations may arise for all parties when the MPC is completely terminated (dissolution). On partial termination (voluntary exit or exclusion), post-contractual obligations may arise for the outgoing *party*. These obligations, intended to preserve the results of collaboration, are binding and enforceable despite contract termination. Non-performance of post-contractual obligations is subject to remedies, such as corrective measures, compensation or restitution. The duration of post-contractual obligations is usually limited and commensurate with the reasonable reliance of the other parties.

207. *Types of obligations*. Although termination brings the contractual obligations to an end, certain obligations may persist and new ones may arise to prevent the collective interest from being jeopardised by post-contractual action (or inaction) *by* the (outgoing) party(ies). Typical examples are: (i) confidentiality obligations, (ii) non-competition duties, (iii) sustainability commitments, and (iv) duties aimed at the completion of activities that cannot be postponed or omitted (see example, below). These obligations may require restraint (refraining from certain activities) or positive action. Exiting or excluded parties could be required not to carry on any activity in competition with the MPC project, not to exploit relevant know-how that was developed during their participation in the MPC, and not to oppose the use of intellectual property rights by the remaining parties when these rights have been developed with the contribution of the exiting or excluded party. The exiting or excluded party may also be required to continue to engage in pending activities for the completion of the project that could not be discontinued or replaced without harm to the collective interest.

208. *Changing nature of obligations*. While these same obligations might have been imposed on parties during the contractual relationship, their function changes in the post-contractual phase. The objective is no longer implementation. Rather, the objective is to preserve the results that have been achieved and to prevent their depletion. For example, an MPC could establish that farmers who exit the contract but continue to grow their produce in the same area occupied by the remaining parties should inform the remaining parties about the type, *quantity* and timing of pesticide administration to enable the latter to protect their produce against the indirect effects of pesticides. As another example, within an MPC regulating the functioning of a digital platform for the exchange of data on agricultural practices, exiting parties should be obliged to update existing data for a certain period after contract termination to enable the correct supply of services based on those data. As a final example, within an MPC for the implementation of an experimental farming technique, the exiting parties could be obliged to inform the remaining parties and their suppliers about any incident or relevant supervening effects caused by experimental techniques that could be relevant for the further development of the project. As the above examples illustrate, post-contractual obligations may be directed towards parties to the MPC, or to third parties along or outside the chain.

209. *Confidentiality and non-competition*. Post-contractual obligations commonly concern confidentiality and non-competition, particularly in research and development projects. Parties may not engage in similar collaborative projects if this would *entail* the use of knowledge and resources developed with contractual parties, even after parties have exited the MPC.

210. *Distinctions between complete and partial termination*. In the case of complete termination of an MPC, performances might be owed by some parties to other contracting parties or third parties, such as positive obligations to ensure collaboration or negative obligations to refrain from appropriation or misuse of shared resources. External creditors may have an interest in ensuring that post-contractual obligations are performed and that the creditor's interests are fully protected, for example, local communities that may be affected by project discontinuity. In the case of partial termination, the excluded party may not only be required to compensate the other MPC parties, but also to contribute towards longer-term *solutions*, especially when environmental or social standards were violated and harm was caused to contractual and/or third parties. For example, where producers had committed to refraining from the use of pesticides and the violation of this obligation caused water and soil pollution, apart from damages and penalties imposed on the excluded party for direct effects of non-performance, this party might also be required to execute post-contractual obligations, such as preventing the expansion of water and soil pollution into the fields of remaining parties, or of third parties.

211. *Requirements of remaining parties on partial termination*. When the MPC continues to exist after exit or exclusion, the determination of duties may be complemented by other post-contractual obligations based on the need to continue the collaboration *and* to complete the project's execution. Contractual modifications may be necessary to redefine the structure of collaboration and replace the activity of the parties that have exited. The remaining parties have an interest in ensuring the excluded parties comply with their post-contractual obligations. As a result, they might have to make collective decisions about which course of action to take.

212. *Implications for third parties*. Post-contractual obligations may also concern third parties outside the chain. The contract should prevent parties from externalising costs by terminating contracts the non-performance of which have caused or can cause harm to third parties. If, for example, there have been sustainability *violations* of contractual clauses, infringers may have to perform remediation activities to address environmental or social harms even when the MPC is no longer in force. These activities should be performed even if the MPC was terminated because the conditions for collaboration had ceased to exist.

213. *Distinction from contractual rules for distribution*. Post-contractual obligations differ from those directly associated with contractual dissolution and the rules on asset allocation and distribution of debts and credits among the parties. The rules for distributing debt and credit are usually qualified as liquidation. Although liquidation follows *termination of the MPC, their function relates strictly to contractual execution and its characteristic performanc*es. The same applies to restitution or compensation due to or by the outgoing party in case of exit or exclusion. Where appropriate, the MPC should also include terms regulating performance of post-contractual obligations after the MPC has been terminated.

214. Enforcement. In the case of exit or exclusion, the remaining parties will be responsible for the governance and enforcement of post-contractual obligations. By contrast, in the event of complete termination of the MPC, no party remains and an enforcement gap can emerge. If the complexity of the performances following contractual termination requires coordination and monitoring, some governance mechanism may be devised to ensure completion of post-contractual obligations. The MPC may provide some coordination mechanisms that ensure that contractual and third-party creditors are fully satisfied by appointing a committee with delegated power to act on behalf of the creditors and monitor the activities that debtors have to perform after contractual dissolution.

CHAPTER II

COOPERATIVES

TABLE OF CONTENTS

I. INTRODUCTION

1. *Cooperatives*. This Chapter uses the term "cooperatives" as defined by the International Cooperative Alliance (ICA) Statement and the International Labour Organization (ILO) Recommendation N°193, as "[…] an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise".[66]

2. *Taxonomy of cooperatives.* Various criteria may be used to establish a taxonomy of cooperatives. There is no single approach to describe the scope and typologies of cooperatives. Generally, cooperatives may be classified by: (i) economic activity and/or (ii) cooperative characteristics. Cooperatives may further be categorised according to the following:[67]

(a) member relationship with the cooperative, for example, consumer, user, worker;

(b) nature of member activity as producer (and thus, supplier), for example, crafter, farmer, fisherperson;

(c) membership types, for example, homogeneous member cooperatives (e.g., farmers) or multi-stakeholder cooperatives; and

(d) nature of the cooperative's function in relation to the members' production, for example, purchasing or marketing.

3. *Specifying agricultural nature of cooperatives.* While the above-cited general definition of cooperatives states the three-fold objective of cooperatives (meeting the economic, social and cultural needs and aspirations of the members) and lays the cornerstones of the cooperative form (a jointly owned and democratically controlled enterprise), the definition of agricultural cooperatives requires further specifications to determine the agricultural nature of a cooperative.

4. *Agricultural cooperatives.* Agricultural cooperatives are a type of cooperative essentially involved in carrying out an agricultural activity, especially by providing services to farmers that allow them to be competitive, for example through inputs supply, marketing channels, advisory services, subsidy services, insurance, supplies, training, education, etc. In practice, the cooperative may also be involved in non-agricultural activities (e.g., data collection or marketing related to the agricultural activity) and/or other activities for the well-being of its members, such as in areas of health or finance. This is often secondary production or a related activity that is organised in some other way. It is essential that secondary production or related activities promote the success of primary production and thus enable farmers to be competitive.

5. *Typologies of agricultural cooperatives*. It follows that different types of cooperatives exist within the agricultural sector, and may include supply cooperatives, marketing cooperatives and agricultural producer cooperatives. Agricultural cooperatives could also be described by the relative weight they put on the various aspects of their objectives which is economic, social and cultural, the types of transactions (sellers of product, buyers of inputs and services), scope of activities of

---

[66] See the 1995 International Cooperative Alliance Statement on the co-operative identity and the International Co-operative Review, Vol. 88, no. 4/1995, 85 f.; as well as the 2002 International Labor Organization Promotion of Cooperatives Recommendation No. 193. The "persons" referred to in the ICA definition are generally called "members" once the cooperative is formed. This definition of cooperatives has also been used in the Model Laws developed by the ICA with FAO's support. For example, paragraphs 6 and 7 of the African Model Law on Cooperatives (2024) explicitly restates the ICA definition and principles and locates them within the ILO framework. The ICA/ILO-based identity elements are codified in Parlatino's 2012 Framework Law for Cooperatives of Latin America, which mirrors the ICA Statement on the Cooperative Identity, lists the same seven principles and was developed on the basis of UN cooperative guidelines and ILO Recommendation 193. For more information see: https://ica.coop/en.

[67] *Ibid.*, ILO, 2017a.

members (single stakeholder to multi-stakeholder), and types of members (individual farmers or another legal person qualifying as member).

6. *Different definitions.* These given differences raise the question of how an agricultural cooperative can be defined consistently from a legal perspective.[68] The main reason for a definition is to provide the basis for promotional policies and/or adequate regulations, for example taxation. Different areas of law might have different definitions of cooperatives. Although it is possible that similar approaches are chosen, it can generally be said that tax law offers a more precise and perhaps narrower definition.

7. *Legislators' definitions.* Legislators may define an "agricultural cooperative", but this does not seem to be a common approach.[69] More common is a reference to an "agricultural activity".[70] Accordingly, agricultural cooperatives can be defined as those that either (i) carry out agricultural activities themselves (as an enterprise, for example, with the members working as agricultural workers) – this case may be of less practical importance – or (ii) exclusively or largely provide input or market agricultural products that are produced or supplied by their members or by non-members where those of the members do not suffice to honour an obligation of the cooperative with a third party, for example a retailer. Furthermore, certain practices such as leaving fields fallow are increasingly being defined as an agricultural activity, with the aim of reducing agricultural production for environmental reasons.

8. *Agricultural activities legally defined*. It is therefore necessary to explain how an agricultural activity can be defined from a legal perspective in order to understand what is meant by primary production and secondary or related activities. Legislators and policymakers often define agricultural activities through an enumerated list. In addition to such an approach, primary production can be defined in general terms by referring to the maintenance and development of a biological cycle, wholly or in part, of a plant or an animal on which the agricultural activity is based.[71]

9. *Relationship between primary and secondary production*. In both cases, the question arises as to how a link can be established with the secondary activities mentioned. In list-based definitions of agricultural activities, a distinction is commonly drawn between primary production (e.g., rice, coffee, or livestock farming) and secondary or ancillary activities (e.g., butter or wine production). While the latter are linked to agriculture, they are not strictly agricultural in the narrow legal sense. Similar considerations apply to non-agricultural services that use farm infrastructure – such as agritourism, including farm stays or on-site restaurants. To preserve the agricultural character of the enterprise and avoid its transformation into a primarily commercial or hospitality business, such ancillary activities are typically restricted. This can be done by limiting them to the processing of products from the farm's own primary production (e.g., using only on-site grapes for winemaking), or by capping the scale of tourism services (e.g., limiting the number of guest rooms). These measures ensure that secondary activities remain supportive of – and not a substitute for – the farm's primary agricultural purpose. With regard to the second approach (definition of primary production

---

68 The meaning of "agricultural activity" is discussed in the Introduction [*add cross-reference*].

69 Parlatino's Model Law on Agri-Food Cooperatives (2024) does not repeat the generic ICA definition in Article 5. Instead, it offers a sector-specific definition of *cooperativas agroalimentarias* as a subtype of cooperative enterprise focused on agri-food production, processing, distribution and related activities. This text is drafted as special legislation that presupposes a general cooperative law with the seven ICA principles.

70 For example, a cooperatives act may state as follows: "Agricultural co-operative" means a co-operative that produces, processes or markets agricultural products and supplies agricultural inputs and services to its members. The reference to an "agricultural cooperative" may also appear elsewhere within the act. For example, the act may refer to "A society which has as one of its objects the disposal of any article or produce of agriculture, animal husbandry, fisheries, forestry, handcraft, or other manufactured goods, produced by it or its members." Additionally, a cooperatives act may define an "agricultural product" as "any product of agriculture, including grain and seed, maize, groundnuts, cotton, tobacco and other field crops, livestock and livestock products, fruit and fruit products, vegetables and vegetable products, honey and any article wholly or partially processed or otherwise derived therefrom".

with reference to a biological cycle), it should be noted that in this case too the general definition is not sufficient to classify other quasi-typical agricultural products, such as the production of butter or wine, as secondary products. In these cases too a link must be established by law between primary and secondary production, e.g., by allowing the farmer to process only his own grapes from primary production into wine: secondary production must take on a serving role in relation to primary production.

10. *Historical context*. Many smallholders and agri-MSMEs have formed or joined agricultural cooperatives[72] since the mid-nineteenth century and continue to do so in order to mitigate the prejudicial effects of their own structure in increasingly industrialising and now globalising economies. Cooperatives make an important contribution to agriculture. The majority of cooperatives categorised in the "Top 300" are cooperatives involved in agriculture (35%).[73] This contribution by or through cooperatives must not be confused with the number of members or the overall number of agricultural cooperatives.[74] For a variety of reasons, due to legal, institutional and economical barriers, which this Chapter will briefly explore later, that number is rather low in many countries.[75]

11. *Role and benefits*. Agricultural cooperatives have played a decisive role in the development of agriculture. They play an important role in the production, processing, and commercialisation of food, as well as the organisation of the retail sector. Forming cooperatives can be an adequate way for smallholders and agri-MSMEs to create economies of scale and to increase their market/negotiating power by pooling without losing their autonomy. This is reinforced by the members of cooperatives having an equal say, independently of their financial contribution, when they agree to outsource some of their activities to an enterprise (cooperative) of which they retain full control.

12. *Variations in normative frameworks*. This Chapter offers a generalised perspective on agricultural cooperatives across diverse global contexts. This must not be construed as disregarding the importance of variations in the normative frameworks at the domestic level that govern cooperatives, especially the cooperative laws and internal cooperative rules and which must be taken into consideration when dealing with concrete cases.

13. *Chapter contents*. This Chapter considers the following features of the cooperative form: (i) objectives; (ii) formation; (iii) membership; (iv) governance; (v) financial resources and income distribution; (vi) collaboration among cooperatives and with other entities; (vii) dispute prevention and resolution; (viii) mergers, demergers and transformation; (ix) dissolution and liquidation; and (x) the impact of digitalisation.

---

[72] While cooperatives are a way to cooperate, not all cooperation takes place in the form of a cooperative.

[73] Top 300 is a list of the largest cooperatives compiled by ICA/EURICSE for the World Cooperative Monito. See the 2023 World Cooperative Monitor: Exploring the cooperative economy report.

[74] The International Cooperative Alliance (ICA) provides data on membership and the number of cooperatives worldwide. For more information, see: coops4dev.coop.

[75] Based on the member directory of the International Cooperative Agricultural Organisation (ICAO), a sector of the ICA, the estimated number of farmers organised in cooperatives is 121 million individuals. However, it is important to consider that ICAO's data covers: (i) only part of worldwide agricultural cooperatives, (ii) some ICAO members are not agricultural producers' cooperatives (e.g. ACC(Türkiye), IFFCO(India), NAFSCOB (India)), (iii) some of ICAO's members are not farmers, and (iv) some of ICAO members' data has not yet been collected. Based on the internal data collected by the ICA, between the years 2015 and 2018, for 160 countries, it is estimated that 112.6 million members are organised in agricultural cooperatives. Additional information is available from the ICA facts and figures coupled with the World Cooperative Monitor developed by ICA and the European Research Institute on Cooperative and Social Enterprises (EURICSE). In addition, publications prepared by FAO Regional Offices may provide useful data on cooperatives (for example, see Agricultural Cooperatives in Eurasia). Although limited to a number of countries (Costa Rica, Italy, Republic of Korea, Türkiye, and the United Republic of Tanzania), useful information is provided in ILO Room document N°14 "Measuring cooperatives: a progress update on the ILO Pilot study on the applicability and implementation of the Guidelines concerning statistics of cooperatives in five countries." The ILO is in the process of establishing an international data collection mechanism that considers smaller cooperatives.

II. OBJECTIVES OF THE COOPERATIVES

14. *Legal relevance of the cooperative identity.* Cooperative enterprises may be distinguished from other types of enterprises by the specific objective of meeting the "common economic, social and cultural needs and aspirations [of the members]", and by being "[…] a jointly owned and democratically controlled enterprise". This Chapter takes into account the definition, principles, and values – the "Cooperative Identity" – as enshrined in the 1995 Statement on the Cooperative Identity of the International Cooperative Alliance (ICA), as set out below.

15. *Elements of the Cooperative Identity.* The development of agricultural cooperatives has been part of this unique evolution of "the cooperative identity" since the mid-nineteenth century. The elements of this identity are: (i) a definition of cooperatives, (ii) a set of values on which cooperatives are based, (iii) a set of ethical values of the members, and (iv) a set of principles. In the words of the ICA Statement, these elements are linked as follows: "The [seven] cooperative principles [as listed and explained in the Statement] are guidelines by which cooperatives [as defined in the Statement] put their [six] values [as separated in the Statement from the four ethical values of the members] into practice". Thus, the often-used term "Cooperative Principles" means the cooperative principles in their interconnection with the various other elements of "the Cooperative Identity".

16. *Significance of the ICA Statement*. The world cooperative movement, organised in the ICA, has a particular history of ongoing reciprocal processes of practicing cooperative theory and theorising cooperative practice. This has led to the international recognition of the "Cooperative Identity".[76] The text of the ICA Statement is unique in a number of ways. Firstly, the members of more than three million cooperatives worldwide identify with it; secondly, through their membership in the ICA, these cooperatives oblige themselves to respect it;[77] and thirdly, this identity is being recognised heteronomously by more and more national and regional cooperative laws and by public international law, especially through the 2002 Promotion of Cooperatives Recommendation [No. 193] of the International Labor Organization. This provides the legal relevance of the Cooperative Identity that law-makers are required to justify in cases of non-compliance.[78]

17. *Nature of a cooperative*. Cooperatives are created on a voluntary basis, with freedom of membership by following democratic governance principles. The distribution of surplus is made according to members' transactions or usage (see Section VI.C, Income distribution). Therefore,

[76] The following international texts of varying legal nature are relevant for the discussion of the "Cooperative Identity." These texts are: (i) the 1995 International Cooperative Alliance Statement on the Cooperative Identity; (ii) the 2001 UN Draft guidelines aimed at creating a supportive environment for the development of cooperatives, Annexe to the 2001 Report of the Secretary-General of the United Nations on "Cooperatives in social development" (A/56/73-E/2001/68); (iii) the 2002 International Labor Organization Promotion of Cooperatives Recommendation [No. 193]; (iv) the 2021 Report of the Secretary-General of the United Nations on "Cooperatives in social development" (A/76/209); and (v) the 2023 and 2025 Reports of the Secretary-General of the United Nations on "Cooperatives in social development", which recommend to the United Nations General Assembly to have national governments align their legislative and regulatory frameworks with the 2001 UN Draft guidelines (see, respectively, UN Doc. A/76/209 (Chapter III), endorsed by A/RES/76/135; UN Doc. A/78/187 (Chapter III, A.), endorsed by UN Doc. A/RES/78/175; and UN Doc. A/80/168 (Paragraph 71.(a)).

[77] According to Article 12.2 of the Articles of Association of the ICA (adopted on 28 June 2023), "All Members [of the ICA] shall expressly adhere to the Statement on the Cooperative Identity as set forth in Appendix 'A' to these Articles of Association." The official text of the Articles of Association of the ICA is in French. The ICA provides the English translation for information purposes only.

[78] This legal relevance, if not legal bindingness, can be derived in two ways: firstly, from a systematic reading of Article 12.2 of the Articles of Association of the ICA and Article 22 (Freedom of association) of the 1966 Covenant on Civil and Political Rights and, secondly, from arguments which show that ILO R. 193 is legally binding as far as cooperative law is concerned. The content of the cooperative law is predetermined (albeit not in detail) by public international law, especially the ILO R. 193. Its Paragraph 10 (1) states that "Member States should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out in Paragraph 3 […]". These "values and principles" are similar to those enshrined in the ICA Statement.

three general premises that capture the nature of a cooperative, coherent with the previously identified criteria, are:

(a) an organisation with legal personality that functions according to specific principles;

(b) a member-based organisation; and

(c) specific objectives and functions related to its member-users' needs.

18. *Member-centred type of enterprise.* Membership is the most distinctive structural characteristic of the cooperative enterprise. By its objective, a cooperative is member needs-oriented and, by its form, it is member-centred; capital plays a purely auxiliary role. More precisely and according to the above-cited definition of cooperatives, the members of cooperatives are co-entrepreneurs, as they themselves and not the cooperative "… meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."

19. *Hybrid nature of cooperatives*. This unique structure places cooperatives in a hybrid category between associations of persons and associations of capital (companies). This hybrid nature is often not addressed by legislators. As a consequence, this may lead to a conflict between cooperative law, on the one hand, and labour law, taxation (income tax and VAT, especially), competition law, etc., on the other hand, because these laws are modelled on the company-type of enterprise.[79]

20. *Democratic participation*. The member needs-oriented and member-centred nature of cooperatives is expressed through democratic (in the sense of *per capita*) member participation, independent of members' financial contribution. Member participation runs as a golden thread – a meta-principle – through all elements of the cooperative identity, permeating all organisational (governance, nature and structure of capital, etc.) and operational aspects of cooperatives. It is to be understood in the widest sense possible, including control and the conditions that enable the members to exercise their related rights and obligations, such as adequate information by the board/management, adequate education, and their being informed through independent audit reports. Members' democratic participation is the core mechanism through which the objective, namely "[meeting] the economic, social and cultural needs and aspirations [of the members]", is pursued.

III. FORMATION

A. Considerations when forming an agricultural cooperative

21. *Benefits.* The challenges which may occur when setting up a cooperative, mentioned below in paragraph [32], are outweighed by the economic, social and cultural advantages that smallholders and agri-MSMEs can achieve in forming an agricultural cooperative. The choice of cooperatives may also include historical aspects. Some of them are direct, impacting net margins or savings, and some of them are indirect, affecting market price formation and improving the quality of goods and services. The advantages of collaboration may be obvious immediately after the agricultural cooperative's establishment; however, in general, the benefits will materialise only in the longer run and in a sustained manner.

22. *Overview of benefits.* Agricultural cooperatives offer a wide range of benefits to smallholders and agri-MSMEs. These include stronger bargaining power, enhanced transparency and democratic governance, reduced input costs, increased returns, improved product and service quality, and access to larger markets through economies of scale. Cooperatives also help secure essential resources, such as infrastructure, training, technical support, and legal services. Furthermore, they

[79] Most countries in Central and South America have introduced the figure of "*acto cooperativo*" to qualify the relationships inside the cooperative between the various groups as a relationship *sui generis*.

play a key role in rural development, risk reduction, and the strengthening of social capital. Among these, access to credit and agricultural inputs remains a central reason for cooperative formation. While credit − where available (see Section VII.B) − can facilitate input purchases, in many countries the inputs themselves are not readily accessible. This challenge is particularly acute for smallholders and agri-MSMEs in remote areas or with limited market power.

23. *Justifications*. Where related factors are present (e.g., unequal bargaining power, difficulty in accessing markets, high upfront or technical costs, etc.) the formation of an agricultural cooperative may be simpler to justify. For example, often cooperatives operate in areas where other enterprises are unable to reach, and they function to aid rural development and create social capital. Cooperatives may be chosen as a response to inflated prices of essential commodities. If cooperatives are able to implement incentive schemes to induce individual growers to improve quality, they may also gain premium reputation in the market. In general, cooperatives are also chosen for the empowering role they play through the integration of education, training, information-sharing policies, providing support for women farmers, and, in general, promoting values of self-responsibility.

24. *Nature of products*. The nature of the product (e.g., perishable fruit and vegetables, dairy), may also influence the choice of forming an agricultural cooperative, given the infrastructure that is necessary. While there have been some assumptions that cooperatives cannot deliver quality products, this has not been supported by the literature as a general observation, particularly recently. Research results indicate regional differences in terms of how cooperatives compete with private companies with respect to quality and reputation.

25. *Access to credit.* An important consideration for establishing and joining agricultural cooperatives is the use of cooperatives by farmers as leverage to access credit and distinct forms of capital (see Section VI, Financial Resources). Beyond traditional loans, cooperatives may, where not prohibited and if their autonomy and independence (fourth ICA Principle) can be maintained, utilise specific financing features such as issuing shares to non-member investors with limited rights (e.g., non-voting shares, debentures, or investment certificates). This allows the cooperative to raise necessary funds while maintaining the principle of democratic member control and autonomy. Cooperative initiatives on innovative financing can combine loan guarantees with capacity-building initiatives. In addition, some cooperatives also have savings and credit sections or only credit sections, where farmers may access credit needed for purchase of inputs.

26. *Cooperative services*. In a study carried out in one African country, it was found that farmers who have simultaneous access to credit and cooperative services achieve significantly higher productivity than farmers who have access to either one or the other (or neither). The study recommended that agricultural productivity-targeted programmes consider farmers' simultaneous access to credit and cooperative services. In other instances, cooperative banks and savings and credit unions should be conceived as forming part of a cooperative ecosystem (see Section VII.B).

27. *Sustainability.* Smallholders and agri-MSMEs may be drawn to the cooperative model not only for its practical benefits in pooling resources and accessing markets but also for its intrinsic alignment with the objectives of sustainable development. The cooperative legal form, with its inherent obligation to serve the economic, social, and cultural needs of its members (see Section I) and its non-extractive distribution of surplus (that is, no third parties extracting profits), is structurally designed to contribute to a more inclusive and resilient development pathway. When combined with the cooperative movement's seventh principle (Concern for Community), this model directly supports three foundational dimensions of the legal principle of sustainable development: economic security, social justice, and environmental protection. The interdependence of these dimensions is crucial.

28. *Social Justice.* Cooperatives, by mandating attention to members' social needs, inherently promote social justice. In turn, social justice is widely acknowledged as a prerequisite for political stability, which itself is necessary for sustained economic security. Only in conditions of economic security are individuals and communities more likely to engage meaningfully with environmental challenges. Thus, the cooperative's legally embedded mechanisms – particularly, democratic member participation – play a pivotal role in regenerating social justice. It is important to clarify that this perspective does not propose cooperatives as the sole or universally superior vehicle for achieving sustainability goals. Rather, they represent one of several complementary legal structures available. The strength of cooperatives lies in their participatory structure, which enables the operationalisation of sustainability principles in a participatory and legally accountable manner – making them particularly well-suited to the contexts in which smallholders and agri-MSMEs operate.

29. *Pooling capacities*. Finally, another reason to form a cooperative (of possibly increasing importance) is the pooling capacities to (re)gain control over and benefit from members' own data (see also Section XI on Digitalisation). Agricultural data is a valuable asset in and of itself, whether for market reasons or decision-making potential. Increasingly, it is consolidated in the hands of powerful value chain actors, further exacerbating power imbalances.

30. *Agricultural-related data*. This Chapter considers the role agricultural cooperatives may play in enabling farmers to benefit from, use, and control agricultural data. Cooperatives can provide digital services directly to their members, assist farmers in monetising or leveraging their own data or aggregated cooperative data, and facilitate partnerships with third parties offering specialised services. Individual units of agricultural data alone have limited value. Their worth increases significantly when combined with data from diverse sources and standardised across datasets. The organisational structure of agricultural cooperatives naturally supports the aggregation of member data. The challenge and the task of cooperatives should be to protect the autonomy of members in relation to their data. Some cooperatives have launched data analytics initiatives aimed primarily at member benefits – providing competitive advantages and promoting knowledge exchange. Cooperative platforms may enable farmers to maintain control over and derive benefits from their data. Recently, there has been growing interest in platform cooperatives and collaboration between agricultural and IT cooperatives. These efforts focus on open-source solutions and interoperable standards, promoting cooperative-driven innovation and data sovereignty.

31. *Integration into value chains.* Besides cooperating amongst themselves (see Section VII.A), cooperatives, like all types of enterprises, integrate ever more often into (global) value chains (see Section VII.C). The factors of globalisation (e.g., digitisation, digitalisation and tele-transferability of data, see para. [142] allow and/or require them to do so, not only operationally and through contracts, but also organisationally, often having to adjust their organisational structures to the demands of value chain leaders. Traditionally, power imbalances in value chains related to capital and labour issues; more recently, and increasingly, data have become the dominant factor. This is an additional reason for smallholders and agri-MSMEs to form cooperatives, as on their own they might not have the capacity to (re)gain their data autonomy and benefit from it.

32. *Challenges*. The setting-up of a cooperative with legal personality faces six main, interrelated challenges, which are not all exclusive to this form of enterprise but need to be considered.

(a) Firstly, the widespread assumption is that a cooperative is a simple type of enterprise, easy to set up and run. Although the material requirements to set up a cooperative are minimal, the governance structure (see Section V) is not as straightforward as that of most other enterprise types. To reduce governance complexity, a number of jurisdictions have introduced simplified cooperative structures.

(b) Secondly, whereas trust is inherent in primary or close groups (for example, family farms), in secondary or more distant groups, such as cooperatives, trust must be generated and constantly maintained.80 In some cases, however, the introduction of cooperative initiatives has served to build social capital and trust. Internal governance factors include decision-making processes, the role of the different governing bodies, the allocation of control rights to members and professional management, and the organisational structure of the cooperative enterprises, such as first-, second- or third-tier cooperatives, holding companies or subsidiaries.

(c) Thirdly, the formation of agricultural cooperatives according to national law may clash with customary law and/or social norms, especially within close-knit groups such as extended family groups or ethnic groups to which potential members belong. While natural persons belong to primary or close groups, governed largely by the laws that regulate the status of the members, cooperatives are legal entities (secondary groups) that require formal membership and adherence to the relevant laws.81 If this difference is not taken into account, it may lead to a conflict of norms to the detriment of both types of groups.82 This may contribute to why smallholders and agri-MSMEs often remain in what is called the informal sector.83 The institutional environment (social, cultural, political and legal context) in which smallholders and agri-MSMEs and their potential cooperatives operate, may have a supporting or constraining effect on their abilities to join cooperatives or on the cooperatives' potential performance.

(d) Fourthly, there is the possible undue involvement of external actors. According to the above-cited definition of cooperatives (see Section I), the members "[…] meet their common economic, social and cultural needs and aspirations […]" through an enterprise. The determination of these needs and aspirations and the agreement to meet them through a cooperative enterprise must be left to the potential members. This does not preclude involvement of outside experts who may provide advice on various aspects, such as formation, legal requirements, taxation and accounting, education and training, etc., as long as the delineation is clear between what is for the potential members to decide autonomously and what outside promoters should be allowed to do.84

(e) Fifthly, there are the legal and bureaucratic hurdles related to the cooperative's registration and thus recognition as a legal person. Notwithstanding their necessity, these requirements are often cumbersome and not in line with the principle of equal treatment of all enterprise types, as enshrined, for example, in Paragraph 7 of the ILO R. 193 and in the 2001 United Nations Draft guidelines aimed at creating a supportive environment for the development of cooperatives.

---

80 In addition, where history of the cooperative model might include incidents of misuse by cooperative organisations, donors, governments, etc., this hampers the building of trust. Both phenomena explain to some extent the aforementioned low number of farmers having formed or joined cooperatives.

81 Although there are exceptions – some jurisdictions recognise families as legal persons.

82 Two examples are illustrative. First, as legal person status can only be granted under State law, which will determine membership qualification. The question of whether a married woman may join an agricultural cooperative may, however, also be regulated by customary law where it pertains - as it often does - to the status of persons and where it pertains to access to land. Second, an adequate cooperative law will regulate the qualification criteria for persons holding office. These rules are often superseded by customary law relating to equivalent positions in primary groups.

83 Other potential reasons are, foremost, the fact that State law often "does not speak" to informal sector actors, does not reach them and/or that its administration is ineffective. "Informal" is not to be confused with "illegal", nor must one assume that no law applies in the sector. Paragraph 9 of ILO R. 193 suggests that "Governments should promote the important role of cooperatives in transforming what are often marginal survival activities (sometimes referred to as the "informal economy") into legally protected work, fully integrated into mainstream economic life." Bringing the sector and/or its actors into the formal realm has its advantages and disadvantages. The ILO has worked on this topic since 1972.

84 The involvement of governments in the development of cooperatives spans from setting the necessary framework, as suggested here, to being involved in the running of the cooperative enterprise and anything in between.

(f) Sixthly, other restrictions might make the cooperative enterprise form less attractive, such as, for example, that in some countries cooperatives do not have the right to export or exports are only possible with approval from the competent authorities.85

33. While some of these challenges may be unique to the cooperative form, others may be common to more than one of the collaborative legal structures considered in this Guide, such as the following: (i) inclusivity (membership usually has a cost: both in terms of price or because of a requirement that members/farmers need to own the land); (ii) the difficulty in meeting market requirements and performing well; (iii) the limited resources to access credit and inputs; and (iv) the limited adaptability to face climate change and to promote new sustainable practices in agriculture (see also Chapter V, Comparing and Combining Legal Structures).

B. Formation process

34. *Legal requirements.* If the potential or existing members might want or need to seek recognition as a legal entity, they must get acquainted with the requirements they have to meet according to the law on cooperatives and possibly other laws (together: "cooperative law"). The applicable legal framework will usually stipulate the documentation required for registration and will also specify the matters to be regulated in the internal bylaws or statutes[86] of the cooperative and which will have to be submitted to the registration authority. In general, these bylaws or statutes will be registered in a public register.

35. *Formation and registration.* It is essential to distinguish between the formation of the cooperative and its registration. Formation is the internal preparatory phase where potential members define their common needs and agree on the structure of their collaboration. Registration is the subsequent administrative step where the entity acquires legal personality under State authority if needed and wanted by the members.

36. *Defining common needs***.** The formation process begins with the identification of the "common economic, social and cultural needs and aspirations" of the potential members. Generally, two issues need to be kept distinct: (i) the contract to establish a cooperative; and (ii) the constitution of the cooperative. Hence, the cooperative is established on the basis of a contract, but it is not a contract; it is the result of the fulfilment of the agreed obligation to constitute a cooperative.

37. *Constitution of a cooperative.* In most jurisdictions, members are generally free to determine the structure and internal rules of a cooperative. However, this freedom is subject to limitations imposed by cooperative law – whether found in general legislation on cooperatives, sector-specific laws, or other applicable statutes. These legal frameworks typically establish the fundamental organisational elements of cooperatives, while allowing specific operational details to be set out in the cooperative's bylaws or statutes. This legal structure seeks to balance flexibility with the need to protect the interests of third parties (e.g., business partners), the public, and the cooperative's own members. Accordingly, freedom to stipulate internal rules is only permitted to the extent that cooperative law allows such provisions to be defined in the bylaws or statutes.

38. *Authorisations.* Only in rare cases does the decision of the registration authorities include a decision on whether the to-be-registered cooperative may exercise the envisaged activity. The potential members must therefore generally seek additional authorisation from the respective authority and understand that abiding by the cooperative law does not relieve them from abiding by the laws governing the activity they exercise.

---

85 For example, in the Central African Republic, mining cooperatives cannot export but this does not appear to apply to agricultural cooperatives. In general, across Africa it seems that agricultural cooperatives may export upon receiving approval.

86 The terms vary. These are the two most commonly used and they are used here interchangeably.

39. *Membership agreements.* In addition to the applicable legal framework, the articles of association ‒ where required ‒ and the bylaws or statutes, may all regulate the formation and organisational aspects of cooperatives.[87] Such other legal instruments may include "membership agreements" that outline the specific duties and standards required of each member. Detailed production specifications and obligations might also be set out in these membership agreements or in other contracts between the cooperative and its members.

40. *Support mechanisms.* The ILO has developed and tested a detailed guide for the agreement to establish a cooperative and for its constitution. In some circumstances cooperative unions and/or federations and semi-public entities provide support for the setting-up of cooperatives.

C. Process and consequences of registration

41. *Separate legal personality.* Upon registration, and in general upon subsequent publication of the registration, the cooperative exists as a legal person with its own rights and obligations, separate from those of the members. Without publication, third parties are left with uncertainty about the legal status of the cooperative. Moreover, the published bylaws or statutes represent the document from which third parties will seek information on important matters, such as who is empowered to represent the cooperative, the liability of the members, and so forth.

42. *Registration process*. Once the members have agreed to establish a cooperative and drafted their bylaws or statutes, they may seek recognition as a legal entity. The application typically requires a minimum number of members, copies of the bylaws or statutes, and often a statement regarding the capital or viability of the proposed entity. The role of the public authority is to verify that the documents submitted comply with the objective legal requirements set out in the applicable cooperative law. The authority checks, for instance, whether the mandatory content of the bylaws or statutes is present, whether the proposed activities are lawful, and if the bylaws or statutes include adequate provisions for audits and member education.

43. *Liability during formation*. Care must be taken by those acting on behalf of the cooperative during the formation process, for example, in concluding contracts and performing other acts, because they possibly remain liable for these acts as long as these have not been endorsed by the cooperative as a legal person. Cooperative law does not always clearly regulate this.

44. *Member liability*. Members are not personally responsible for their cooperative's obligations but are liable up to their membership shares for debts incurred during their membership and often for a limited time after leaving. Bylaws or statutes can extend this liability further. The scope of any additional liability depends on members' willingness and capacity, but it may encourage greater member oversight and enhance the cooperative's creditworthiness ‒ especially when membership shares are small and reserve funds are limited (see Section VI).

---

[87] Some jurisdictions require a whole series of documents for registration, such as organisation/pre-membership agreements that establish the members' commitment during the formation process and can include the objective, patronage and financial commitments, and calling of meetings; articles of incorporation (or equivalent), legal document for the formal registration of the cooperative that sets out the purpose and structure, name, place of business, duration (usually perpetual) names of incorporators and description of capital. In the case of such articles of association the bylaws or statutes will elaborate in more detail the internal operations, the governance structure and role of members, directors, and staff and serve as a guide on how the cooperative should function. See FAO. 2024. A Guideline on Effective Process of Writing and Reviewing Legal Documents for Agricultural Cooperatives.

IV. MEMBERSHIP

A. Centrality of membership

45. *Member needs-oriented.* Membership is the most distinctive structural characteristic of the cooperative enterprise. As can be read from their definition (see Section I), cooperatives are member needs-oriented by their objective, and they are member-centred by their form. The law-maker assumes that the members obtain the best service if they themselves determine their needs and the way to address them. To ensure this, members must have a central role in all organisational aspects, including control, and in all operational matters.

46. *Democratic member participation*. Putting democratic member participation into practice requires both clarity and capacity. While cooperatives are designed for members to serve themselves through collective enterprise, many members misunderstand this role, expecting passively the cooperative to serve them. A lack of time, interest, or understanding often limits participation, and cooperative managers may lack the skills or motivation to support democratic processes. Moreover, cooperatives may face certain risks caused by information and knowledge gaps among stakeholders. Participation may become difficult in large, multi-stakeholder cooperatives, where coordination is complex. Integration into value chains may add further complications. These chains often include non-cooperative actors governed by different legal systems and business norms, potentially clashing with cooperative principles like the principle of democratic member participation and inter-cooperative collaboration (sixth ICA Principle). Ultimately, cooperatives must balance democratic governance with the practical demands of operating in competitive markets − a central tension that influences both internal management and external collaboration.

B. Admission to and termination of membership

47. *Admission to membership.* To become a cooperative member, an individual must satisfy specific eligibility conditions. Unlike in a company, where a potential shareholder can typically buy his or her way in, cooperative membership is not primarily defined by financial contribution. The symbolic nature of the membership share is underscored by the fact that most cooperative laws do not prescribe a fixed value for it. The key membership criterion stems from the first ICA Principle − the so-called "open door" principle − which limits eligibility to those who can use the cooperative’s services and are willing to accept the responsibilities of membership. However, meeting these conditions does not automatically entitle a person to join. Admission remains subject to approval, reflecting the right of current members to choose their collaborators. This ensures that membership supports a functioning cooperative dynamic, where trust and mutual engagement are essential to success.

48. *Eligibility criteria.* The conditions of agricultural cooperative membership can vary depending on the laws where it is registered. However, general conditions commonly required include (i) legal capacity, (ii) shared interest, and (iii) geographic location. The open-door principle is the starting point for admission to membership. It aims to offer a democratic approach to entrepreneurship for all those who are able and willing to adhere to the membership criteria of the particular agricultural cooperative. For example, it may make sense for a smallholder or agri-MSME to have grapes processed by the same cooperative as the neighbouring farmer. Reasons for this may be territorial proximity to the farmer and the cooperative, similar production methods, or merely to support each other. Legal entities may also be or become members.

49. *Open door principle.* Applicants for membership do not have a right to admission but are entitled to a fair assessment based on objectively comprehensible criteria. In terms of its legal feasibility, the open-door principle is thus positioned between economic expediency and the expectation of correct treatment. In order to ensure the latter, the bylaws or statutes of an

agricultural cooperative must specify exactly which requirements and criteria members must fulfil (e.g., production of certain agricultural products, residence in a certain territory, etc.). When applying for membership, it must be checked whether or not these criteria are met. This should also ensure that the group of members remains homogeneous in terms of the interests to be jointly promoted − which can reduce the risks involved in the heterogeneity of member interests. On the other hand, the circle of members may have to be opened up for economic reasons, in order to be able to produce more efficiently and ensure the competitiveness of the cooperative − and thus of its members.

50. *Obstacles to entry.* However, if a smallholder or an MSME farmer had a right to become a member of a cooperative, this could, for example, mean that a cooperative that is already working at full capacity would have to process additional agricultural products − without the corresponding production or storage capacities. Accordingly, an obstacle to entry is the economic viability for the agricultural cooperative or its members.

51. *Homogeneous membership.* A homogeneous membership base facilitates decision-making, which, in turn, should have a positive impact on the economic success of an agricultural cooperative and strengthen the bond of trust between the members and their cooperative. This applies to the general assembly as a formalised decision-making body, but there are also other, less formalised ways of strengthening trust between the cooperative and its members: for example, an ongoing exchange between members and the members of the board of directors and the managers, such as through joint field inspections to carry out harvest forecasts.

52. *Decision-making power.* Members should have the ultimate right to decide on membership questions, notwithstanding the right of the board of directors to act provisionally, if necessary, and pending a final decision of the members in the general assembly.

53. *Membership size.* Taking into account what the applicable cooperative law might prescribe and considering the viability of the enterprise, the potential members might have to decide on a minimum and/or maximum number of members of a cooperative. This should be specified in the bylaws or statutes.

54. *Termination of membership.* Membership may terminate for several reasons; usually these reasons are outlined in the cooperative's bylaws or statutes. Voluntary and involuntary reasons may justify termination. For example, four typical reasons include: (i) voluntary withdrawal, (ii) death of a member, (iii) dissolution in the case of legal person members, and (iv) expulsion. The criteria for the process and implications of the termination of membership vary depending on the applicable cooperative law and the cooperative's bylaws or statutes.

55. *Voluntary withdrawal.* The right to withdraw corresponds to the right to freedom of association. Specific rules may provide for notice requirements (oral or written notice) and time limitations, e.g., length of time before members can leave, which might also be a consequence of the member agreements (see above).

56. *Expulsion.* Expulsion is a rare case for termination of membership. It is rare for the reason that the specific governance structure allows for preventive corrective measures (see Section VIII), the most important of which being temporary suspension of membership. The reasons for expulsion or temporary suspension may include a repeated failure to attend meetings or participate in governance or other active membership requirements (e.g., non-payment of capital contributions). The violation of bylaws or statutes as well as of codes of conduct (e.g., breach of rules or policies, misconduct or fraud, conflicts of interest) may also lead to expulsion. The main reason may be the failure to use the cooperative's services over a defined period of time.

57. *Capital refund.* Upon termination of membership, members are entitled to a refund of their capital contributions: in principle, the amount of the nominal value of their membership shares. This

is to avoid membership motivated by speculation. The cooperative’s bylaws or statutes describe how to calculate the refund. Where the economic interests of the cooperative are seriously threatened by an immediate reimbursement or where it would lead to violating a minimum capital requirement (if any), the reimbursement may be withheld, but for a reasonable period of time only.

58. *Membership shares.* In some instances, a withdrawing member may decide to transfer his or her membership shares to another natural or legal person under the condition that the candidate fulfils the membership requirements and is admitted as a member by the cooperative. The same rule applies, *mutatis mutandis*, to the heirs of a deceased member.

59. *Financial obligations and inherited membership.* A member whose membership has terminated may remain liable for any debts incurred by the cooperative during his or her membership for a specified period of time. In addition, he or she may have a legal obligation for a specified limited period of time to make further financial contributions in the event of insolvency. The same rules apply to the heirs of a deceased member.

60. *Post-membership obligations.* Moreover, a membership agreement may create additional post-membership obligations for a certain period of time. Typical examples are delivery obligations that go beyond membership so that the cooperative can fulfil promised services to third parties.

61. *Transitions.* A well-defined process for the termination of membership should be set out in the bylaws or statutes to facilitate necessary transitions while safeguarding the interests of the remaining members (and possibly of third parties).

C. Obligations and rights of members

1. Members’ obligations

62. *Equality principle.* Emphasis is put on the members’ obligations, as the members’ rights are conditioned by the members discharging their obligations. According to the first ICA Principle, family ties, age, religion or any other affiliation to a group must in no case affect the equality of the members in terms of obligations and rights.

63. *Sources.* The obligations and rights of the members are usually regulated by the relevant cooperative laws and are specified in the bylaws or statutes. Contrary to some types of companies, financial contributions, membership shares, or the like[88] have nearly no[89] influence on the obligations and rights of the members.

(a) Personal obligations

64. *Use of cooperative’s services.* Members have a duty to use the services of their cooperative. This includes actively using its services (e.g., sharing equipment and training) and participating in its transactions (e.g., supplying agricultural produce). Without sufficient member engagement and demand, the cooperative cannot operate effectively or fulfil its objectives. This obligation is fundamental − it is rooted in the definition and in the first ICA Principle − and forms a core part of the cooperative’s structure. While it is possible to require members to use the cooperative’s services to some extent, such a rule might harm the cooperative’s competitiveness over time and potentially conflict with competition law if members run their own enterprises. Therefore, instead of a strict legal obligation, it may be better to view this as a moral duty for members to support their cooperative. It is also the cooperative’s responsibility to offer attractive services to encourage member

---

88 For cooperative principles respecting financing instruments, see: International Cooperative Alliance, The Guidance Notes to the Cooperative Principles.

89 The third ICA Principle allows for limited returns on capital contributions; upon termination of membership members have a right to receive the nominal value of their share(s) if the cooperative is solvent.

participation. Exceptions can be made, especially if members agree on a major investment the success of which depends on their use of the cooperative's facilities. In such cases, members could be temporarily restricted from seeking services elsewhere, and individual contracts might be necessary to ensure stability.

65. *Compliance with bylaws or statutes.* Members should respect the bylaws or statutes, the decisions taken by the general assembly, and the decisions taken by the board in accordance with its powers.

66. *Participation in cooperative governance and meetings.* Members should participate in cooperative governance. Additionally, regular attendance at meetings is fundamental for democratic decision-making.

67. *Abstention of detrimental activity.* Members should avoid practices that conflict with the objective of the cooperative or the interests of its members (for example, "side selling" product rather than delivering it to the cooperative).

(b) Financial obligations

68. *Contribute capital.* Each member must subscribe to and pay for the minimum number of shares fixed in the bylaws or statutes. In exceptional cases, and for a limited period of time, the bylaws or statutes may require the payment of a membership fee and additional capital contributions may also be required. Fees are payments for specific services and will not be reimbursed in case of termination of membership.

69. *Financial liability.* Each member is financially liable for the debts incurred by the cooperative during his or her membership, at a minimum with the amount of money to be paid for the shares subscribed by him or her. If not specified in the law, the type of further financial liability of the members may be specified in the bylaws or statutes in order to protect the interests of third parties and to improve the creditability of the cooperative. Because of their legal person status, the obligations of cooperatives do not commit the members; the members are liable towards their cooperative only, and not towards the creditors of the cooperative.

70. *Supplementary payments.* The applicable laws and/or the bylaws or statutes may impose an obligation to make supplementary payments. The same may apply in case the cooperative is unable to pay its debts (so-called "liability to further call" or "reserve liability"). This may result in unlimited financial liability of the members. Liability risks must be thoroughly explained to the members.

2. Members' Rights

(a) Personal rights

71. Each member has the right to:

(a) *Use the cooperative's services*. Each member has the right to ask for services that further the objective of the cooperative (including education and training, use of the installations of the cooperative, etc.);

(b) *Vote and participate in decision-making.* Every member typically has one vote, regardless of how much they contribute. Members can participate in general assembly, propose a motion therein, and elect the board of directors;

(c) *Be elected.* Eligible members can be elected for an office in the cooperative or in that of a higher-level structure to which her/his cooperative is affiliated;

(d) *Access information.* Members can obtain at all reasonable times from the responsible persons in the cooperative information on the situation of the cooperative, especially such information that enables her or him to make use of his or her participation and control rights. Members may review financial statements, annual reports and other policies and records;

(e) *Request a cooperative-specific audit.* Members can request the supervisory council, if any, and/or an independent cooperative auditor to exercise oversight over the board.

72. *Joint rights.* Jointly (with the necessary number to be determined in the bylaws or statutes), the members can also convene a general assembly if the responsible persons fail to do so and/or have a question inscribed on the agenda of the general assembly, as well as ask for an (additional) audit.

(b) Financial rights

73. The members have the right to:

(a) *Share in surplus.* Receive a share of the surplus at economically reasonable intervals in the form of patronage refunds, paid *pro rata* with regard to their transactions with the cooperative, and/or a limited interest on the paid-up shares (see third ICA Principle);

(b) *Reimbursements.* When terminating their membership, members have a right to be reimbursed and may ask that the paid-up shares be reimbursed at nominal value. Losses or devaluations may be deducted from this amount. The reimbursement may be deferred in case it would otherwise endanger the viability of the cooperative. However, this deferment must not undermine the right to withdraw;

(c) *Share of funds.* Members should receive, in the case of liquidation, a share of the remainder, if any, except of those funds which were declared indivisible by the law or the bylaws or statutes, and as required by strict cooperative principles (see third ICA Principle). In this case, the remaining funds must be credited to another cooperative, a cooperative structure of which the cooperative was an affiliate, or to a charitable or public interest organisation (see Section X).

V. GOVERNANCE

A. Principles

74. *Member control.* If governance means the relationship between those who govern and those who are governed, then cooperatives – centred on their members, as stated in their definition, values and principles (see Section I) – must have a distinct form of governance compared to other enterprise types. To protect members' position and influence over business decisions, bylaws or statutes should ensure members can effectively control the cooperative. This follows the second ICA Principle, often insufficiently or falsely summarised as "one member, one vote". Cooperative governance is based on the overarching principle of democratic member participation, which includes more than just voting rights. While voting helps prioritise the common interests of members, such as processing or selling their products, cooperatives must also use other participation mechanisms to fully support member control, unlike companies focused on capital ownership.

75. *Governance structures*. Compared to the shareholder model, cooperatives require distinct governance structures due to their unique objective. Governance is simpler when members share similar or complementary interests (homogeneous membership), but it becomes more complex as interests diverge (heterogeneous membership).[90] Additionally, as cooperatives grow larger and more

[90] Heterogeneity of interests in cooperatives can be described in various ways: by farm size, age, product, etc.

diverse in their activities, individual members' influence typically decreases. Members must decide how well their cooperative can accommodate diverse interests; if differences become too great, forming a new cooperative may be considered.

76. *Member participation.* The functioning of cooperatives, as opposed to that of capitalistic companies, depends on the participation of the members, who must be able to exert an effective influence on the affairs of the cooperative. Nevertheless, as a legal entity operating as an enterprise, its management must be able to act independently to a certain extent. The bylaws or statutes should therefore provide for the principle of democracy and the principle of economic efficiency to be applied simultaneously, i.e., they must cater to the two elements of the definition of cooperatives, the association element and the enterprise element (for more on this dual nature, see below).

77. *Management.* The internal organisation and division of powers must reflect the cooperative's dual nature. Issues related to its associative character – such as elections and major decisions – are handled by the general assembly, representing all members. Enterprise matters are dealt with by the board of directors, which may delegate daily operations to a professional manager under its supervision. This separation prevents inefficiencies caused by uninformed members over-managing, and it avoids loss of member control when management acts without proper consultation with the members. Governance tools like supervisory councils and cooperative-specific audits help mitigate these risks. Clear power-sharing also clarifies legal responsibilities for those managing the cooperative.

78. *Cooperative-specific audits*. Unlike a standard company audit, cooperative audit must relate to the specific objective of cooperatives, which is to meet the economic, social and cultural needs and aspirations of the members (see definition of cooperatives), hence not limited to financial aspects; comprise *management* and social audit and, possibly, also societal audit (sustainability issues); and it should include advice. This requires special qualifications for auditors. Access to such special audit services is often not available. This is the reason why it should be a task of federated structures (cooperative unions and/or federations) to make such services available to their membership.

79. *Decision-making.* When cooperatives collaborate with other cooperatives – as encouraged by the sixth ICA Principle – to offer better or more affordable services (e.g., selling apples internationally) or access services on better terms, clear decision-making processes become essential. Such collaborations often lead primary cooperatives (like farmers' milk cooperatives) to form secondary and tertiary cooperatives that provide services like tax advice, accounting, marketing, or international sales (see Section VII.A). Managing decision-making complexity is crucial because cooperation increases heterogeneity and requires specialised knowledge to enter national and global markets. Cooperative systems can develop governance structures that maintain member interests and uphold democratic principles.

80. *Agreements.* In addition to these organisational arrangements and the aforementioned member agreements, further mechanisms that are less legally strict are typical. Often, they are of a political nature only, in the sense of declarations of intent. Such agreements can be helpful in adapting the cooperative system through which a value or supply chain is managed to challenges that arise, for example, due to the complexity of the chain or due to innovation. Such agreements can be comprehensive (e.g., measures to protect biodiversity in order to make the chain more ecologically sustainable) or selective (e.g., regulation regarding the use of pesticides or genetically modified organisms in order to be able to respond to changing consumer needs).

81. *Organisational challenges*. These challenges may be addressed through cooperative-specific audits, enhanced transparency requirements, and targeted education and training for both management and members. Members must understand market dynamics and recognise their opportunities to influence decision-making. Conversely, managers should be attuned to members'

needs and constraints, anticipating how decisions may affect them (and their families). Implementing the cooperative objective requires balancing democratic control with managerial efficiency. Supportive tools include tailored incentive systems for managers and members, governance mechanisms aligned with the principle of member promotion, and ensuring the qualifications of managers, supervisory bodies, and members. All actors must be adequately informed about the market context in which the cooperative operates.

82. *Cooperation among cooperatives.* One might also consider the integration of cooperatives into higher-level cooperative structures according to the sixth ICA Principle as part of the governance of cooperatives. Domestic laws on cooperatives may use the term "integration" instead of the term used in the sixth ICA Principle ("cooperation among cooperatives") in order to signify the idea behind this specific type of collaboration.[91] In some countries, cooperatives may be legally requested to join an audit association. This topic is dealt with in further detail in Section VII.

B. Bodies of the cooperative

83. *Organisational bodies.* Across jurisdictions, similar governance systems can be found. In general, cooperatives are required to have a general assembly and a board of directors (monistic or one-tier system). Some jurisdictions leave it to cooperatives to decide through their bylaws or statutes whether to have in addition a supervisory council or committee; some require cooperatives with a larger membership to have such a committee [dualistic or two-tier system]. The supervisory council may be given co-decision powers, authorising it to approve or reject strategic decisions (e.g., construction of a new production facility exceeding a certain amount).

84. *Membership composition.* To ensure the interests of the members, it is necessary that in principle only members be part of these bodies. Exceptionally, to a limited extent and with limited voting power, persons external to the cooperative may be appointed to the board these might be persons with particular expertise. Their presence might be viewed as necessary, as this enables the inclusion of an additional, differentiated perspective in the decision-making process. Moreover, as a temporary measure, external competences can also ensure the professionalisation of the cooperative until board members acquire the necessary skills. Similarly, and rather restrictedly, non-users may be admitted to participate in the general assembly (see Paragraph [85]).

85. *Purpose.* Whichever system is chosen, ultimately, it is a matter of finding suitable mechanisms to ensure that members' interests are protected. This is achieved, as roughly described, on the one hand, through direct influence (member participation in various bodies/organs), but also through specific transparency obligations, which are intended to ensure that management openly demonstrates how the interests of the members are to be protected.

1. General assembly

(a) Composition

86. *Composition.* The general assembly, composed exclusively of the members of the cooperative, is the supreme decision-making body of the cooperative. Third parties, especially investors, may possibly participate in the general assembly, if admitted under specific restrictive conditions, but they should not have voting rights. If they do, these voting rights must be limited to matters which might impact their interests.

87. *Decentralised assemblies*. If the size of a cooperative in terms of territorial coverage or number of members is such that the necessary quorum is difficult to attain, or that the organisation or the proceedings of the general assembly become too cumbersome, or where in a multi-purpose

[91] For example, laws on cooperatives in Central and South America.

cooperative diverse interests so require, regional assemblies and/or assemblies by sections may be formed. These decentralised assemblies elect their representatives to a delegates' assembly, which replaces the general assembly. In order to reinforce communication between the different parts and ensure coherence, members of the board of directors and of the supervisory council, if any, should have a right to participate in the meetings of these decentralised assemblies.

88. *Technology and remote participation*. New ways of communication do not require an administrative centre or the physical presence of the members in order to hold a general assembly. The members may decide so in their bylaws or statutes. Otherwise, they should be free to discuss and vote using any technical device as long as abuses of rights can be avoided. What matters is democratic control by the members, not their physical presence at meetings, although this may still help to generate and regenerate the necessary reciprocal trust among the members.

(b) Powers of the general assembly

89. *Division of powers.* The above-explained dual character of cooperatives as associations and enterprises is indicative of the way in which powers must be shared amongst the general assembly and the board of directors. According to the definition of cooperatives, the members use the cooperative enterprise to attain the three-fold economic, social and cultural objective (see Section I). The board of directors or management must have the necessary freedom for efficient management of the cooperative enterprise, whereas all decisions concerning the cooperative as an association must be taken by the general assembly.

90. *Exclusive powers.* Starting from this basic distinction, one may draw a list of exclusive powers of the general assembly. Generally, these powers may not be transferred to any other body or person, not even by a unanimous decision of all the members, as they form part of the legally-protected cooperative distinctiveness which, in turn, ensures legal clarity and security. Among these powers the most prominent is the right and obligation to adopt and to modify the bylaws or statutes within the limits of the law.

91. *Bylaws or statutes.* In the formation stage, potential members must prepare the bylaws or statutes in such a way so that the essential features of the entity are clearly understood. The general assembly has the power to draft and modify the bylaws or statutes, which may stipulate matters on which the law is silent, where the legislator leaves a choice amongst several options or invites specification of legal provisions, or when the members decide to rewrite certain clauses of the law in order to make them easier to understand and/or more operational. Generally, the law on cooperatives requires a minimum necessary content for the bylaws or statutes, and it suggests a number of additional, non-compulsory matters to be included therein.

92. *Mandatory content*. Mandatory content generally includes the name and trade name of cooperative, its duration, and the locality of its head office – along with its postal address and, where applicable, the conditions for transferring it to another locality. It also covers the cooperative's object, specifying whether it is single-purpose or multi-purpose, as well as the criteria, conditions, and procedures for admitting members and terminating membership. In addition, mandatory content includes the value of shares and the minimum and maximum number to be subscribed by each member, together with the procedures and conditions for their subscription and payment. Shares may be contributed in cash, by retaining part of a member's surplus within the cooperative, or in kind, including work, industry, or services. The type of financial liability borne by members for the cooperative's debts must also be established.

93. The mandatory content further addresses the administration of cooperative registers and required documentation, as well as the conditions and procedures for convening and conducting general assemblies, including notice requirements, agenda setting, quorum, voting rules, and the election of the session president. Bylaws or statutes should also specify the size of the board of

directors, eligibility and qualification criteria for its members, the duration of mandates, reimbursement of expenses, and the rights, obligations, and decision-making processes of these officers, along with those of the manager, if any. Mandatory content also includes provisions on the conditions and procedures for convening the board of directors and any supervisory council, covering quorum and voting requirements. Financial matters must be outlined, including capital formation, the establishment of legal reserves and funds, the distribution of profits and surpluses, and the coverage of losses. The distribution of assets in the event of termination of membership or dissolution of the cooperative is also defined. The definition of the financial year is also a mandatory content.

94. Additionally, auditing requirements are also part of the mandatory content, covering financial, management, social, and possibly societal audits. Bylaws or statutes must include conditions and procedures for both voluntary dissolution and dissolution ex officio, as well as address dispute resolution mechanisms, procedures for amending the bylaws or statutes, and any additional matters required by law.

95. *Non-compulsory content.* As for the non-compulsory content, it generally includes the geographical area of activity; affiliation to one or several secondary or higher-level cooperative organisations; the nomination of a supervisory council; the nature and volume of transactions with non-member users; the remuneration of office holders; the number of additional or supplementary shares per member and the conditions of their subscription, payment and repayment; the acceptance of investments by members or non-members and the rights and obligations attached thereto − within such limits as to not jeopardise the autonomy of the user-members or the pursuit of the objective of the cooperative; the formation of regional and/or assemblies by sections, their decision making, voting and number of delegates to represent the regional or sectional assemblies at the central level; participation of members in the general assembly by proxy; the establishment and use of education and other statutory funds; the establishment of commissions/committees, their tasks, their term, the qualifications of their members; and any other matter falling within the autonomy of cooperatives.

96. *Model bylaws or statutes.* Some laws on cooperatives or government authorities provide for model bylaws or statutes. Although this makes registration easier because of their assumed conformity with the law, their adoption − unless compulsory by law − must be thoroughly considered. The elaboration of the bylaws or statutes by the (potential) members is a unique learning/education opportunity. The more time they devote to this joint elaboration, the less likely conflicts around the interpretation of the bylaws or statutes will arise during the operational phase of the cooperative.

97. *Additional powers.* In addition to drafting and modifying the bylaws or statutes, the general assembly has the power to decide the matters relating to keeping of minutes of its meetings; the distribution of powers between the different organs or bodies and the adoption of internal regulations for each of them; the election and dismissal of the members of the supervisory council, if any, and the board of directors, unless the latter is to be nominated by the supervisory council; surplus distribution and loss coverage;mergers, demergers, transformation of the cooperative into another legal entity or dissolution of the cooperative; decisions concerning the possible limitation of loans, deposits or investments; the nomination of auditors, the duration of their mandate, and their remuneration; examination of the auditor's report, as well as of the annual report of the board of directors, including the yearly activity plan; giving or refusing the discharge of board members; adoption of the annual budget; final decision on the admission and expulsion of members or the suspension of membership; education and training measures for members and employees; extension of the duration of the cooperative; the decision on whether the board of directors may appoint a professional manager, member or not of the cooperative; and the possible creation of committees with specific tasks, and the duration of their mandate.

(c) Decision-making

98. *Quorum.* The mode of decision-making must respect the principles of democracy and economic efficiency. Fixing a quorum, i.e., the minimum number of members who must be present or represented for the general assembly to validly sit, deliberate, and vote, constitutes a compromise between these two principles. This quorum, most often being expressed either as a percentage of the number of members at the time of convening the general assembly or as an absolute figure, or as a combination of the two, may therefore vary according to the topic on the agenda of the general assembly.

99. *Voting.* In primary cooperatives, the basic rule on voting is "one member, one vote", according to the second ICA Principle. This also applies to legal-person members. Exceptionally, a limited number of plural voting rights may be granted through the bylaws or statutes where the law so allows and exercised when deciding on specified matters, in general, those relating to the operations of the enterprise. The volume of transactions with the cooperative or other criteria might be used when allocating plural voting rights. In no case, however, may plural voting rights be granted on the basis of the amount of financial contributions by a member, and in no case must one single member be in a position to take decisions by virtue of the number of voting rights he or she is holding or representing.

100. *Plural voting rights.* In secondary and higher-level cooperative organisations, a system of plural voting rights may be applied without the above-mentioned restrictions, but in line with democratic principles (see second ICA Principle).

101. *Voting rights of non-members*. Should non-members or non-user members, usually investors, have voting rights at all, then these must be regulated in a way to ensure that they cannot outweigh regular user-members. It must, however, be emphasised that the admission of such members and the attribution of voting rights constitute a deviation from cooperative principles as it risks jeopardising the pursuit of the objective of cooperatives as well as their autonomy and independence (see definition of cooperatives and fourth ICA Principle).

102. *Voting by proxy.* If voting by proxy is to be allowed, the proxy must be a member of the cooperative and should not represent more than two or three members, including the proxy.

103. *Majorities.* Generally, decisions are taken by simple majority, if the required quorum of members is present or represented. Decisions concerning the associative character of cooperatives − be it, for example, a modification of the bylaws or statutes or a decision on merging, splitting, dissolving, transforming, or affiliating the cooperative with a higher-level cooperative organisation − must be taken by a qualified majority, generally at least a two-thirds majority.

2. Supervisory council

104. *Principles.* The supervisory council acts, on the one hand, as a representative of the general assembly meeting (effectively as a limited version of the general assembly), exercising supervisory functions in the interests of the members. It may therefore be qualified as having a middle position between the general assembly and the board.

105. *Powers.* The supervisory council's principal task is to control the activities of the board of directors, of the managing director, if any, and of any commission. In order to be able to carry out this task, it will have access to all information at all times. The supervisory council is only accountable to the general assembly.

106. *Exclusive powers*. In addition to these broad powers, the supervisory council can have a number of particular ones. For example, should the board of directors fail to convene a general assembly, the supervisory council could do so, and it might elect the members of the board of

directors in cases where they are not elected by the general assembly or in the case of a vacancy, if it is impossible for the general assembly to take a rapid decision, subject to confirmation by the latter.

3. Board of directors

107. *Principles.* The board members must have those qualifications which are necessary for their specific cooperative. One of the differences between cooperatives and capital-centred companies is that the responsible persons must be able to manage the assets of the cooperative, while at the same time provide services to the members, within the limits set by the bylaws or statutes and the decisions of the general assembly (see Chapter V of this Legal Guide, on comparing legal structures). In exceptional and well-justified cases – within the limits of the fourth ICA Principle, by which non-members or non-user members, mainly investors, have a right to sit on the board of directors – one must ensure that these non-member directors are neither able to take decisions on their own, nor that they constitute a blocking minority.

108. *Powers and obligations.* The board of directors is responsible for all matters not expressly reserved to the general assembly. Its powers and obligations include representing, administering and managing the cooperative; maintaining registers, books and minutes; ensuring that accounts and balance sheets are prepared in accordance with applicable rules; supervising and facilitating the audit process; concerning the general assembly and preparing its agenda; preparing the management report, annual activity plan and budget; admitting, excluding or provisionally suspending members; filling vacancies where authorised; safeguarding members' rights *and* obligations; appointing and overseeing a manager or director, while remaining ultimately responsible for their actions; filing for bankruptcy proceedings where necessary; adopting joint liability in cases of wrongdoing; and carrying out any other duties assigned by the general assembly or provided in the bylaws or statutes.

109. *Decision-making.* Management decisions in cooperatives often have long-term implications, and their outcomes may only become apparent over time. A decision taken today in good faith and with the intent to promote members' interests may, in hindsight, result in unintended negative consequences. However, this does not necessarily mean that the cooperative has failed in its objective of member promotion. Rather, it underscores the importance of sound governance structures that guide prudent decision-making, ensure transparency, and allow for accountability – while recognising that entrepreneurial risk is inherent in any enterprise, including cooperatives.

110. *Business judgment rule.* The relationship between cooperative management and members is reciprocal – both parties carry responsibilities essential to the success of the enterprise. In most jurisdictions, decisions are assessed under the business judgment rule, which protects managers from personal liability if they acted in good faith and in the cooperative's best interest. However, if it becomes clear that management did not act in the members' interest, their actions must be evaluated against this standard. If the business judgment rule was not followed, legal action may be taken. If it was followed, then members must bear the consequences of the entrepreneurial risk, such as reduced benefits or exposure to liability claims.

VI. FINANCIAL RESOURCES AND INCOME DISTRIBUTION

A. Principles

111. *Financing.* Like all enterprises, cooperatives require adequate financing to sustain and develop their operations. However, they face several structural and type-specific challenges in accessing capital. First, in today's global economy, enterprises that can readily mobilise capital enjoy a competitive advantage, particularly in knowledge-driven sectors. Yet even in less capital-intensive industries, cooperatives often struggle to secure sufficient financing. A key reason is that cooperative

capital is closely tied to membership: it fluctuates as members join or leave. Moreover, most cooperative members – often smallholders or MSMEs – have limited financial capacity. Because cooperative principles limit voting power *per capita* (notably the third ICA Principle) and restrict returns on capital (second ICA Principle), there is little incentive for members to invest beyond the required minimum, and even less for non-members to do so. Additionally, unlike investor-owned firms, cooperatives are designed to meet the economic, social, and cultural needs of their members – not to maximise financial returns. Benefits are typically distributed based on member participation, not capital investment. This member-needs orientation, while foundational to the cooperative identity, makes it difficult to attract external capital without undermining democratic control or member benefit structures (fourth ICA Principle).

112. *Challenges.* The conflict between member-user interests and investor interests, which is to be avoided by the cooperative model, is likely to emerge through any external financing mechanism. Practices that do allow for investments and/or grant limited or unlimited member status to non-user investors, or grant them voting rights in proportion to their contribution, as well as the acceptance of any kind of external funding, have to demonstrate that they do not jeopardise the pursuit of the specific objective or the autonomy of the cooperative, not to mention the effective exercise of control by the members. One of the main challenges faced by cooperatives in accessing and retaining capital, therefore is how to secure sufficient capital while guaranteeing autonomy and member control.[92]

B. Financial resources

113. The autonomy of cooperatives and control by the members flow from a system of carefully balanced internal and external financing. For these reasons, the cooperative should explore internal financing possibilities before looking for external ones.

1. Internal financing sources

114. *Member share contributions.* Member share contributions[93] are not to be confused with investor shares such as in shareholder corporations. The member shares do not constitute a gainful investment. The paid-up shares constitute money which the members put at the disposal of their cooperative for the time of their membership in order for the cooperative to attain the jointly fixed objectives. These shares are nominative, indivisible, in principle non-transferable (unless decided otherwise by the general assembly), not attachable, and non-negotiable; they do not contain the right to receive dividends and may receive only limited other financial returns (see third ICA Principle), and they do not appreciate, i.e., they are issued and reimbursed at nominal value, but they may be reevaluated. In primary cooperatives, the amount of capital held by one member must be limited so that the principle of equality of the members in real terms is not endangered. For the reasons stated, the part of the capital constituted by the member shares will, in general, be small.

115. *Reserve fund.* The typical way for a cooperative to consolidate capital is by transferring parts of the surplus generated on transactions with the members to a reserve fund. As mentioned, by transacting with the cooperative, the members fulfil their most basic primary obligation that stems from the very rationale why they formed or joined a cooperative (see first ICA Principle). At least part of this surplus has to be transferred to a reserve fund, "part of which at least would be indivisible"

---

[92] Capitalisation was one of five pillars of cooperative development during the Cooperative Decade, which followed the International Year of Cooperatives 2012. See International Cooperative Alliance, Blueprint for a cooperative decade 2011-2020 and ICA, The capital conundrum for co-operative.

For further consideration, see also the ICA's Blue Ribbon Commission report entitled "The Capital Conundrum for Co-operatives" which explores ideas and options available to cooperatives that need suitable, long-term capital. The report examines the relationship between cooperative capital and cooperative principles, as well as the concerns cooperatives may have when seeking and/or using capital for growth and expansion.

[93] With few exceptions and in line with the third ICA Principle, almost all jurisdictions make the subscription and at least part payment of membership shares a condition for membership.

(third ICA Principle). This phenomenon is also referred to as unallocated asset lock. While it is available for cooperative activities, it is not available for distribution among the members, neither during the lifetime of the cooperative nor at dissolution. According to a generally accepted principle, that is not enshrined in the ICA Statement, the totality of the profit generated on transactions with non-members also has to be transferred to the reserve fund.

116. *Reserve fund amount*. The reserve fund often exceeds members' paid-in share capital, a point sometimes criticised for obscuring the cooperative's market value. However, this critique overlooks the fact that member shares are non-transferable and cooperatives are not tradable entities. Rare demutualisation cases are not acceptable exceptions to the cooperative principles. The reserve fund provides critical advantages: it discourages speculative dissolution, enhances financial stability, and shifts focus from financial returns on investments to member benefits based on transactions. These patrimonial reserves underpin cooperative longevity by growing incrementally, thus fostering intergenerational sustainability. While reserves may be deployed, their primary purpose remains the promotion of members' interests and sustainable development.

117. *Additional member shares*. To improve internal financing, cooperatives may issue additional or supplementary shares to members. These may be designed flexibly – for example, without creating further liability, with fixed interest payment rights, with the possibility to be reimbursed upon request, and with rights to participate in indivisible reserves upon withdrawal where the indivisibility of the reserves is waived for this specific case. Such instruments can enhance capitalisation without undermining cooperative principles.

118. *Supplementary payments.* Some cooperative laws and bylaws or statutes allow, or require, members to make supplementary payments. These may be triggered either as a general financial obligation or in situations where the cooperative faces financial distress (e.g., "liability to further call" or "reserve liability"). The calculation may be uniform per member, proportional to transactions, aligned with surplus distribution formulas, or based on number of membership shares and/or supplementary shares.

119. *Minimum capital*. Another strategy is to establish a minimum capital threshold below which the share capital must not fall. This may result in delaying the reimbursement of departing members or requiring remaining members to recapitalise through supplementary payments. While this strengthens financial resilience and creditworthiness, it also shifts the cooperative's financial structure closer to that of capitalist enterprises.

120. *Savings and credit unions and cooperative banks*. Financing through savings and credit unions and cooperative banks can be considered an additional internal financing mechanism, belonging to what is described as the "cooperative eco-system" (described in Section VII.B). Cooperative ecosystems function as dynamic systems that aggregate resources to create "economies of aggregation", encompassing data providers and financial institutions, and enabling collective resource management and shared ownership. It is important to emphasise how these ecosystems drive collective action and resource optimisation. Financial cooperatives play a critical role within ecosystems of agricultural cooperatives, being essential for sustaining primary agricultural cooperatives and addressing the financial needs of members. However, general banking regulations must be observed.

121. *Financial and economic stability.* In parallel, the sustainability of cooperatives often depends on internal financing instruments. Traditionally, members contributed not only capital but also bore personal liability for cooperative debts – a practice no longer widespread, although some jurisdictions still allow cooperatives to call on members to contribute financially in times of crisis. Crucially, capital in cooperatives is primarily formed through member transactions that generate a surplus. These transactions are central to the cooperative business model, as they directly reflect and reinforce the principle of member economic participation. In this sense, capital formation is closely tied to the

volume and quality of internal economic activity, further highlighting the importance of member commitment and engagement in cooperative operations.

2. External financing sources

122. *Risks and conditions.* As previously noted, cooperatives should turn to external sources of financing only after all internal mechanisms have been exhausted – and only insofar as such financing does not compromise their autonomy. The board should ensure that a suitable, balanced financing system is found. The use of external capital can easily erode the autonomy of cooperatives. Ideally, members alone should be both the financiers and beneficiaries of the cooperative, in accordance with the cooperative principle of identity of user and member (fourth ICA Principle). The inclusion of non-user members and non-member users, while now widely accepted, constitutes a departure from this principle. An even further deviation arises with the admission of investor members and non-member investors. In some jurisdictions, cooperative shares may be listed on stock exchanges, while membership shares hold merely symbolic value. Such arrangements risk transforming the cooperative into a structure indistinguishable from a joint-stock company. Beyond violating the identity principle, these developments may also jeopardise the cooperative objective of member promotion.

123. *Non-member transactions.* Transactions with non-members relate to situations where the cooperative also offers to non-members the services for its members. These transactions may be considered a form of external financing. By definition, so-called "closed cooperatives" do not engage in such transactions. Cooperatives composed of members connected by specific bonds – such as savings and credit cooperatives established within a company or locality – also frequently limit or exclude services for non-members. However, depending on their objectives and operational context, cooperatives may choose to transact with non-members, provided they carefully consider the implications for autonomy and member-centric governance. Since non-member users may not share the same interests as member-users, it is essential to ensure such transactions do not disregard the needs of the members and undermine the cooperative's independence. To that end, some legal frameworks and cooperative bylaws or statutes limit non-member transactions by setting a maximum percentage of total turnover or prohibiting contracts that might place non-members in a dominant market position. Some jurisdictions make a specific tax treatment of cooperatives dependent on the volume of transactions with non-members not exceeding a specific threshold

124. *External transactions*. For legal and accounting purposes – particularly in matters of taxation, surplus distribution, and reserve fund calculation – cooperatives must maintain a clear distinction in their records between transactions with members and non-members.

125. *Subsidiaries and cooperative groups.* Some cooperatives have been experimenting successfully with setting up so-called "cooperative groups", i.e., capitalistic companies which can more easily access the financial market because they do not have the same financing constraints as cooperatives. Provided that such arrangements continue to serve the interests of the cooperative's members and remain under their control, this model may represent a viable solution within the bounds of cooperative principles.

126. *Debentures and subordinated bonds*. A number of jurisdictions permit cooperatives to issue debentures and negotiable subordinated bonds. When properly structured – ensuring no voting rights or other forms of participatory control are attached – these instruments do not compromise member autonomy. Moreover, technical safeguards and limits on the volume of external capital can mitigate risks of dependency.

127. *Investors*. Another mechanism is the issuance of transferable investment certificates, available to both members (internal financing) and non-members (external financing). These may, in some cases, carry rights such as participation in the general assembly, board representation,

profit-sharing, or liquidation proceeds. Where such certificates grant no voting or decision-making powers – or, in the case of members, no additional decision-making rights – this may be considered a tolerable deviation from cooperative identity. However, if voting rights are granted, even on a limited basis, the principle of member control may be at risk. At any rate, the investor will have legitimate expectations to receive a high financial return on the investment. This will put pressure on the management to meet this expectation and might therefore alter the objective of the cooperative, which by definition (see Section I) does not have any financial objective. It might thus "denaturalise" the cooperative.

128. *Solidarity funds*. Solidarity funds are mutual finance institutions, funded through mandatory or voluntary contributions from cooperatives (for instance, a small share of annual income and, in some cases, residual assets at liquidation). These funds provide loans, guarantees and equity-type instruments to support start-ups and existing cooperatives and to finance training, research and other activities for the cooperative movement as a whole. They operationalise a form of "external mutuality": while they are formally external to individual cooperatives, they remain collectively owned and governed by the cooperative movement and are fully devoted to the long-term promotion of member-owned enterprises. These solidarity funds are rare, but they could become a more frequently used instrument.

129. *Guarantee fund*. These solidarity and reputational reasons have led some jurisdictions to setting up inter-cooperative guarantee funds that may be accessed as a factor of creditworthiness and to avoid insolvency or bankruptcy.

C. Income distribution

130. *Surplus and profit.* A fundamental distinction exists between surplus and profit. Surplus refers to the excess revenue generated from transactions with members, effectively representing an over-recovery of costs or a deferred payment to members. In contrast, profit typically refers to earnings derived from transactions with non-members. While surplus may be returned to members as patronage refunds or bonuses in proportion to their use of the cooperative's services, profit from non-members is typically transferred to indivisible reserves to maintain the cooperative's autonomy and long-term sustainability. For a detailed comparison of financial structures across legal structures, see Chapter V of this Legal Guide.

131. *Distribution*. Available net income after taxation, debt payments, investments, etc., may be distributed in several ways: sums derived from profit are transferred to the indivisible reserve fund, while any remaining surplus is partly allocated to the indivisible reserve fund and partly to voluntary funds such as education and pension funds, where applicable; it may also be distributed as limited interest on paid0up membership shares at a rate not exceeding that paid by commercial banks on certain types of deposits as returns on any investments, as patronage refunds to members calculated pro rata based on their transaction with the cooperative, and, where appropriate, as premiums to employees.

VII. COLLABORATION AMONG COOPERATIVES AND WITH OTHER ENTITIES

132. *Forms.* For the purpose of this Chapter, two types of collaboration are considered: (i) non-cooperative-specific collaboration and (ii) cooperative-specific collaboration.

133. *Non-cooperative-specific collaboration.* As for the non-specific type, cooperatives may collaborate among themselves or with other entities for whatever purpose and in any way other legal entities may do so – through contracts, joint ventures, networking, etc. Not all jurisdictions allow them to do so. For more information see Chapter V of this Legal Guide).

134. *Cooperative-specific collaboration*. As for the cooperative-specific types of collaboration, it is important to recall that the cooperative form of enterprise itself is also a type of collaboration among smallholders and MSMEs. As already alluded to (see Section V), collaboration in the form of a cooperative might be made more effective by cooperatives collaborating in the form of "cooperation among cooperatives" in the sense of the "structures" noted in the sixth ICA Principle. These "structures" are of two kinds: horizontal and vertical.

135. *Horizontal and vertical cooperation.* Horizontal and vertical cooperation must not be confused with "horizontal" and "vertical" integration as related to economic activities (production, distribution and consumption). In this sense, "horizontal" integration focusing solely on the production and "vertical" integration which integrates production, processing and distribution, are not necessarily the same as "horizontal" and "vertical" cooperation among cooperatives. The latter are, at times, intertwined. Where this collaboration in the form of vertically and/or horizontally-ordered structures (cooperation among cooperatives) performs similar or even the same functions as non-cooperative agrifood chains, farmers might have to choose between the two, possibly jeopardising the economic standing of the other.

136. *Agrifood chain.* It might therefore be necessary to distinguish (i) where farmers might (have to) join an agrifood chain, (ii) where an existing agricultural cooperative (has to) join such a chain, and (iii) where such a cooperative will be formed mainly in view of joining an agri-food chain. In addition to cooperating in the sense of the sixth ICA Principle, cooperatives of different sectors do often relate to each other in a non-formalised, non-structured way and thus form a cooperative ecosystem. Not all types of cooperation and collaboration are differentiated in a clear-cut way and each one can be further sub-divided. Not the least for didactical reasons, they are kept separate here.

A. Cooperation among cooperatives

137. *Higher-level cooperative organisations.* Cooperation among cooperatives in the sense of the sixth ICA Principle is based on the same rationale as that set out in Sections I and III: primary agricultural cooperatives might form secondary cooperatives (called unions, for example), and these, in turn, tertiary cooperative organisations (called federations, for example), because this is a way to more effectively address their common needs. If cooperatives integrate by sector of activity, the highest organisation is at times called the "apex organisation".

138. *Governance*. In such organisational arrangements, the lower level is to control the higher level and the higher level is to serve the lower level, resulting in an improvement of the living conditions of the members of the primary level.[94] Independently of the legal form these higher-level cooperative organisations adopt, they must not have their own interests or purposes, but be the means through which the members of the primary cooperatives seek to address theirs.

139. *Membership*. Although not an essential part of their structure, membership in higher-level cooperative organisations tends to be a factor of success for primary cooperatives. This is particularly the case where smallholders and MSMEs are involved, as well as where farming activities are spread out over vast and/or isolated areas.

[94] Paragraph 6 (d) of ILO R. 193 is instructive in this connection. It reads "[…] Governments should provide a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by the cooperative values and principles […], which would […] facilitate the membership of cooperatives in cooperative structures responding to the needs of cooperative members […]."

140. *Autonomy*. Joining forces horizontally or vertically is to avoid concentration and is a way to preserve the autonomy and independence of the individual cooperatives (fourth ICA Principle), whilst creating the advantages of economies of scale.

141. *Independence*. As is the case with the formation of primary cooperatives, the autonomy and independence of higher-level cooperative organisations might be at stake where outsiders, for example, buyers and larger enterprises that do not belong to the cooperative sector, or other actors, such as international organisations, drive their foundation.

142. *Functions*. Higher-level cooperative organisations perform economic, representative, advisory and/or control functions, coupled with knowledge transfer activities. In general, unions perform economic and representative functions, whereas federations perform representative and control functions. These functions include economic activities such as financial services; supply of input (including seeds and fertiliser); provision of knowledge through extension services; production collection and distribution of agricultural products; logistics and transport; processing; marketing; and export and import of agricultural products, as well as data protection services. Representative functions include representation at national, regional and international levels; promotion, education and training; legal, financial and economic advisory services; development of inter-cooperatives relations; and research and development. Control functions include arbitration and audit.

B. Cooperative eco-systems

143. *Relationships.* An unstructured yet impactful form of cooperation among cooperatives occurs when cooperatives from different sectors or stages of the economic process engage with one another based on a shared understanding of cooperative principles. For example, it is no coincidence that cooperative banks, savings and credit unions primarily serve small and medium-sized enterprises, including agricultural cooperatives. Similarly, consumer cooperatives increasingly source agricultural products from producer cooperatives. These kinds of cross-sectoral relationships contribute to the development of a broader cooperative ecosystem that supports mutual growth and reinforces the cooperative model across the economy (see also Chapter V).

C. Integration into agrifood value chains

144. *Emerging trends*. The following trends can be seen worldwide:

(a) Accelerated internationalisation has led to small-scale farmers increasingly forming associative and/or collaborative strategies that are continually being restructured due to changes in other areas of the system;

(b) Large investor-owned firms (IOF) have modified relationships in the value chain, thus affecting integration and collaboration;

(c) Cooperatives are very present in worldwide food distribution, but often, as a supplier to large distribution and as a buyer from large suppliers (inputs), they are seen to represent a weak link in terms of power in the overall monopolistic value chains or systems;

(d) Competition among powerful retailers is transferred to squeezing the margins of the farmer suppliers; and

(e) Cooperatives either concentrate or cooperate horizontally, but they must also engage in vertical collaboration (cf. prior references herein to heterogeneity of member interests/values/incentives).

145. *Value chain integration.* Where historically the idea was to organise agrifood chains cooperatively, vertically and/or horizontally, from the producer to the consumer, the various

functions − production, processing, commercialisation and retail − now seem to atomise and to integrate separately ever more intensively into global value chains, which the factors of globalisation, digitisation, digitalisation and tele-transferability of data require and allow. The integration into value chains, instead of integrating into cooperative structures, bears the risk of weakening the structure of primary cooperatives and makes it ever more difficult to respect the cooperative identity, especially as expressed in the fourth ICA Principle (autonomy and independence).

146. *Barriers.* These significant changes in competition, distribution of market power, and governance structures of agrifood chains lead to complex decisions as to which relationships to build on and how. Between vertical market structures, cooperative principles, and hierarchical governance structures, agricultural cooperatives have been continually adjusting alternative governance structures, new financial instruments, and different organisational arrangements. This has led to a concern over the loss of cooperative "DNA", most importantly member engagement, and has led to discussions on the barriers to enabling environments for cooperatives and whether cooperatives risk becoming a "firm" independent from members.

147. *Collaborative arrangements.* Cooperatives are embedded in different inter-organisational collaborative arrangements within the agrifood system through:

(a) a diversity of activity (supply and services, production, logistics, transformation and processing, marketing, consumer interaction, data management, etc.);

(b) engagement of entities from different stages of the value chain (upstream or downstream collaborations);

(c) involvement of heterogeneous players from different sectors;

(d) horizontal and vertical interdependencies with respect to economic, technical (especially digital), knowledge (Agricultural Knowledge and Innovation Systems), investments, scale, bargaining power, risks, etc.; and

(e) technological (digital), organisational, institutional changes and innovations.

148. *Implications.* These inter-organisational collaborative arrangements have implications for the distribution of benefits and governance and raise questions about the purpose of the value chain as a whole. Cooperatives are organisational business models based on principles and values, as set out in Section I, and the plural value dimensions and institutional logic in heterogeneous supply chains create trade-offs that are not straightforward, even in a typical horizontal and vertical collaborative value chain. This is further complicated by a shift away from traditional value chains, where there are a range of additional influences and demands that mediate the relationship between farmers, their cooperatives and the consumer (e.g., environmental and sustainability certification requirements).

149. *Implications vary by actor*. The types of collaboration may have different implications for farmer members and their cooperatives. In general, the implications vary according to the actor leading the collaboration:

(a) when collaboration is led by downstream actors (processors, retailers) − farmers are not involved in knowledge exchange, R&D, or joint investment in production and marketing;

(b) when collaboration is retailer-led, there is no pooling of resources by farmers, but there is the existence of horizontal collaboration amongst consumers (consumer cooperatives), while farmers are relegated to being suppliers, and decision-making is controlled by consumers, with little knowledge exchange on agricultural practices;

(c) when collaboration is farmer-led, actors differ greatly, but such collaboration includes knowledge and research entities;

(d) when collaboration is with traders, farmers are highly engaged in knowledge exchange, R&D, joint planning on production, marketing and joint investment;

(e) when intermediaries lead collaboration, farmer involvement is limited to intangible resources (knowledge, R&D); and

(f) where there is systemic collaboration led by production actors (e.g., cooperatives), this leads to the pooling of decision rights on production and marketing, as well as the pooling of financial resources (joint investment).

VIII. REMEDIES, DISPUTE PREVENTION AND RESOLUTION

A. Types of breaches and disputes

150. *Sources.* Disputes may arise because of differences in the interpretation of the law, the bylaws or statutes, the member agreements, or any other instruments that govern the organisation and/or the operations of cooperatives, i.e., the execution of the collaborative project.

151. *Types of breaches.* Breaches of rules concerning cooperative organisation and breaches related to collaborative projects need to be distinguished. In addition, a distinction needs to be made between (i) a specific fundamental breach (as determined by the bylaws or statutes) leading to expulsion or other specific sanctions and (ii) other breaches. Generally, a member seriously breaches his or her obligations if he or she acts contrary to a cooperative's interests. In fact, such behaviour does not permit a trustworthy continuation of the business relationship with the member, as trust between members and cooperatives is an essential feature of cooperatives. Trust is supported and built by an appropriate system of good governance (e.g., by means of transparent, comprehensible decisions committed to the members), which, in turn, can facilitate decision making.

152. *Examples of breaches.* The most common breaches of obligations established by the law and specified in the bylaws or statutes may include the non-payment of financial contributions, the failure to participate in meetings and voting on important matters, and the misuse of cooperative resources for personal gain or purposes contrary to the cooperative's objective.

153. *Violations of other rules.* Disputes may also take place in cases of violation of other rules and policies that relate mainly to non-compliance with quality or environmental, social and sustainability standards.

B. Principles of dispute settlement

154. *Principles.* Conflicts can be resolved "statically", with the result that sanctions are imposed immediately if rules are broken, or "dynamically". The latter is certainly the better solution to maintain collaboration. Because of the importance of good personal relations for the success of cooperatives, disputes within cooperatives, i.e., disputes exclusively involving members, the organs/bodies of the cooperative, the cooperatives themselves or their higher-level organisations, should be subject to reconciliation, mediation and/or general or special arbitration procedures before the parties may access a general or special court of law. Most jurisdictions therefore even provide for the obligation to resort to such out-of-court procedures before a dispute may be submitted to a court of law. Because of the importance of finding non-disruptive solutions, few disputes end up in external dispute resolution procedures.

C. Remedies and sanctions

155. *Right to cure.* Remedies that support the continuity of collaboration should be prioritised before imposing more severe sanctions like termination or expulsion. The "right to cure", as a corrective measure within the remedial process, refers to the opportunity given to a cooperative member to remedy or correct the breach of an obligation before facing more severe consequences, such as termination of membership. For example, a farmer who does not deliver according to the agreed quality would be allowed to replace the delivered goods with goods of adequate quality. This type of provision would keep the relationship between the cooperative and members flexible enough to ultimately strengthen collaboration.

156. *Scope.* It is necessary to determine to what extent a breach of obligations interferes with the cooperative's member promotion activities. Non-compliance with cooperative obligations may be addressed through different types of remedies, including corrective remedies such as warnings, disciplinary measures, training, and opportunity to cure, but also possibly stricter remedies such as suspension of membership or exercise of rights, termination of membership, mediation, conciliation or legal action if necessary. If the non-compliance leads to the suspension or expulsion of the member, the decision on the suspension or expulsion must be sufficiently substantiated to explain why the requirements for membership are no longer met or how a central obligation from the bylaws or statutes or a decision of a board has not been fulfilled. Expulsion is possible, for example, if a member does not participate sufficiently in the development of the cooperative (e.g., by not using the services of the cooperative) or if a member no longer fulfils other criteria of membership and does not withdraw voluntarily.

157. *Sanctions.* Breach of members' obligations can lead not only to expulsion but also to the payment of a fine or the freezing of administrative rights. This can be the case, for example, if the agreed quality of the products is repeatedly not achieved, for example, in a milk-processing cooperative. In such cases, the cooperative can take direct action against the member to redress and restore collaboration rather than punishing or adopting a compensatory measure. In addition, the cooperative law may establish a list of acts liable to penal sanctions. This is to exclude any practice whereby cooperatives incriminate certain acts in the bylaws or statutes as if they constituted a criminal offence.

158. *Dismissal.* The functioning of cooperatives may be disrupted not only by members not following the rules, but also by those responsible for its operations not acting according to the rules. Therefore, the bylaws or statutes provide for the criteria specifying when members of the board of directors or of the supervisory council, if any, may be dismissed. As these persons are elected, they may also be dismissed without giving any reason. Labour laws will apply to cases related to the misbehaviour of employed managing directors.

IX. MERGERS, DEMERGERS AND TRANSFORMATION

159. *Principles.* As the members are free to dissolve their cooperative (see Section X), they must also be free to merge with each other or with other entities, split or transform into another type of enterprise, as long as third-party interests and the rights of the members who do not agree to such a change are protected.

160. *Types of mergers.* Mergers are of two types: (i) one or several cooperatives are absorbed by another or (ii) a new cooperative is established by merging two or more cooperatives.

161. *Challenges.* Often, expectations as to the economic effects (rationalisation of management and administration, economies of scale, etc.) are not met and/or identification of the members with the new entity fails, resulting in demotivation and difficulties in decision-making. In any case,

governance tends to become more complex with the size of the cooperative, so before deciding to merge, the cooperatives should therefore consider integrating horizontally (see Section VII.A).

162. *Demergers.* A cooperative may split into two or more cooperatives. In this case, members, assets and debts have to be split, including the reserve fund.

163. *Transformation.* Cooperatives may transform into another form of enterprise (such as a company) within the limits of the legal provisions relating to the new organisation. This right must not be restricted, as is often the case, as cooperatives cannot be prevented from dissolving, with members establishing another type of enterprise. However, the legal reserve fund of the cooperative cannot form part of the capital of the new organisation, unless it is divisible or divisible in the specific case of transformation decided on non-speculative grounds. In any case, this leads to complex issues if surplus monies transferred to the reserve fund were not taxed, as they should be. Moreover, the legitimacy of such a transfer to another entity might be questionable where the reserve fund was not built up by those deciding its divisibility.

X. DISSOLUTION AND LIQUIDATION

A. Instances of dissolution

164. *Conditions.* Relevant legal regulations and the cooperative's governing documents typically define the conditions under which a cooperative may be dissolved. Common grounds for dissolution include:

(a) The will of the members;

(b) Achievement of the cooperative's objective;

(c) Impossibility of achieving the objective;

(d) Expiration of a predetermined duration without renewal;

(e) Failure to meet registration requirements, such as maintaining the minimum number of members over a specified period;

(f) Insolvency; or

(g) Violation of the law.

165. In all cases, the cooperative's governing bodies must decide on dissolution (see Section V). If they fail to do so − except when dissolution is initiated by members − the cooperative may be dissolved by government authority (*ex officio*). Throughout the process, the rights of third parties, especially creditors, must be protected. Creditors may object to the dissolution until their claims are fully satisfied. Additionally, under the right to freedom of association, dissenting members retain the right to withdraw from the cooperative in cases of voluntary dissolution.

166. *Consequences.* The dissolution of a cooperative can also have consequences for other cooperatives if they are all part of a cooperative system and thus depend on each other, as this generally means fewer resources upstream, e.g., fewer apples to sell, but also downstream, e.g., fewer customers for services provided by secondary cooperatives, with the consequence that costs for remaining cooperatives increase.

B. Liquidation

167. *Procedure.* Similar to the liquidation process for other enterprise types, that applicable to cooperatives follows a specific order beginning with the determination of assets and the payment of

debts. This is followed by the repayment to members of their contributed capital, generally at nominal value. In exceptional cases where the legal reserve funds is divisible, it may also be distributed among the members according to the method used for distributing a surplus at the end of the financial year, potentially taking into account the seniority of membership as an additional criterion. Any remaining balance is then distributed in accordance with the principle of disinterested dissolution. In some jurisdictions, this principle is mandatory, while in others it can be stipulated in the bylaws or statutes. In this case, the remainder after liquidation is to be allocated to cooperative-specific activities, such as contributing to a fund for the promotion of the cooperative system. Where this principle does not apply, the remainder can instead be distributed among the members, usually in proportion to their financial contributions and/or to their transactions with the cooperative over a given period of time.

XI. DIGITALISATION

168. *Reorganisation.* Agricultural value chains have undergone profound reorganisation, and this process is continuous. Decentralised chains become centralised; new food chains emerge; and digital technologies change the nature of chains to networks through retail platforms.

169. *Application*. Digitalisation processes are intertwined with almost all processes of value chains and horizontal and vertical collaboration. Some examples include traceability, quality standard implementation, production scheduling, logistics, consumer communications, environmental monitoring and collection of production data for prediction and control, market predictions, etc.

170. *Benefits.* The utilisation of Big Data and ICT technologies on a large scale in agriculture is seen to be a solution for dealing with climate change, environmental degradation, land and water constraints, the necessity to optimise resources and reduce costs, and increase traceability and food safety, amongst other compelling arguments. However, it has also resulted in imbalances in power, investment barriers, and the decreasing ability of smallholders and agri-MSMEs to control and benefit from their agricultural-related activities.

171. *Challenges.* While agricultural data and their use for better decision-making and innovation are at the core of the digital transformation of agriculture, there are serious and legitimate concerns for small farmers, agri-MSMEs and agricultural cooperatives. The first of these are fragmented and unclear data governance arrangements, the protection of privacy and confidentiality of agricultural data, and protection of farmers' economic interests in such data. Secondly, with this lack of clarity comes the real risk of power imbalances and the use of farmers' data without any reciprocal benefit, and indeed, possible harm (e.g., anti-competitive behaviour, lock-ins, misuse of sensitive economic or compliance information).

172. *Data governance.* This is a different approach from that used by contracting and licensing advocates. These latter efforts have not been able to address imbalances in the contractual relationship between farmers and service providers due to information asymmetries, power imbalances and a lack of the requisite literacy among farmers. The thought that an individual farmer could bargain with a multi-national behemoth beggars belief, yet farm machinery consortia and certain agricultural cooperative representative bodies rely on codes of conduct and contracting "good practices" with the argument that innovation should not be thwarted by not allowing access by companies to such data. Competition law also seems rather ill-suited to deal with these farmer-tech platform power imbalances, given that it has been an ineffective tool to control such entities in other areas. However, while the cooperative legal structure is very promising with respect to the collective use of farmer data, there are still various issues to consider: compatibility of standards and interoperability, different regulatory approaches to data sharing and use, whether the law allows cooperatives to develop such services and/or to contract for such services, etc.

CHAPTER III

COMPANIES

TABLE OF CONTENTS

I. INTRODUCTION

1. *Scope*. This Chapter focuses on business organisations for collaborating in agrifood value chains whose foundational objective is to generate profit and that operate under a legally recognised form ("companies").[95] Although it is nearly impossible to define and categorise the various legal structures available to profit-oriented business organisations for collaborating in agrifood value chains, most jurisdictions offer a range of legal structures that includes some variation of partnerships and investor-owned legal entities, such as corporations and limited liability companies. Moreover, globalisation and the expansion of corporate activity have contributed to convergence between legal traditions in the use of partnerships and investor-owned entities as organisational forms. Many jurisdictions have adopted "hybrid" business forms that combine elements of company and partnership law, such as the limited partnership, Limited Liability Companies (LLCs), and simplified business organisations, thus blurring traditional divisions between partnership and company law.

2. *Sector-neutral and agriculture-specific company legal structures*. In many countries, the above-listed forms may be used by agricultural enterprises to structure their collaborative endeavours, including by smallholders and agri-MSMEs. Under this approach, which reflects the trend globally, company law treats agriculture and agrifood operations as any other business or commercial activity. It is through other bodies of law such as land law, environmental law, fiscal law that the practice and effects of agriculture and agrifood operations *per se* are regulated. Under a second approach, sector-neutral company forms are available for agricultural enterprises as well as agriculture-specific legal structures that are not mandatory but often incentivised. Under a third, less prevalent approach, specific legal structures are mandated for profit-seeking agricultural enterprises. Where agriculture-specific company forms are prescribed, conditions must be fulfilled to register as such.

3. *Single-member and multi-member business organisations.* Although collaborative projects are by nature between a minimum of two persons, this Chapter includes consideration of single-member business organisations. A significant proportion of farms and enterprises operating in agrifood value chains are individually owned and, in several jurisdictions, operate informally. For many such enterprises, formalisation into single-member business forms is likely to be the first step towards participation and collaboration within agrifood value chains.

4. *Sole proprietorship.* The sole proprietorship is a legally recognised business organisation carried on by an individual natural person. With minimal legal requirements for its formation and operation, it is the simplest form of doing business recognised by the domestic law in most jurisdictions and offers an accessible legal structure that may potentially be used as a stepping-stone toward collaboration. Moreover, in many countries, the sole proprietorship is a legal structure commonly used by farmers and agri-entrepreneurs by virtue of the very few formalities required to form the business.

5. *Partnerships.* A traditional or "general" partnership[96] is a trust-based association or relationship between two or more members ("partners") who jointly operate a business with a view to profit and where partners are in principle personally liable for the obligations of the partnership to its creditors. By their very essence, partnerships are collaborative legal structures. They require a limited number of conditions to be formed. Freedom of contract in this type of association provides significant leeway, so that parties can set up tailor made provisions to govern their undertakings.

---

95 This Chapter refers to profit-oriented business organisations and companies interchangeably. The term "company" is used in a very broad sense to include partnership-like structure.

96 General partnerships can be distinguished from limited partnerships. In this Chapter, the adjective is not used, and the term "partnership" refers to the general partnership.

These features of partnerships account for their prevalence amongst small-scale, family-run or early-stage agri-businesses. For larger agrifood operators, the unlimited liability of the partners in a partnership coupled with governance complexity and other scaling considerations often represent a significant deterrent. In specialised or strategically chosen situations, partnerships may be useful for larger collaborative ventures in agriculture because of the broad flexibility for private ordering afforded to partners.

6. *Limited partnerships*.[97] A limited partnership is a profit-based business association between one or more general partners and one or more limited partners whereby the general partners agree to contribute their work, experience and expertise, and the limited partners agree to make capital contributions to the partnership. In a limited partnership, general partners are the only members authorised to administer and bind the partnership. They are jointly and severally liable for the partnership's debts and normally bear unlimited liability. The limited partners' liability for the partnership's debts is limited to their contribution. As a result, if a limited partner has already contributed all that they committed to contribute to the limited partnership, that limited partner has no further exposure. Limited partnerships are unevenly used worldwide as vehicles for structuring collaboration in agrifood value chains. Sometimes perceived as higher risk and more complex structures, their prevalence varies considerably depending on *inter alia* the jurisdiction and the segment of the value chain one is dealing with.

7. *Shareholder corporations*. Corporations are separate legal entities that exist indefinitely, and act in their own name. They may sue, be sued, lend, and borrow. In for-profit corporations, ownership interests are typically divided into shares, and the holders of those shares are referred to as shareholders. These types of corporations may be referred to as "shareholder corporations" or as "share capital corporations". Shares consist of bundles of legal rights that shareholders can assert primarily against the corporation. These shares do not, however, give the shareholders legal title to the assets of the corporation. It is the corporation, as a separate legal entity, that has legal title to the assets. Shareholders typically benefit from limited liability, meaning that the corporation itself is responsible for its debts and obligations rather than the shareholders. In agrifood chains, shareholder corporations are generally more prevalent amongst enterprises operating at the mid- and downstream levels. At the primary agriculture/production level, in most regions of the world, the majority of operators are smallholders and agri-MSMEs that tend to structure collaborations through cooperatives and partnerships.[98]

8. *Partnerships and corporations – civil and common law distinctions*. In some jurisdictions, primarily those of common law tradition, partnership law and company law usually constitute distinct bodies of law. In other jurisdictions, primarily those of civil law tradition, the distinction between partnerships and companies is frequently governed under a unified set of general rules, in part because both forms are governed by more unified legal frameworks (such as codes). Nonetheless, both common law and civil law jurisdictions have adopted "hybrid" business forms that combine elements of company and partnership law, such as the limited partnership, limited liability companies (LLCs), and simplified corporations, thus blurring traditional divisions between partnership and company law.

---

[97] In some jurisdictions, the term "limited liability partnership" (LLP) refers to a special form of basic partnership that was created for large professional services organisations (such as law firms) that for regulatory reasons are required to function as a partnership and where it was thought that there should be some limitations on one partner's responsibility for another partner's acts. In the Guide, the term "limited partnership" is used to avoid being perceived to have conflated limited partnerships and limited liability partnerships.

[98] In closely held corporations (one where the majority of shares are held by a few persons and that is not traded publicly), shareholders can provide for rights of first refusal for the negotiation of shares (i.e., the right to acquire shares from another shareholder that wishes to sell those shares, thereby limiting the ability to sell those shares to a third party) among other share transfer restrictions. Likewise, trading shares of listed corporations in securities markets may be subject to rules governing how, when and to whom they may be sold, and other requirements.

9. *Limited liability companies*. In certain jurisdictions, a type of corporate entity referred to as a "limited liability company" (LLC)) is also available to profit-oriented ventures, including in agriculture. The entity combines features of partnerships and corporations the members can elect to treat it as a partnership for tax purposes[99]. This allows the income of an LLC to be treated as income of the members and taxed in their hands rather than it being income that is taxed at the corporate level. This can be beneficial for its members. Although a partnership or limited partnership often provides this sort of flow-through tax treatment, an LLC also has a separate legal personality, thus providing limited liability to its members. Where LLCs are available, this combination of features may be attractive for farmers and other agri-businesses operating in sectors such as greenhouse operations and speciality crops where personal liability can be high and/or in jurisdictions where litigation risks are high. Where treated as tax-transparent entities, LLCs generally avoid the entity-level and shareholder-level taxation commonly associated with conventional corporations. The attractive features of LLCs should nonetheless be balanced against the possibility of increased tax complexity, less legal predictability and standardisation, potential investor and financing limitations as well as potential international incompatibility.

10. *Simple and simplified legal structures for business organisations.* The importance of simpler and more easily accessible legal structures that respond to the needs of the smallest and most vulnerable enterprises has been recognised internationally and has prompted the development of models and international legal instruments meant to facilitate the operation of MSMEs throughout their lifecycle.[100] It has also led to the adoption of simplified legal structures for business organisations in various jurisdictions. These forms are used across different sectors, regions, and stages of production, reflecting their relevance for MSMEs. This includes agri-MSMEs and in particular farm-operated ventures, which commonly use simplified structures due to their relatively low administrative complexity and governance flexibility. Simplified corporations are also increasingly being used by larger businesses precisely because these simpler rules of formation and operation are also useful for large enterprises; however, listed companies are generally not permitted to adopt such forms. Their formation requirements are discussed in Section III, Formation, below.

11. *Chapter contents*. This Chapter considers how the following features of profit-oriented business organisations may affect and/or facilitate collaboration in agrifood value chains: (i) objectives of companies; (ii) formation; (iii) separate legal personality; (iv) scope of liability of the members; (v) asset partitioning; (vi) membership; (vii) member contributions and capital; (viii) governance, (ix) decision-making; (x) management; (xi) financial rights; (xii) transfer of rights; (xiii) exit and withdrawal of a member; (xiv) life and dissolution of the company; (xv) company group structures; and (xvi) dispute prevention and resolution..

II. OBJECTIVES OF COMPANIES

12. *View towards profit*. Companies within the scope of this Guide are organisations that have as their objective the pursuit of a business or commercial activity in the agrifood sector with a view to profit. The pursuit of social, cultural, community and/or environmental goals ("sustainability goals") may also be part of their objectives.

13. *Profit defined*. The term "profit" in this Chapter means any surplus that remains on amounts earned (e.g., revenues or income) after all amounts spent in the operation of business or activity (operating expenses) have been deducted. The pursuit of profit for companies should not be automatically equated with the intent of distributing that profit to members. Profit in companies may be distributed to members but may also be reinvested in the company. While this may also be the

---

[99] The Common Law LLC must not be confused with the French *Société à Responsabilité Limitée* (SARL) or the German *Gesellschaft mit beschränkter Haftung (GmbH)*. These are different types of companies, the regulation of which is generally not driven by tax considerations.

[100] See discussion below at Section […].

case with surplus for other legal vehicles such as cooperatives, the reference to a focus on profit generation as a foundational objective is intended to underline the emphasis that companies place on this objective not simply as a means to an end but also as an end in and of itself. This may be contrasted with other legal vehicles considered in this Guide that do not place the same emphasis on the pursuit of profit.

14. *Evolving purpose and legal structures*. The role and objectives of companies have evolved both in practice and in theory. In many jurisdictions, legislatures and courts have sought to reconcile the historical focus on the importance of generating profit and, in turn, a return for investors with more current concerns that this not obscure the reality that companies have an important impact on other stakeholders and on society at large. As a result, in some countries the rules governing classic for-profit company forms have been modified to varying degrees to accommodate new legal duties to consider the interests not just of shareholders (including minority shareholders) but also of other stakeholders. At the same time, some countries are also creating new legal structures that explicitly shift the focus from a profit-centric legal model to models that permit or require the organisation to pursue other purposes (social, cultural, community, economic and/or environmental) in conjunction with or ahead of profit ("mission-driven companies"). These developments have resulted in a relative blurring of what were once much clearer boundaries between companies and other types of legal structures such as cooperatives. However, unlike cooperatives where "sustainability" goals concern the improvement of the situation of the members and/or of their community, the sustainability goals that companies are being asked to pursue are very often described as goals designed to improve the greater public good. It should be clear, then, that the universe of legal structures is not static and that over time the nature and range of legal structures evolve in response to concerns about the strengths and weaknesses of those that were created in the past.

15. *Mission-driven companies*. Under a growing trend across jurisdictions to create specific legal structures for mission-driven companies, businesses that register as such are subject to specific reporting requirements and may be granted special fiscal treatment or other incentives. Generally, compliance with Corporate Social Responsibility (CSR) or Environmental, Social and Governance (ESG) principles − whether voluntary or mandatory − is insufficient; for a company to be considered mission-driven, sustainability and/or advancing a social good must be central to its objective. Mission-driven companies exist in various sectors, including in the agrifood sector. For example, a company may have as a socio-economic objective the production, transformation, and marketing of agricultural, livestock or forestry products to implement improvements in the rural environment, for agricultural promotion and development, as well as in the provision of common services. It is important for any business considering which of the existing legal structures is best suited to its needs to consider the comparative strengths and weaknesses of different available models (see Chapter V of this Legal Guide).

Broad objective clause. A company is not an advocacy, political or charitable organisation; it is a business.[101] As such, the carrying out of business or commercial activities is considered central to the purpose of a company. In accordance with international guidance, limitations on the scope or lists of permitted activities are discouraged by international instruments.[102] Although this applies equally to companies operating in agrifood value chains, in some jurisdictions, certain activities are restricted or prohibited due to land use regulations, or the political, economic and legal context that favours other legal structures in the agricultural sector. For example, some States have a tradition of State-owned and collective agricultural systems that strongly restrict the ability of farms to register as private companies. Moreover, as noted in the introduction, some jurisdictions have adopted

[101] A business organisation may engage in lobbying, political, or charitable activities; however, these are not its primary purpose or activity. Specific rules, requirements, and sometimes distinct legal structures apply in most jurisdictions to organisations engaging in such activities.

[102] UNCITRAL Legislative Guide on Limited Liability Enterprises (LLE). Recommendation 2 "The law should provide that an LLE may be formed for any lawful business or commercial activity."

sector-specific company legal forms for businesses whose purpose is to conduct agricultural or agri-food activities.

16. *Collaboration as objective*. Certain kinds of companies (e.g., partnerships) are designed and structured to facilitate collaboration. Collaboration may also be one of the central objectives for which members decide to form a company. As discussed further below, in many countries statutes that govern modern business organisations provide legal forms that allow for considerable flexibility and efficiency when structuring collaboration. This is true both within the corporation, where the collaborative relationships between those working with the corporation can be organised in many different ways, and with respect to collaborative relationships between the corporation and third parties that are integral to the success of the business, such as providers of capital, customers and suppliers.

17. *Objective informs choice of company form*. Where agri-entrepreneurs select the company as a preferred legal structure, based on *inter alia* profit-making as their primary goal, a decision must be taken on the particular company form under which to operate. Here too, the proposed purpose of the agri-business may influence choice. For instance, several individual producers may wish to form a company with the retailer that purchases their agricultural products for sale to third-party customers, such that the business to be conducted by the company remains distinct from the individual business of each member. *Prima facie*, the logical choice of company form in this case would be one that provides for the creation of a distinct legal entity that does not expose the producers to unlimited liability, for example a corporation comprising several individual producers and a retailer (possibly itself a company). In another case, several agricultural companies of similar or different sizes (either partnerships or corporations with several shareholders or single-member business organisations) may wish to form a company (either a partnership or corporation) with the objective of penetrating a new market (domestic or international), developing a new or improved product, or offering customers a new medium or technique of purchase of their products. In this arrangement, all members in the new company are companies.

III. FORMATION

18. *Overview*. While identifying purpose is a fundamental starting point for the choice of legal structure, possibly of equal importance is consideration of the elements relating to the formation of the chosen legal structure. If the formation process is perceived as complex and expensive, smallholders and agri-MSMEs are unlikely to consider that collaborative legal structure. Thus, consideration of the elements of formation will help identify the legal structure that would best address the needs of a particular project.

19. *Elements of formation.* Issues to consider in the formation of a company include the following: (i) number of members required to form the company; (ii) whether membership in the company is open to both natural persons and legal persons or natural persons only; (iii) the moment at which a company comes into legal existence; (iv) the time, cost and nature of formalities that must be completed (including sustainability requirements where applicable); (v) minimum capitalisation requirements;[103] (vi) the possibility to form a company using digital tools and platforms, together with their related advantages and disadvantages; (vii) and, the impact of one company form in comparison with another on the ability to access credit. Availability of a simplified, inclusive and affordable non-discriminatory process of formation is also a consideration.

20. *Number of members*. General and limited partnerships must have at least two members from the time they are formed until dissolution. As noted above, by their very nature, they are a collaborative legal form. Corporations are required to have at least one member; some jurisdictions

---

[103] Minimum capitalisation requirements are often seen as a significant obstacle for the formalisation of business enterprises. See Section V below.

provide for the single-member company, which as the name indicates, requires no more − and no less − than one member at all times. For the purposes of collaborating in agriculture, a corporation would be formed with at least two members unless it was created for entering into a venture with other legal or natural persons or as an initial step within a staged collaboration endeavour. Moreover, as explained in Chapter V of this Legal Guide, because partnerships are founded on relationships of trust they generally considered to be better-suited for endeavours involving small numbers of participants. On the other hand, the corporate form accommodates ventures involving any number of members because it separates ownership from management and allows ownership interests to be standardized and transferred efficiently.

21. *Types of members*. When deciding upon which company form to use for collaborating, founding members should consider whether they wish membership to be open to both legal persons and natural persons or to natural persons only. The capacity of a natural or legal person to be a member of a company is usually governed by State laws. It is important for members of a company to understand the concept of a legal person as well as the implications and possible benefits and disadvantages associated with legal persons being members of a company (see Sections IV Separate Legal Personality and VII Membership).

Moment of formation. Legal rules indicate the moment at which the company is formed. This provides legal certainty as to when a company comes into existence. Rules on the time of formation of a company vary depending on the type of company and the jurisdiction. [104]

22. *Time of formation of corporations, limited liability companies and simplified company forms*. Most jurisdictions provide that corporate forms come into existence upon effective registration in a business registry (e.g., issuance of articles of incorporation or bylaws). State laws generally specify the conditions under which registration becomes effective. These conditions vary depending on the legal form of business being registered.

23. *Time of formation of partnerships*. Unlike for corporations, state registration is generally not required for a partnership to be formed. A partnership legally comes into existence when the conditions that define a partnership in that jurisdiction are met. The key legal requirement for creating a partnership is for members to agree, explicitly or by conduct, to carry on an enterprise together with a view to profit. There is no requirement for an upfront resource contribution. This may be advantageous for smallholders and other agri-MSMEs.

24. *Formation of limited partnerships.* A limited partnership is generally considered legally formed upon conclusion of a limited partnership agreement; however, the full legal effect often arises only once a certificate of limited partnership or similar document has been issued by the business registry. Other steps may then be required for the limited partnership to become operational.

25. *Partnership and multiparty contracts*. In some jurisdictions, a partnership relationship can come into existence without being subject to registration requirements, simply upon start-up, by virtue of the way in which participants are working together, and regardless of whether they consciously intend to enter into a partnership (e.g., *société de fait)*. It is important for participants to such a form of collaboration to be aware of this, particularly given that members of a partnership are in principle personally liable for the obligations of the partnership to its creditors. In many of these jurisdictions, it is not possible to "contract out" of the partnership law; a contractual clause to the effect that the parties do not intend their relationship to be a partnership will not suffice, and the relationship would have to be structured either as another legal structure (e.g., a corporation), or in

[104] In some jurisdictions, incorporation may occur before any shares are issued, with membership to be completed at a later stage. While such a company cannot operate until at least one share is issued and a shareholder exists, this allows for pre-emptive incorporation so that an entity is legally constituted and ready to commence activities once shares are allotted.

ways that clearly do not fall within the partnership definition. Similarly, parties wishing to collaborate using a multiparty contract structure rather than a partnership structure should be aware of the distinctive features of each type of legal structure and be careful to organise their collaboration accordingly (see Chapter I on Multiparty Contracts).

26. *Formalities*. The type of information, documents and procedure required to form a company depends on the legal structure adopted. These formalities are specified by law and are meant to serve multiple purposes, including providing legal certainty on the existence of the company, making the company visible to the State and third parties, and protecting the company, its members and third parties from abuse and fraud. Similarly, the cost, level of complexity and necessary time to comply with formal requirements will vary depending on the particular company form and jurisdiction. These variables may also be influenced by cultural and customary norms, bureaucracy and the broader national legal infrastructure of a State.

27. *Incorporation*. Formation of an incorporated company usually requires filing articles of incorporation, public deeds or other constituent documents with an authorised office. These filed documents generally form part of the public record. Under certain regimes, the drafting of by-laws, appointment of directors, approval of promoters' benefits, as well as other follow-up steps, are also needed to complete the formation process. In addition to these foundational documents, shareholders can also execute other private agreements, such as shareholder agreements and voting trusts to govern matters not addressed in the articles or by-laws (discussed in Section XX).

28. *Consequences of formation*. Formation has several legal effects. In addition to the general ones stated in the above paragraphs (e.g. legal certainty, visibility, protection), specific legal effects may include the following. In the case of a corporation, at the moment of incorporation, the entity acquires its own separate legal personality, with the attendant consequences of asset partitioning (i.e., separation of the company's assets from those of its members), the possibility to acquire its own rights and obligations, the ability to sue and be sued, and protection of members from the claims of the company's creditors (discussed in Sections XX below). By comparison, company forms without distinct legal personality (e.g., in many jurisdictions this is the general partnership), formation would not have this effect. Secondly, formation may initiate obligations of the company to comply with specific tax, environmental, ESG, health, safety and other laws and regulations, licensing and permit requirements. For example, environmental impact assessments might be required as a precondition for starting operations. Where a collaborative agricultural enterprise includes foreign partners, restrictions on ownership of agricultural land might require specific authorisation by government agencies.

29. *Discriminatory prohibitions*. Some jurisdictions still impose legal restrictions on the ability of certain groups (such as women, minority groups, indigenous peoples) to register a company despite international efforts to discourage such measures. Discrimination may be based on gender, race, ethnicity, nationality, religion, caste, political affiliation, marital status, language, social origin, property, birth, disability or other status. For example, in some jurisdictions, women may need their husband's or guardian's permission, signature, or consent to register a company, sign contracts, or open a bank account. In the context of extractive industries and agribusiness operations, indigenous peoples also face challenges to their ability to register and operate a company due, *inter alia*, to difficulties in asserting their rights to lands, territories and resources, many of which are not legally recognised.

30. *Facilitating formation, simplified business registration*. As explained in the Introduction to this Guide, across the world, MSMEs, including smallholders and agri-enterprises, make significant contributions to gross domestic product and towards generating employment. Nevertheless, in many jurisdictions, many of these enterprises continue to operate either completely informally or without being fully compliant with legal requirements applicable to their business for reasons discussed in

the Introduction. Informality, particularly of MSMEs, has been associated with increased vulnerability and daily operations being hindered by various obstacles. Accordingly, an increasing number of jurisdictions offer simplified business registration and simplified company forms that may be used by smallholders, MSMEs and others operating in agrifood value chains. Recognising the hurdles faced by MSMEs in particular to legal formation, over the past decade, international organisations have developed guidance aimed at facilitating formation of legally recognised businesses. In jurisdictions across the globe, legislators have promoted law reforms in alignment with these international models.[105] To further facilitate the establishment of business organisations, some jurisdictions provide model formation documents prepared by business registrars or other public authorities to simplify and expedite the formation and registration process (See Chapter IV on Digital Platforms).

31. *Digital formation, digital divide*. Digital platforms for business formation and registration may present advantages, including for the smallest and most vulnerable operators, as well as challenges. While digital platforms are intended to make business formation more accessible and convenient, and less costly and time-consuming, this may be the case only where internet infrastructure is adequate and where users have easy access and sufficient levels of legal, digital and general literacy. The "digital divide" constitutes an additional obstacle for smallholders and agri-MSMEs that limits their ability to use and benefit from digital business tools.

IV. SEPARATE LEGAL PERSONALITY

32. *Definition.* Separate legal personality is the principle that a legal entity exists as a distinct person in law, separate from its members, and can act in its own name. An important consideration when deciding upon the appropriate company form is whether that form is imbued with a separate legal personality under the relevant domestic law and whether this aspect is essential to the collaboration. The principle does not apply to every company form; whereas corporations and limited liability companies typically have separate legal personality, this varies for partnerships across jurisdictions and depending on the applicable statutory regime.

33. *Consequences of separate legal personality*. Separate legal personality of the company form has important consequences both for members and the company itself. For agri-MSMEs and smallholders collaborating in a venture, separate legal personality can facilitate collective ownership of assets, contracting, access to finance and markets, continuity of the venture, and it may allow the venture to operate separately from changes in membership. It has a significant impact on members' liability and on their financial exposure, also to creditors' claims and overall business risk.

34. *Separation of personal assets*. Save for cases that require piercing the corporate veil,[106] the separate legal personality attached to corporations and limited liability companies facilitates the separation of personal assets of members as distinct from company assets (see Section V below).

35. *Legal personality and asset partitioning - partnerships*. Irrespective of whether a partnership has a separate legal *personality*, a typical feature of this form is strong asset and liability pass-through to its members. In most jurisdictions, creditors of a partnership can be paid from partnership

[105] At the international level, this has resulted in guidance adopted by UNCITRAL – the Legislative Guide on Key Principles of a Business Registry (2019) and Legislative Guide on Limited Liability Enterprises (2021). These Guides are complemented by UNCITRAL's Guide on Access to Credit for Micro, Small and Medium-size Enterprises (2023), UNCITRAL's Model Law on Secured Transactions (2016) and UNCITRAL's Legislative Guide on Insolvency for MSMEs (2018). Similar efforts have been undertaken at the regional level in the Americas with the Inter-American Model Law on Simplified Corporations (SAS), which has resulted in a wave of harmonisation of company law across Latin America. OAS, OEA/Sec.GNI, DDI/doc.3/21 rev. 1, 14 June 201, Model Law on the Simplified Corporation: Status of Reforms in the Region. The SAS takes a practical approach to incorporation, governance structure, limited liability and contractual freedom. The simplified model rules have made it possible to facilitate expeditious constitution, excluding the need for excessive procedures and formalities.

[106] Where the corporate form has been used in a fraudulent manner to shield shareholders, the law in most jurisdictions allows the court to "pierce the corporate veil" and attribute liability to the shareholders.

assets and in many cases may also be able to claim against the personal asset of the partners. In practice, partnerships are seen as transparent business structures, where the financial risks and obligations are ultimately borne by the partners, although specific legal rules vary across jurisdictions.

36. *Access to credit and subsidies*. Companies with a distinct legal personality are likely to have access to better credit (e.g., better terms, larger loans, credit from established and/or formal institutions) and may be able to apply for government subsidies not otherwise available. The reasons are further described below (see paragraph […]).

37. *Better record-keeping*. Businesses with separate legal personality are required to maintain financial records distinct from the personal finances of their members and are subject to stricter financial and other record-keeping obligations. This makes it easier for financiers to assess the financial health and creditworthiness of such businesses, increases transparency and accountability of the business, and ensures that it effectively partitions business assets from those of its members and the members' personal creditors (See Section VI on Asset Partitioning). In turn, this is likely to increase the trust of financiers and their willingness to extend credit on better terms.

38. *Capacity for ownership*. Separate legal personality imbues the entity with capacity to own immovable and movable assets in its own name and, subject to exceptions and limitations provided by the law,[107] to use such assets as collateral to secure business credit. This helps make clear to third-party credit provider which assets belong to the business and can be pledged in exchange for credit provided to the business, without running the risk that these assets will also be available to the members' personal creditors. In contrast, financiers may be more reluctant to provide loans to companies without separate legal personality; in such companies, particularly the smallest, business and personal assets are often intertwined, leading to a greater risk of disputes over ownership (and which assets are available to which creditors), valuation and liquidation, and making enforcement more complicated and costly.

39. *Distinct credit history*. Businesses with a separate legal personality can build a credit history independent from that of their members, which can be used by financiers to assess the creditworthiness of the business. This can be advantageous, particularly where the personal credit history of one or more members is weak or absent.[108]

40. *Perpetual existence*. Separate legal personality of a company may make it easier for a legal system to provide that companies may have perpetual existence,[109] which can be advantageous to agrifood businesses for various reasons, including succession planning. This is particularly relevant for collaborative agricultural endeavours involving family farms.

41. *Higher profile and levels of trust*. Separate legal personality may help raise the business profile of a company before its customers, financiers and other actors of the agrifood value chain. This, together with the observance of more stringent governance, record-keeping and formation formalities attached to the creation and operation of companies with a separate legal personality, may contribute towards increasing levels of trust in the business by these actors.

---

[107] For example, agricultural land situated in protected areas may be unseizable and thus prevented from being used as collateral.

[108] In many countries, women often face more difficulty than men to build a formally recognised credit history for a number of reasons: they may lack formal identification documents due to asymmetric burdensome requirements or social and customary beliefs that women should not have or do not need such documents; they may not have an account with a formal financial institution and are even less likely to use a credit card. In such circumstances, building a credit history that financiers will feel confident in relying upon proves difficult.

[109] In some jurisdictions, legal personality does not entail perpetual existence. For example, certain jurisdictions require companies to establish a fixed term of duration, often not exceeding 99 years.

42. *Drawbacks*. Despite significant advantages as explained above, for certain agri-entrepreneurs and smallholders, company forms that offer separate legal personality may prove overly complex, costly and burdensome. Entities with separate legal personality can be subject to numerous and more stringent legal formalities, such as registration, annual filings and members' meetings, audits and other requirements, often at a cost that is prohibitive for the smallest and most vulnerable agrifood businesses and can appear complex for those with lower levels of financial, legal and digital literacy. Moreover, the principle of separate legal personality and its implications may be difficult for these actors to appreciate.

43. *Considerations*. As such, smallholders and agri-MSMEs should carefully consider the financial, legal and economic consequences of a separate legal personality in order to choose the company form – or other legal structure - that best corresponds with their needs. Tax incentives and implications should also be considered. In endeavours that involve higher-risk activities, plans for growth and expansion or where succession planning is important, company forms with separate legal personality may be the preferred option. In smaller projects that involve actors with fewer means, lower levels of legal and financial literacy and a desire to establish a collaborative legal structure quickly, forms without separate legal personality may be better suited.

V. SCOPE OF LIABILITY OF THE MEMBERS

44. *Limited liability*. Company forms with separate legal personality are usually accompanied by limited liability for members; most domestic laws that provide for separate legal personality also provide that some or all of the company's members are not personally liable for the obligations and debts of the company (with certain exceptions[110]). The risk of a member is limited to a fixed sum which is usually the member's contribution to the capital of the company.

45. *Available to multi- and single-member companies*. Limited liability is neither dependent upon the size of a company nor the number of its members. Provided that the single-member limited liability corporate form is available (which is not the case in all jurisdictions), the fact that there is only one member does not alter the basic principles of separate legal personality, asset partitioning and limited liability. Indeed, one of the main incentives to establish a single-member company may be the desire to limit one's business risk and shield personal assets from the claims of company creditors, as described above. In some jurisdictions, however, there is no need for a separate legal personality to obtain the benefits of limited liability.

46. *Liability in partnerships*. By comparison, generally all partners are personally liable for the obligations and debts of the partnership. The partners can seek to limit their liability under a contract through provisions that, for example, prevent the counterparty to that contract from having recourse to assets other than those used in the business and thereby try to insulate personal assets. But it is not possible to limit liability as a partner when there is no contractual relationship with a third-party and liability arises because of a wrongful or negligent act that causes harm to that third-party. Indeed, in many jurisdictions, partnership law stipulates that a partner is responsible to third parties for wrongful acts or omissions and without the ability to opt out of the applicable statutory provision. Recalling, however, that separate legal personality and limited liability are distinct attributes that do not always coincide, in some jurisdictions the partnership form has a separate legal personality but no limited liability, while in others it has no distinct legal personality and yet offers limited liability to limited partners.

47. *No minimum share capital*. The contribution of members to the company, in the case of the corporate form, is commonly referred to as "share capital" because in exchange for such contribution,

---

[110] In many jurisdictions, members of a shareholder company, particularly if serving in the capacity as directors, can be held liable for certain specific debts and obligations for the company, such as taxes, wages, etc.

the member ("shareholder") receives one or more "shares" issued by the company, with the share(s) often providing an entitlement to a proportional share in profits when distributed. The original purpose of share capital was to protect third parties and also to serve as an incentive and proof of the viability of the business. Minimum share capital has traditionally been required in an amount prescribed by law. International guidance, however, recommends that the law should not require minimum capital,[111] and many jurisdictions have significantly decreased the amount of minimum share capital, notably in private limited liability companies, with the trend towards the elimination of any such requirement (a phenomenon now seen in a number of jurisdictions).

48. *Protection of creditors*. The issue of minimum share capital, and limited liability more broadly, should also be considered and evaluated within the context of creditor protection. These are considerations that are connected to the range of legal mechanisms that a country makes available to creditors to secure and enforce claims against a debtor company (*e.g.*, personal guarantees, bank guarantees, suretyship, *etc.*).

49. *Advantages*. Limited liability protects the members of a company as it enables members to invest without the fear of putting their personal assets at risk. Limited liability may also facilitate the raising of capital since the pool of investors is likely to be larger if investors know they will not be liable for more than the amount they have agreed to invest in the business. This enhanced ability to raise capital may encourage companies and their members to engage in bolder transactions which, in turn, promotes innovation, creativity in business operations and entrepreneurship. This is one of the reasons why so many countries have enacted legislation for companies with limited liability.

50. *Disadvantages.* As with separate legal personality, a company form with limited liability may require more numerous and complex formation and operation formalities than a company form that does not distinguish members' liability from that of the company.

51. *Considerations*. To sum up, company forms that offer limited liability should be considered where the following are important objectives or business considerations: protecting members' personal assets; attracting investment for business growth; and increasing the membership.

VI. ASSET PARTITIONING

52. *Asset partitioning*. One of the advantages of separate legal personality is asset partitioning, whereby there is a clear division between assets of the company and the personal assets of its members.[112] Members of the company may not dispose of the assets of the company even though they may have some influence on asset disposition within their competences as members. Asset partitioning allows, on one hand, members of the company to be shielded from claims of the creditors of the company. On the other hand, the company and its assets are protected from claims of the personal creditors of the members.

53. *Not applicable to partnerships*. A prospective member may invest personal assets (e.g., money or property) to acquire membership in a company; however, a prospective member of a partnership is not always required to make a contribution to become a partner. The reason for this difference is because the member of a partnership is liable for the obligations and debts of the partnership. Thus, there is simply no need for partners to make contributions, nor for the partnership to have separate assets, since creditors are protected by the fact that members of the partnership are personally liable to the creditors of the partnership.

---

111 UNCITRAL Legislative Guide on Limited Liability Enterprises (2021), Recommendation 5.

112 As used in this Chapter, asset partitioning refers to separation between the assets of the company and those of its members. Asset partitioning can also refer to distinguishing assets within the company, *i.e.*, the possibility of designating specific assets for different creditors. Asset partitioning can also be arranged through other legal or contractual tools.

54. *Separate patrimony*. Ordinarily, both in common law and civil law jurisdictions, as soon as the legal process to establish a business organisation has been completed, a legal entity arises that is distinct and separate from the individuals that have created it. This enables asset partitioning as described above, or what civil lawyers refer to as "separate patrimony", which involves the demarcation of a pool of assets that are distinct from other assets owned by the entity's owners. As a result, the legal entity has entitlements of ownership over its designated assets that include the rights of use, sale, and to pledge them as collateral for credit.

VII. MEMBERSHIP

55. *Natural and legal persons*. In most States, membership in a company is open to both natural persons and legal entities; exceptions may be found in some jurisdictions for certain types of single-member companies. Company members may be individuals, partnerships, corporations, or other legal entities, depending on the rules of a particular jurisdiction.

56. *Uniformity of members*. If members are all of similar size and financial strength, membership rules and relations may be simpler and more straightforward. This might be the case for family farms or other family-run agribusinesses. However, if members vary significantly in financial strength and market power, it is essential that membership rules adequately ensure the protection of the weaker party. Such rules could be provided by domestic law or supplemented by contract.

57. *Number of members*. Most jurisdictions do not provide restrictions on the minimum or maximum number of members in a corporation. By contrast, a partnership may not be formed by a single member, and legal rules require at least two members throughout the partnership lifecycle.

58. *Minority protection provided by law*. In the corporate form, it is possible for one or more shareholders to obtain a controlling interest (often referred to as "controlling" or "majority" shareholder(s)), with other shareholders then considered as "minority" shareholders. Most legal systems have adapted the corporate law to provide rules aimed at the protection of minority shareholders and their investments. Some of these entail mandatory rules that are provided either by statute or case law and that define basic prerogatives to which minority shareholders are entitled. Such protections and their enforcement are relevant for both publicly-traded and closely-held entities. The scope and robustness of these protections can vary from one jurisdiction to another. Regard should therefore be had to the statutory protections and associated remedies that are available when deciding whether these may need to be supplemented by contract (see the discussion of Remedies in Part XVII of this chapter).

59. *Protection by contract*. In addition to protections under the law, members may also resort to contractual devices such as partnership agreements or shareholder agreements (discussed below) to protect their interests during the lifespan of the corporation. They may also negotiate for protections to be included in a corporation's organisational rules (such as its bylaws). Although parties usually bargain efficiently in their own interest, sometimes circumstances arise, such as information asymmetries or other imbalances, that can leave minority shareholders unprotected and vulnerable and though therefore needs to be given to how best to ensure that an appropriate mix of statutory and contractual provisions are in place to protect their interests.

60. *Fiduciary duties*. As further described below in Section XI, apart from legal and contractual protection, fiduciary duties provided for under a jurisdiction's governing law may play a role in preventing actions that are harmul to minority shareholders. For example, in jurisdictions that provide that controlling shareholders have specific fiduciary duties to minority shareholders, these duties provide an important safety mechanism to protect investors against the abusive tactics of controlling shareholders. If the duties are more open-ended (e.g., owed only to the company and not to minority shareholders), however, fiduciary duties may be less effective as protection for

minority shareholders, especially in countries with courts and legal systems that have not developed robust protections for minority shareholders.

61. *Minority shareholder rights*. Included within the traditional catalogue of minority shareholders' rights, *inter alia*, are the following: i) to participate in meetings of the general assembly of shareholders and to vote in such meetings (which in turn may give rise to the right to elect members of the board of directors, auditors and other company officers); ii) to receive a proportional share of profits or dividends; iii) to inspect books and records under certain conditions; iv) to negotiate the sale of shares of stock, unless a right of first refusal has been included in the by-laws; v) to request the calling of a meeting of shareholders, provided that certain conditions are met; vi) to request management to include topics for discussion at the shareholders' meeting; vii) to exercise shareholders' dissenters' remedies whenever a structural change takes place (such as a merger, split up or anticipated dissolution); viii) to file complaints against directors or officers of the corporation before courts or administrative agencies; ix) to seek the nullification or avoidance of decisions taken by a corporation's board of directors, and x) to receive a liquidation quota (after creditors have been paid in full) after dissolution.

62. *Minority shareholder remedies*. In some instances, minority shareholders of a closely-held corporation are entitled to a buyout process, by means of which a shareholder can request reimbursement of their equity in the corporation. This option provides the minority shareholder with an exit opportunity and the return of the fair value of their investment, which is rare in small corporations where third-party purchasers are usually unavailable. A more extreme option is the so-called liquidation remedy, which may be available in cases where minority shareholders have been subject to unfair treatment. This is the power of the court to order the compulsory winding up of the company, if the court thinks it is "just and equitable" to do so (See Section XVII on Remedies, dispute prevention and resolution).

VIII. MEMBERS' CONTRIBUTIONS AND CAPITAL

63. *Types of contributions*. Members' contributions may, depending on the jurisdiction, comprise money, tangibles, intangible assets (such as intellectual property rights), and services. In some jurisdictions, the provision of services is not an acceptable contribution or may be subject to certain conditions, such as the stipulation that only past services can be considered. In general, however, in most jurisdictions, members may agree on the type, timing and value of their contributions.

64. *Importance of in-kind contributions*. In-kind contributions can be made for strategic, operational, financial, fiscal or other reasons. The option provides companies with the flexibility to pool resources from a wider range of members who, contemporaneously, are able to form and participate in a company through means other than by monetary contribution. For example, a member might lack financial capital but could contribute software, equipment or property that is critical to the company's operations. In the agricultural sector, where physical resources often constitute a significant part of the capital, contributions of land, machinery, or other tangible assets are highly relevant. With the growing use and importance of IT and AI in agriculture, intangible contributions such as databases, digital platforms and applications are becoming increasingly valuable.

65. *Contributions of tenure rights*. Where contributions in the form of land or water rights are contemplated, the legal nature of these rights and the identity of tenure rights holders should be carefully verified, given that such rights may conflict with those of legitimate tenure rights holders. Founders and members of agricultural companies should ensure that the rights and interests of both

legal and legitimate tenure rights holders are taken into consideration, as more fully explained in the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts.[113]

66. *Valuation of in-kind contributions*. Valuation of in-kind contributions presents unique challenges due to market fluctuations and the subjective nature of asset worth; therefore, transparent valuation processes are essential. In some jurisdictions, depending on the company type and size, independent third-party assessments of non-monetary contributions may be required by law, but even where not mandatory, these may be recommended to ensure fairness, particularly where there is a power imbalance.

67. *Voting rights and decision-making*. Valuation of contributions is important, as it typically determines members' rights and distributions, such as voting power and profit sharing. Voting power in company forms where members benefit from limited liability is often linked to the value of the capital, property or services contributed rather than operating on a "one member – one vote" model. As a consequence, some company forms may provide those investors who benefit from limited liability with very little input into the management of a business (e.g., limited partnerships), whereas other forms may allow input on the selection of management and fundamental changes (e.g., corporations). Nonetheless, in some companies, in-kind contributions such as land or equipment can provide significant decision-making power to members who lack liquid assets, fostering broader participation in the collective success of the enterprise.

68. *Protection of other personal assets*. In company forms where members enjoy limited liability and are only exposed to the extent of their contributions, whether monetary or in-kind, all remaining personal assets are protected from the company's creditors. This reality may influence a member's decisions on whether to invest in the first place, and then on the type and amount of its contributions, an issue that is closely connected with limited liability and asset partitioning (discussed in Sections V and VI).

IX. GOVERNANCE

69. *Dependent by default on company form.* Governance of the company depends on the specific legal form and the general rules applicable to that particular legal form. Such rules apply by default unless otherwise agreed by members. For example, depending on whether the vehicle chosen is a partnership or corporation, such rules may provide that:

(a) all members have equal rights, irrespective of their contribution to the company or, instead, the rights that members have are in part a function of the value of the capital, property of services they contribute to the company;

(b) decisions must be agreed to unanimously or, instead, decisions are made based on a majority vote of the members (with voting power potential being a function of the value of the capital, property or services contributed to the company);

(c) members have equal financial rights and profit is distributed equally among all members or, instead, financial rights and profit are distributed based on the value of the capital, property or services contributed to the company; and

(d) all members are authorised and expected to manage the company (day-to-day decisions) or, instead, the power to manage rests in the hands of a smaller group of members and/or non-members who are entrusted with the responsibility to run the company's day-to-day affairs.

---

[113] UNIDROIT/IFAD, Legal Guide on Agricultural Land Investment Contracts. See also, Principles for Responsible Investment in Agriculture and Food Systems and Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

70. *Basic governance distinctions between company forms.* While it may be possible to deviate through contractual arrangements from the default model set out in the governing statute and to provide in both a partnership or a corporation for any of the alternatives in a) through d) above, partnership statutes tend to favour equal rights and equal voice for members, whereas corporate statutes tend to favour concentration of decision-making authority in a board of directors and management team, as well as voting power being a function of the value of a member's contribution of capital, property or services to the business. Once again, this is a feature of the corporation that differentiates it from a cooperative (which typically follows a one member, one vote principle), and it is one reason why third-party equity investors often find the corporate form particularly attractive when considering which kind of legal vehicle to invest in.

71. *Written organisational rules*. It is advisable for a company to have organisational rules in written or recorded form to ensure legal certainty and help avoid disputes between members and/or between members and the company. Although in many countries a significant number of participants in agrifood value chains have low levels of formal education and literacy, the law should stress the importance of clear agreement on core organisational rules and record-keeping; efforts to facilitate simplified incorporation and registration throughout the lifecycle of MSMEs, as discussed at paras ** - **, are a significant step in that regard.

72. *Deviation by contract*. In addition to governance of the company pursuant to the law and internal rules, some topics may be addressed in contractual form. For incorporated entities, aside from the articles of incorporation, public deeds or bylaws, members can enter into additional private agreements outside of these foundational documents, for example, shareholders agreements, voting trusts and shareholder pooling agreements, which are usually entered into by all members of an incorporated entity and which must be in compliance with the provisions of the organisational rules and bylaws of the corporation. Acting in contradiction to the shareholders' agreement might be considered a breach of contract that could result in a right to damages for the injured party.

73. *Mandatory rules*. Autonomy of members to depart from rules that apply by default may be extensive, depending on the chosen legal form. To that effect, it is important to determine which rules are mandatory and where variation is possible. It is also important to determine the formalities that are required: for example, whether written form is required or if oral agreement will suffice.

74. *Shareholder agreements.* When a corporation does not have a large number of shareholders, it is possible for all shareholders to enter into an agreement commonly referred to as a unanimous shareholders' agreement (USA). Corporate statutes in many jurisdictions allow shareholders to take decision-making power away from a board of directors by entering into a USA that specifies the matters over which shareholders are assuming decision-making power. Shareholders will in turn often be statutorily required to assume the statutory responsibility and potential director liability associated with those powers. Shareholders may also choose to deal with other matters in a shareholder agreement (regardless of whether they wish the agreement to be a USA that removes powers from the directors): for example, how directors will be nominated and whether they will vote their shares to support these nominees; or matters where shareholder approval must be obtained before the corporation can proceed and what approval levels will need to be obtained (e.g., with respect to a decision to proceed with a significant acquisition or disposition, or the entering into of major contracts).

75. *Voting trusts*. In a voting trust, shares of stock of the participating shareholders are contributed to a trust in such a manner that legal and equitable title to the stock are separated; the trustee then has legal ownership and must exercise voting power according to the terms of an agreement for the duration of the trust. The usual purpose of the agreement is the transfer of voting rights to the trustee for a specific period of time; it may contain additional stipulations, as long as these do not violate the law or contradict the purposes intended by the parties. The transfer of legal

title to the shares of stock provides parties with a high level of certainty regarding the instructions that the trustee must undertake under the agreement.

76. *Pooling agreements*. These agreements entail the exchange of promises made by members to exercise their right to vote in a specific manner or collectively, in accordance with the guidelines drawn up by a specific group. In anticipation that a disagreement may arise during shareholders' meetings, the parties specify in the agreement the manner in which the votes must be cast. It is also common for a dispute resolution mechanism (such as mediation or arbitration) to be included. Such pooling agreements are less cumbersome to execute as compared to voting trusts but offer a lower level of legal certainty for the subscribing parties. In fact, compliance with their provisions depends upon the willingness of the parties to fulfil their obligations under the agreement and not on the precise instructions given to a trusted third party (the trustee).

77. *Legal requirements*. Voting trusts and pooling agreements are subject to compliance with certain formal requirements that arise from the law in force in each country. A common requirement is that the agreement be made in writing, and, in some cases, a copy must be deposited in the registered offices of the company along with a list of the subscribing shareholders. The agreement must bear some relation to the matters subject to voting, be of defined duration and cannot include purposes contrary to law or situations of oppression or fraud with respect to the other shareholders or corporate creditors. It can only be modified by unanimous consent of the signatories.

78. *Flexible regulation*. Generally, the obligations contained in voting trusts and pooling agreements only bind the subscribing shareholders to vote or act in a determined way. However, provisions are usually included in which board members are also engaged to undertake certain commitments provided in such agreements. These clauses can be useful to align the interests of directors and shareholders and to ensure the adoption of certain corporate governance guidelines. In some jurisdictions, legislative developments have led to the promulgation of flexible regulations regarding these agreements. Contractual freedom has facilitated their frequent execution and rapid enforcement, particularly in closely-held corporations.

79. *Use and application*. Voting trusts and pooling agreements can be a useful device to define the relationships between landowners and suppliers of labour. Many intra-company conflicts can be avoided through the provisions contained in such agreements, particularly where the number of shareholders is small and there is high potential for deadlock.

80. *Specific mechanisms of voting trusts and pooling agreements*. These types of arrangements can contain provisions for a number of mechanisms, as follows:

(a) Pre-emptive rights and rights of first refusal. These are restrictions for the subscription or negotiation of shares of stock that are granted in favour of subscribers to the agreements and are designed either to keep the entity closely held or to prevent the entry of new parties. A pre-emptive right will allow incumbent shareholders to acquire shares of stock upon issuance with preference over any third party; it enables shareholders to keep their proportional interest in the corporation's capital unaltered whenever it is increased by order of the board or any other corporate body and thereby acts as an anti-dilution provision. Pre-emptive rights are sometimes provided for in the governing corporate statute, but when they are not it is necessary to consider adding them to the articles of incorporation, the by-laws or to build them into agreements governing arrangements such as a voting trust or a pooling agreement. A right of first refusal arises on a proposed transfer of shares whereby a shareholder is bound to offer its shares for purchase by the corporation and/or fellow shareholders, prior to third parties. Both pre-emptive rights and rights of first refusal can be waived by the subscribing parties whenever the circumstances provided in the agreement so dictate.

(b) Minority shareholder protection. Certain provisions can be included that allow minorities to effectively protect their rights by, for instance, blocking detrimental decisions, such as the corporation's abusive capitalisation or unexpected dissolution.

(c) Exit rights. Commonly used exit clauses are puts and calls. A "put" is an option to sell shares of stock or other securities issued by the corporation at a stated price and for a stated period. A "call" is an option to buy shares of stock or other securities at a stated price for a stated period. When the call option is exercised, the resulting transaction (execution of the purchase contract) occurs even against the will of the owners of the shares.

(d) Buy/sell agreements. These coercive share purchase agreements are useful in disputes that cannot be resolved amicably between the subscribing members. The agreement operates through the formulation of an offer to sell shares by one or more of the subscribing members. If the sale offer is not accepted by the other shareholders, it is understood that they have automatically formulated a counterproposal to sell their shares to the initial offeror. This counteroffer is understood to be formulated tacitly, under the same terms and conditions of the initial offer. Thus, shareholders who do not agree to buy shares from the initial offeror will be forced to sell all or part of their shares in the corporation.

81. *Enforcement – pooling agreements vs voting trusts.* Generally, pooling agreements are not self-enforcing. Remedies for breach are subject to the legal proceedings provided under contract law. One disadvantage concerns the enforceability of such agreements vis-à-vis the corporation (i.e., whether the corporation can be party thereto). Aside from this issue, the time-consuming nature and uncertainty of judicial proceedings against shareholders in breach suggest that such agreements can be of doubtful enforceability. This is particularly true in jurisdictions with a less developed judiciary. By contrast, a voting trust provides significant enforcement advantages; it locks the parties into a voting arrangement with no need for court-ordered specific performance.[114]

X. DECISION-MAKING

82. *Voting rights*. Every member is, in principle, entitled to vote on certain fundamental matters affecting the company. Voting rights may depend on the financial value of the contributions made by members, an issue that is largely left to the autonomy of the members. The percentage of votes that are required to make decisions, whether by absolute majority or otherwise, also depends on the company form, type of decisions and governing rules. Members who are economically weaker should be very cautious when deciding on the majority voting thresholds that will be required, particularly if voting rights are determined by the value of members' contributions.

83. *Governance vs management*. It is important to distinguish decisions regarding governance, which remain with members,[115] from decisions relating to management. Governance concerns the existence and structure of the company and includes election of directors (where the corporate form requires one or more directors) and decisions relating to the adoption and amendment of the governance rules that address core issues such as how members' meetings must be run, the organisation's management structure, and the decision-making responsibilities being entrusted to the managers; determination of members' contributions, if any; and whether members are to have

[114] By way of illustration, in a three-shareholder corporation, two may enter into an agreement by means of which they contribute their shares of stock to a trust with the expectation of retaining control through the exercise of majority voting rights. The trust agreement includes precise instructions to the trustee as to the manner in which the votes must be cast at the shareholders meeting. Once the shares have been transferred to the trust, the subscribing parties are bound by such instruction for a fixed period. Even if one of the subscribing shareholders wanted to breach the agreement and vote in a manner inconsistent with the instructions set forth in the contract, he or she would not be able to do so.

[115] UNCITRAL Legislative Guide on Limited Liability Enterprises (2021), paras.72-75.

equal decision making rights or whether these rights will be allocated on some other basis (e.g., as a function of the number of shares held in a corporation; conversion or restructuring of the company; and dissolution of the company. Management involves the day-to-day business operations (e.g., opening and closing bank accounts; accessing credit; buying and selling equipment, seeds and products; hiring employees; etc).

84. *Delegation to management*. While decisions regarding governance remain with members, many legal forms allow those initially entrusted with decision-making power (e.g., a board of directors) to delegate decisions regarding day-to-day management to selected members or to non-members, such as employees of the company who are hired to run the business. This may be either because the governing statute provides for such delegation or because the members themselves have decided to delegate decision-making power.

XI. MANAGEMENT

85. *Management and supervisory functions*. Operating a company involves two general functions: the making of day-to-day decisions (management function) and monitoring management (supervisory function).[116] How these functions are performed and by whom depends on the legal form of the company, its size and management structure. Other formal and informal internal mechanisms[117] as well as external ones[118] may be used or required by law to facilitate and help improve the performance of management functions. The size, level of complexity and resources of a company are among the elements that influence the performance and structure of management and the significance of the supervisory function.

86. *Management structure*. From a legal standpoint, members of a company are free to decide on the management structure that best corresponds to their business goals and to their governance, industry, value chain and other needs, subject to mandatory provisions of the law. These include provisions relating to the qualifications required to manage a company. In many jurisdictions corporate statutes have been designed both to provide for flexibility with respect to the design of management structures, and to enable management to exercise considerable day-to-day authority over how a collaborative activity will be coordinated. A well-designed corporate statute helps reduce the need to use (and then amend) contracts to structure collaborative activity. Instead of relying on contractual mechanisms that can be extensive and costly to design and that might be put in place for multiparty contract structures or for partnerships (e.g., a partnership agreement that sets out how management decisions will be made), in a shareholder corporation, one can internalise and coordinate activity within the corporation using internal rules that can be more easily changed as the business evolves. A well-designed corporate law statute is designed to facilitate this coordination function by allowing for the creation of an organisational structure within which one can have employees work with one another in many different ways (that often change over time) that are a function of how managers think their work should be coordinated.

87. *Management in the corporate model*. A corporation may therefore allow one to build hierarchical organisations more effectively and also allow for decision-making authority to be more centralised, than is the case with some other organisational structures, including partnerships. This may assist with the organisation’s ability to make decisions in a more nimble and efficient fashion and to have those decisions made by an experienced manager or management team, rather than by providers of capital such as shareholders who may not have the expertise needed to manage the day-to-day activities of the organisation. Depending on the other players involved in a value chain

[116] *G20/OECD Principles on Corporate Governance*, p.34.

[117] For example, financial and operational reporting, internal auditing, gathering feedback from members and employees.

[118] For example, external audits and other tax or industry-related reporting requirements, having recourse to external advisers and training, seeking feedback from customers, suppliers and, as the case may be, investors.

and the stakeholders that a business has to deal with, this dimension of the corporate vehicle may prove advantageous for purposes of effective and timely decision-making. The corporate model also typically limits the range of matters over which providers of capital such as shareholders get to have a say, leaving day-to-day decision-making to management, while confining the need for shareholder approval to certain specified fundamental changes to the business or corporation.

88. *Choice of management structure in agrifood value chains*. Different company forms entail different levels of flexibility regarding the structure and performance of management. This demonstrates the importance for smallholders and agri-MSMEs to adequately assess their needs and goals when deciding upon the appropriate legal form and management structure for their business. Although operating in the agri-food sector does not entail specific legal requirements regarding management structure, the structure that is chosen by companies in this sector, particularly the decision regarding vertical integration (hierarchy) versus relying on market transactions, is fundamentally determined by the imperative to minimise production and transaction costs across the value chain. Factors inherent to the commodity drive the need for tight control: production requiring high asset specificity (specialised equipment) elevates transaction costs and favours internal management, while perishable products or those destined for the processing industry demand strong vertical coordination. Companies are heavily incentivised to pursue structures that ensure product quality and reliability of supply, especially when servicing competitive, quality-sensitive end markets. Operationally, companies with large, capital-intensive processing plants require a steady flow of raw materials and use tight management structures, leveraging their superior access to capital, production knowledge, and market information to exert major control over production decisions at the farm level. However, a company may be prevented from achieving full vertical integration due to external constraints such as government policies and legal frameworks that explicitly restrict agribusiness firms from owning and cultivating land, or practical obstacles like finding sufficient labor for hire, particularly since hired labor in integrated operations tends to be less motivated than independent farmers, thus increasing supervision costs. Ultimately, the management structure selected is the least-cost option for organis***i***ng production given the product characteristics, operational needs, and the specific limitations of the enabling environment.[119]

89. *Legal capacity, minimum numbers of directors*. In addition to requirements for management structure that are linked to legal form, most national laws contain mandatory provisions requiring the persons responsible for the supervisory function in a company to have legal capacity and not be legally disqualified by virtue of being bankrupt or due to other circumstances provided by law. Publicly traded (or listed) shareholder corporations are generally required to have a minimum number of persons performing supervisory functions (i.e., directors).

90. *Sustainability requirements*. Under the trend towards incorporating ESG (Environmental, Social, Governance), some jurisdictions have started to include specific requirements that publicly traded corporations include on their boards a minimum number of persons from underrepresented groups (based on gender, race, ethnicity, and sexual orientation). Although such requirements are generally aimed at large corporations, some may be relevant *mutatis mutandis* for companies of any size and whether private or public as they reflect national and/or internationally recognised standards and good practices. For example, managers may become responsible for ensuring the acquisition of a minimum percentage of raw material from small-scale farmers, with the exact minimum varying by geographic region. Furthermore, managers may be requested to commit to providing technical assistance to small-scale farmers across all agricultural production phases, along with training on production techniques that safeguard family food safety and financial stability. These developments, however, have largely emerged from other areas of law (e.g., tort law), rather than from corporate

---

[119] FAO. 2013. Contract farming for inclusive market access; FAO. 2019. Developing sustainable value chains for small-scale livestock producers. Edited by G. Leroy & M. Fernando. FAO Animal Production and Health Guidelines No. 21. Rome; FAO. 2014. Developing sustainable food value chains – Guiding principles.

statutes. Increasingly, scholars and policymakers advocate for embedding such obligations directly into corporate law frameworks to ensure greater coherence and accountability.

91. *Technical expertise*. In some industries, national laws include requirements for specific qualifications and experience requirements of senior/executive managers. While these specifications are generally not required for managers of agriculture companies, other requirements as to sustainability and governance may imply the need for particular skills and experience for managers of companies operating in agrifood systems.

92. *Non-binding standards and good practices*. In addition to requirements mandated by national law, various non-binding instruments at both national and international levels also provide guidance, recommendations and best practices in relation to sustainability and ESG for management structures. Again, most of such instruments are directed towards large and/or publicly traded companies and are not specific to companies operating in agrifood systems. Nonetheless, some of their principles may be useful to define management structure.[120] Good practices for the management structure would be appointing managers with experience in environmental science, sustainable agriculture, or corporate social responsibility.

93. *Management by natural or legal persons*. Another consideration when deciding on management structure is whether both natural and legal persons, or only natural persons, may manage the company. In the case of legal persons, the law varies across jurisdictions depending on company type. The general trend indicates that whereas legal persons are often permitted to manage partnerships, this is not the case for shareholder corporations. Reasons for precluding legal persons from corporate management would include the fact that natural persons are more easily held accountable for breach of fiduciary duties imposed on managers, rules against money-laundering, prevention of fraud and illicit use of a company form. Where legal persons are permitted to be managers of a company, conditions and restrictions may be imposed, such as the following: such legal persons may be required to be members of the company; to name a natural person to deal with matters concerning day-to-day operations on their behalf; to have at all times at least one natural person in management; and to disclose and file information regarding legal persons managing the company.[121]

94. *Management by members and non-members*. Subject to the restrictions on management structure noted above, management of a company may be performed by all members exclusively, by some members only, by non-members exclusively, or by both members and non-members. In companies with few members, at least at their initial stages where each member may wish to have substantial participation in the management and operation of the business, appointing a manager who is a non-member may not fit the governance needs of the members. This would be the case when the company is a micro or small enterprise, where management by all of its members exclusively may be the preferred scenario.[122] Appointment of non-members to management is more common in publicly traded companies and in mature private companies that require professional managers with experience in running larger organizations. As a business evolves, however, it may

[120] For example, the *G20/OECD Principles on Corporate Governance*, which were revised in 2023, self-describe as the "leading international standard for corporate governance" and as aiming "to provide a robust but flexible reference for policy makers and market participants to develop their own frameworks for corporate governance." Part V of the Principles is devoted to the responsibilities of the board. Among other leading corporate social responsibility initiatives is the *UN Global Compact* (https://unglobalcompact.org/what-is-gc/mission/principles), which is a voluntary framework for businesses and organisations to promote sustainability and social responsibility based on ten principles (in the areas of human rights, labour, environment, anti-corruption).

[121] UNCITRAL Legislative Guide on Limited Liability Enterprises (2021), para.90.

[122] *Id*., paras **. This is the scenario adopted as the default rule applicable to management of limited liability enterprises given the fact that such a legal form is aimed primarily at facilitating the (legal) formation and operation of MSMEs.

be desirable to delegate day-to-day decisions to a few members or even to one or more non-member professional managers; thus, whether the legal form chosen will facilitate such adaptation rather than necessitating conversion (e.g. from partnership to corporation) is an important consideration. In medium and large enterprises, modern corporate governance frameworks often include specialised board committees (e.g., auditing, risk and remuneration committees) to enhance transparency in management practices.

95. *Managerial capacity*. Some members of a company may not be eligible under the law to perform management or supervisory functions (e.g., they may not have the legal capacity or may be disqualified as noted above) or they may prefer to delegate some or all of their management powers (day-to-day and/or supervisory) to other members, non-members or both. Whatever the reason, it is important for members to understand the legal and practical consequences. They should also understand that while management of day-to-day operations may be delegated, as explained above, governance remains within the realm of the members, and in the case of various kinds of corporations with their boards of directors as well.

Fiduciary duties

96. *Meaning*. Those in particular roles entrusted with certain responsibilities in the course of operating a company are usually subject to statutory duties that are known in many jurisdictions as "fiduciary duties". These include the duty of loyalty, which requires individuals to focus on doing what is best for the company; to put the company's interests ahead of their own; and to avoid putting themselves in situations where there might be a conflict between their own interests and those of the company. These often also include the duty of care, which requires individuals to act diligently when making decisions and to consider the impact of decisions not only on the company; in some jurisdictions it can also extend to those who may be affected by the company's actions.

97. *Duties in partnerships*. As a partnership involves a special legal relationship between people working together to pursue a business venture, it calls for a high degree of trust. As a result, many partnership statutes stipulate that partners owe each other certain duties that are often characterised as fiduciary in nature since they require partners to deal with each other in good faith and to put the interests of the other partner(s) ahead of their own. For example, a partner may be prohibited from setting up a separate business that would compete with the partnership and precluded from taking advantage of business opportunities for its own exclusive benefit that should instead be pursued on behalf of the partnership. Although the way in which these duties are expressed can vary from one jurisdiction or legal system to another, the central concern remains the same: to ensure that partners act in each other's best interests rather than seeking to advance their own interests at the expense of their fellow partner(s).

98. *Duties in limited partnerships*. A general partner will typically have statutory duties to any other general partner(s) and to the limited partner(s) that are identical, or very similar in nature, to those of a partner in a general partnership. A limited partner is not normally entitled to be involved in making important management decisions and so will not ordinarily be subject to the full range of duties to which a general partner is subject.

99. *Duties in corporations*. Most corporate law statutes provide that directors and officers (the latter typically defined as being senior members of management that the Board has appointed) have fiduciary duties that include the duty of loyalty and duty of care discussed above. These duties are owed to the corporation and are applicable in privately-held and public corporations. The duty of loyalty may also extend to shareholders in a few specific jurisdictions that have decided it is desirable to do so in order to attract and protect providers of equity capital. In most jurisdictions, however, there is no duty to act in the best interests of shareholders; the duty of loyalty is owed solely to the corporation. These jurisdictions may nevertheless state that directors have a duty to consider the

interests of shareholders (although they need not be given priority), while others may state that this duty to consider (i.e., the duty of care) is only owed to the corporation.

100. *Extension to whom duties owed*. Many jurisdictions are regularly confronted with pressure to extend statutory fiduciary duties to others beyond the corporation. As noted, some jurisdictions have done so, either through statutory amendments or as a result of judicial decisions. The countervailing concern is that as the number of those to whom fiduciary duties are owed increases, it becomes more difficult to retain clarity on whose interests should prevail in situations of conflicting interests. Accordingly, legislators must carefully consider the best way to balance these different interests. Central to almost all regimes is the principle that directors and officers cannot put their own interests ahead of those of the corporation and that they must exercise care when making decisions with respect to the corporation and its actions.

101. *Minority shareholders*. There are jurisdictions where majority shareholders owe fiduciary duties to minority shareholders in certain circumstances, although the practice is not uniform across all jurisdictions. Various forms of minority shareholder protection are discussed at greater length in Section VII of this Chapter.

102. *Business judgment rule*. In certain jurisdictions, particularly in common law countries, the so-called "business judgment rule" may serve to protect directors and officers from claims that they have breached their fiduciary duties or duties of care. The rule is intended to have courts defer to the business judgment of directors and officers in circumstances where they have not acted fraudulently, engaged in misrepresentation or incurred a conflict of interest in any given decision subject to judicial scrutiny. Under this principle, the onus is on the plaintiff to establish that the business judgment rule should not apply. The rule is intended to recognize that courts should limit the extent to which they second-guess directors and officers responsible for making difficult business decisions, and it is intended to prevent frivolous litigation, incentivise risk-taking and promote efficiency in decision-making. Some civil law jurisdictions have adopted this common law rule by means of statutory provisions and with certain variations.

XII. FINANCIAL RIGHTS

103. *Meaning*. Financial rights typically include rights with respect to the distribution of profits and of any remaining assets or capital when a company is wound up and all debts have been paid off. The starting point for a member's financial rights will often depend on the legal vehicle that is chosen.

104. *Financial rights in partnerships*. With a partnership, the default model in applicable legislation is often based on equality: for example, the statute may provide that each partner is entitled to an equal portion of any profits that are distributed. But partners may be permitted to deviate from this default model by entering into a partnership agreement that provides for an allocation of financial rights based on some other criterion: for example, the value of what was initially contributed to the partnership when it was formed, or the value of ongoing contributions.

105. *Financial rights in corporations*. In contrast, with a corporation, the default model in applicable legislation is most often that financial rights are a function of the number of shares held, which is intended to reflect the value of the contribution made in exchange for those shares. Once again, it may be possible under applicable legislation to deviate from that model by entering into an agreement among shareholders that provides for a different allocation of financial rights or that specifies that certain shareholders have distinctive financial rights. But in a corporate context differences in financial rights are most often provided for by creating different classes of shares whose financial rights are then reflected in the constitutive documents (e.g., articles of incorporation or by-laws). For example, some corporations provide for what are called "preferred" shares, which are often crafted to provide that investors in those shares will receive a specified return on their

investment from any profits realised before any payment is made to holders on “common” shares. Holders of preferred shares, however, may have no rights to receive a portion of the residual assets or capital upon winding up, or they may be treated in the same way as holders of common shares. In some cases, preferred shares may also not grant their holders any voting rights, depending on the applicable corporate law or the company’s constitutional documents.

106. *Flexibility of corporate model*. As a company grows, it may need access to increasingly diverse sources of financing. A partnership model that has to be adjusted through regular amendments to the partnership agreement can prove more cumbersome to manage than a corporate model, where the statute will often allow for the creation of classes of shares with differentiated financial rights without the need to do this through a negotiated agreement that all members must accept. Statutes governing corporations have evolved over time to facilitate attracting different kinds of investors, and they have often been designed with an eye to offering considerable flexibility with respect to the design of different classes of shares that can either be provided for in constitutive documents when the corporation is first set up, or subsequently through amendments to its constitutive documents. Amendments of this kind will typically require shareholder approval, but the threshold for approval will not normally be unanimity (as might be the case when seeking to amend a partnership agreement).

107. *Differentiation from voting rights*. In some countries, it is possible to distinguish between how one allocates voting rights and financial rights. For example, different classes of common shares may have identical financial rights, but different voting rights. These arrangements, often referred to as “dual-class share structures”, allow a business founder to retain voting control through a class of shares that carries multiple votes per share, while other investors may hold a separate class of shares that has fewer or no voting rights but the same financial rights as those of the founder.

XIII. TRANSFER OF RIGHTS

108. *Value and ease of transfer*. As a business evolves, it may become increasingly important to some members that they be able to transfer their interest. This can be especially important to investors who value the ability to monetise their investment by selling it to another party. Distinct legal personality and limited liability are therefore not the only reasons why corporations are a popular way to pursue business ventures. The legal form is also attractive because in many countries it has been designed to facilitate an investor’s ability to transfer its interest in the business. The importance of ease of transfer becomes clear when comparing different legal forms.

109. *Partnerships*. The default rule under many partnership statutes is that a partner cannot transfer its interest in the partnership, which would effectively amount to leaving the partnership and bringing in a new partner, without the consent of the other partner(s). Unless a partnership agreement has been entered into that specifically contemplates the mechanics that will govern transfer, and even then, some partnership statutes view this as essentially amounting to dissolving one partnership and creating a new one. This can raise a number of issues, ranging from the need to update registrations to more complex questions concerning whether and when a partner who has left a partnership ceases to be responsible for the partnership’s liabilities.

110. *Limited partnerships*. Statutes make it easier for investors who participate as limited partners to transfer their partnership interest, without this giving rise to questions about whether the limited partnership continues to exist once a new limited partner replaces an old one. The model often starts from the default principle that the transfer of a limited partnership interest requires the approval of all other partners, but then goes on to provide for transferability through a limited partnership agreement. Although this requires a contract, it offers greater flexibility than the basic partnership model by allowing, for example, an agreement that states that a limited partner may transfer its interest with the sole consent of one of the general partners.

111. *Corporation*. The corporate form has most often been designed to be even more facilitative, starting with a default position allowing a shareholder an unlimited right to transfer its shares and then entitling a corporation to restrict this ability by placing restrictions in its articles or by-laws, or by having shareholders enter into a contract that regulates transfer rights. Whether or not a shareholder can freely transfer shares is often viewed as an important factor distinguishing a private company, where this right is constrained, from a public company, where shareholders are free to trade their shares as they see fit. Indeed, one of the distinctive features of public companies in many countries is that they list their shares on stock exchanges, which have been created to assist in ensuring that there is a market through which one can readily trade shares. This may be contrasted with cooperatives, which typically require that shares be held by members of the cooperative and that the board of directors approve new members. This is another reason (in addition to the difference in how voting rights are typically attributed under each legal form) why cooperatives seeking enhanced access to equity capital will sometimes convert to the corporate legal form.

112. *Considerations at startup.* While transferability concerns may not be top-of-mind for those who are starting a business, it can become highly relevant once a business has grown and when one party wants to transfer some or all of its interest in the business, or when the business is trying to attract new investors who will be concerned about their ability to sell some or all of their interest. Accordingly, as one reflects on the most appropriate legal form, care should be taken to consider whether transferability is permitted and how easy or cumbersome the transfer process is likely to be. Those who start a business will also wish to consider the degree of control they want to be able to exercise over the parties to whom a member can transfer their interest in the business.

XIV. EXIT AND WITHDRAWAL OF A MEMBER

113. *Issues to address*. Another aspect that needs to be considered with regard to membership concerns the withdrawal, expulsion, or death of a member, and in the case of legal persons, dissolution of a member. Some of these scenarios, notably withdrawal, overlap with the transfer discussion set out above since withdrawal may be triggered by a desire to sell one's interest to a third party, which may in turn give rise to the question whether this is permitted. However, it may be that the issue is somewhat different and that a party that may eventually want to withdraw wishes to ensure that there is a mechanism whereby they can require the other members to buy them out, failing which they are then free to sell to another party. These are questions that will most often be addressed in a contract between the members. It is therefore important for countries designing legal forms to consider the default position (i.e., transferability only with consent of all other members, or free transferability), as well as the ease with which one can move away from this default model (e.g., by way of contact).

114. *Removal of members*. There can be other kinds of "exit" scenarios that are different in nature. For example, members may wish to remove a member for any number of reasons (e.g., because a party has acted inappropriately or because trust has otherwise broken down), in which case the question will be how easily this can be done. In a partnership, this will often be very difficult unless a mechanism wasincluded in the partnership agreement, leaving the partners with no option other than to dissolve the partnership. In a corporation, it can also be very difficult to force a shareholder to dispose of their shares unless a mechanism has been included in an agreement with the shareholder. Removal mechanisms may also raise concerns when used in an oppressive or abusive manner, particularly if they result in the exclusion of minority members.

115. *Death of member.* Other issues arise on the death of a member. Does that member's interest simply disappear with its economic value essentially being for the benefit of the other members? Or does it devolve to the deceased person's estate, such that the beneficiaries of that estate are entitled to all the rights associated with that interest? These questions can be especially important for smaller businesses and should be considered at the outset and when the members are engaged in estate

planning. Once again, the default position under a general partnership statute is usually that the partnership simply comes to an end when one of its partners dies, unless a contract has been entered into that addresses this situation. In contrast, under corporate law statutes the default position is usually free transferability; thus, it may be easier under such statutes to envisage transferring an interest to family members as part of one's estate plan.

116. *Considerations at startup*. It is therefore important for parties starting a business to consider what restrictions, if any, they want to place on transferability. Similarly, thought needs to be given to scenarios in which trust might break down, such that there is a need to remove a member or to hold them to account for harmful actions. Most developed corporate law statutes today reflect decades of experience in designing a model that is better equipped to handle many of these scenarios than the partnership or limited partnership models.

XV. DURATION AND DISSOLUTION OF A COMPANY

117. *Duration*. Most often in practice, companies are formed for an indefinite period of time, when the legislation permits this option, and cease to exist either because one or more members leave the company, because the members jointly agree to dissolve the company, or due to circumstances which give rise to legal consequences, such as bankruptcy. Where the law under which a company is formed is silent on indefinite duration, contractual arrangements may be required to allow continuation after the exit or death of a member.

118. *Short-term goal*. A company may be formed for a specific goal, such as promotion and sale of products at a specific event. Members may wish to pool their limited personal capital and share resources to engage in a single business endeavour with the intention to dissolve after payment of outstanding debts and distribution of profits. This might be considered a typical business case for forming a partnership.

119. *Long-term goal*. A company may also be used to collaborate over a longer term. Members may decide to pool their capital and personal resources to present and sell their products at several events and to large value chains. They may choose to collaborate for better bargaining power and to negotiate a more favourable position which would otherwise not be possible if each member negotiated individually. In this case, the objectives of the collaboration may be achieved through either the partnership or corporate form; participants might conclude that the formalities involved in setting up a corporation are worth the cost because the legal vehicle is better suited to their long-term goals.

120. *Dissolution*. Should members decide to dissolve the company, it remains obliged to pay its outstanding debts with any remaining assets distributed among its members. Whether that distribution is made on an equal basis or *pro rata* in proportion to member contributions is dependent upon the default rules for that particular legal model (e.g., partnership, corporation) and whether the members have chosen to deviate from those rules, either in the organisational rules of the company or as agreed *ad hoc* in the event of dissolution.

121. *Differentiation by legal structure*. As was noted above, by default under most laws, a partnership comes to an end upon the exit or death of a partner, unless a partnership agreement provides otherwise. As corporate law does not envisage dissolution upon the death of a shareholder, indefinite duration of the corporation is the norm.

XVI. CORPORATE GROUPS

122. *Formation*. When several agricultural companies wish to collaborate while maintaining a certain degree of independence and/or in order to benefit from each other's size and role in the agri-

food value chain, the preferred company arrangement might be that of a corporate group. Corporate groups are designed to allow for some degree of integration of business relationships without reliance on contracts to structure that integration. Other purposes of corporate groups are to diversify businesses or regional presence, to allocate different risks or profitability in various separate entities, or to reduce exposure to liability. A corporate group may be formed among companies on either horizontal or vertical levels of the agrifood value chain, for example, by several producers (horizontal) or by several producers, processors and retailers (vertical).

123. The collaboration of agricultural producers with companies and large corporate groups is driven by the necessity of vertical coordination — primarily through mechanisms like contract farming and participation in formalised structures such as agro-based clusters or agro-industrial parks—to meet the stringent demands of modern and competitive global food systems. This integration enables producers to overcome inherent disadvantages such as high transaction costs and limited access to finance, inputs, and technical support, as lead firms (processors, exporters, and agribusinesses) provide embedded services and access to lucrative, quality-sensitive markets (e.g., high-value commodities like poultry or vegetables). Corporate involvement ensures the steady and reliable flow of products required by large processing capacities and facilitates compliance with high quality standards (like GlobalG.A.P.) and traceability through the use of digital supply chain management. Although this collaboration is crucial for modernisation and innovation and can lead to increased yields and profitability for producers, the concentrated market power often held by these downstream corporate groups may dictate the terms of engagement.

124. *Benefits and risks*. A company may wish to consider joining or entering into a partnership with a corporate group or, as it grows, it may consider restructuring its own business into a corporate group. Business group arrangements are not formed exclusively with companies and may also include cooperatives, government agencies, universities or other legal structures. They are not necessarily structured as a company legal form and may be organised through the use of bilateral or multiparty contracts. Corporate groups will generally involve more complex organisational rules and structures as well as varying distribution of power. Accordingly, agri-MSMEs should take this into account and should also assess the potential benefits and risks associated with such an endeavour when considering whether to join a corporate group.

XVII. REMEDIES, DISPUTE PREVENTION AND RESOLUTION

125. *Scope of mechanisms considered*. This section discusses mechanisms for preventing and resolving disputes that may arise during the formation and operation of a company. Some of these mechanisms are established and governed by domestic law while others are governed by non-State norms and practices. It considers mechanisms provided under company and general law and does not address those set out by competition law, unfair practices law, tax law, consumer protection law, labour law or privacy law. This section also considers remedies available under company law, including actions that may be brought by shareholders or other stakeholders to address breaches of duty or oppressive conduct.

126. *Consideration in choice of mechanisms.* The focus is on mechanisms – whether State or non-State – that are most likely to help smallholders and agri-MSMEs prevent and settle conflicts arising from their collaboration. To that end, variables that should be considered in the selection of a dispute settlement mechanism include the following: (i) subject matter of the dispute; (ii) cost, speed and efficiency; (iii) simplicity and accessibility; (iv) flexibility; (v) expertise and knowledge of the dispute decision maker with respect to agricultural issues; (vi) customisation and adaptability to specific context and realities; (vii) preservation of relationships; and (viii) minimisation of disruptions to the operations of the company. The weight that members will give to these variables will depend on the nature of the conflict, the identity of the members, and the legal tradition within which the company operates, as well as other contextual factors. For example, some cultural and legal traditions assign

more importance to the preservation of relationships and to mechanisms that seek to persuade (e.g., negotiation and mediation) rather than oblige as compared with a deeply rooted common law tradition where reliance on formal mechanisms (e.g., arbitration and litigation) is more prevalent and seen to better protect individual rights. In practice, time-sensitive or product-quality disputes may favour negotiation or mediation, while complex legal or high-value disputes may call for arbitration or judicial relief.

127. *Multi-tiered dispute resolution.* The mechanisms discussed in the paragraphs below are not mutually exclusive. Some may be used jointly, in parallel or in sequence (e.g., negotiation, followed by mediation and, if necessary, arbitration or court proceedings) so that easier, lower-cost steps are attempted before more complex and expensive processes that lead to binding adjudication. To enhance enforceability and effectiveness, multi-tiered clauses should clearly state conditions precedent, realistic time limits, applicable institutional rules or appointment methods, and any carve-outs allowing urgent interim measures when necessary.

A. Non-State mechanisms

128. *Non-State mechanisms.* Non-State mechanisms are dispute-prevention and dispute-resolution arrangements grounded in party autonomy rather than adjudication by State courts. They include amicable procedures led by a neutral party (e.g., negotiation, mediation and conciliation), which are typically flexible, fast and relationship-preserving. They can also include arbitration procedures that can involve varying degrees of complexity.

129. *Institutional or ad hoc proceedings.* These mechanisms may operate through institutional providers (e.g., arbitration and mediation centres or trade-association schemes) that supply rules, appointment services, case management and (where applicable) scrutiny of awards and settlement terms. By contrast, ad hoc proceedings are conducted without an administering institution under procedures selected by the parties (for example, the UNCITRAL Arbitral Rules), with appointments and logistics handled by the parties themselves or by a designated appointing authority. They usually offer greater flexibility and potential cost savings, but they require more precise clause drafting and active case management. In both models, effectiveness depends on contract design that clearly specifies: (i) scope of issues (including any pre-conditions); (ii) timelines; (iii) seat and place of proceedings; (iv) procedural rules; (v) number and qualifications of neutral decision makers and the appointment method; (vi) confidentiality; (vii) interim-measure options; and (viii) cost allocation. Internal governance channels (ombudspersons, grievance mechanisms, ethics or complaints committees) may also be used as a first tier before either institutional or *ad hoc* proceedings.

130. *Internal governance rules, overarching guidance*. Reliance on a company's internal governance rules is often seen as the primary method for preventing and resolving disagreements or conflicts because these internal rules have been agreed upon by the members. Included within a company's organisational rules, bylaws (where relevant) and agreements (among partners or shareholders), these rules encompass decision-making, management, members' rights including voting rights, contributions, distributions, record keeping, withdrawal, and, as the case may be, conversion and restructuring. It is only logical that members would refer to these rules first for guidance, which is the reason for the requirement in many States that such internal governance rules be recorded, usually in written form.

131. *Specific direction on dispute resolution*. Secondly, internal governance rules may also contain specific provisions for resolving conflicts that cannot be settled internally. These clauses may provide, *inter alia*, for negotiation, mediation and conciliation, arbitration and/or for an internal ombudsman or grievance mechanism.

132. *Cultural context*. In some legal cultures, internal governance rules, even when written, may be regarded not so much as certain or mandatory but rather as relatively flexible guidelines reflecting a mutual trust and general understanding of the terms of the collaboration. Depending on the cultural context, discrete resolution of disputes with the objective of minimising public conflict is often preferred. Where this is the case, informal negotiation and mediation to settle a dispute may be prioritised over strict application of the internal governance provisions.

133. *Internal ombudsman or grievance mechanisms*. Company-level grievance channels (e.g., an internal ombudsperson or complaints committee) are a first, low-cost step to resolve internal issues. To be credible and effective, they should ensure: (i) independence from management; (ii) a clear mandate and scope (who may file, what issues are covered, and applicable time limits); (iii) simple intake, confidentiality safeguards, and protection against retaliation; (iv) short, predictable timelines for acknowledgment, fact-gathering, and a reasoned outcome; (v) proportionate remedies (corrective actions, undertakings, restitution, apologies) with basic record-keeping; and (vi) feedback loops to management for preventive measures.

134. *Negotiation.* Negotiation is a voluntary and informal dispute resolution mechanism in which the parties engage in direct discussions to resolve their differences amicably, without involving any external neutral party. As the first step in addressing business conflicts, negotiation gives the parties full control over the process and outcome, allowing them to set the agenda and terms of any settlement without third-party intervention. Any resolution reached through negotiation is non-binding until the parties formalize it (for example, in a written settlement agreement or company resolution). Negotiations often preserve working relationships and saves time and costs compared to other proceedings. Companies may include multi-tier clauses in their founding agreements requiring good-faith negotiation as a first resort before escalating the dispute to mediation, arbitration or litigation.

135. *Mediation*. Through mediation, an independent (i.e., neutral) third party facilitates communication between the parties using conflict resolution tools and skills to foster a voluntary solution to a given dispute. The process usually takes place outside a judicial or administrative forum. If a mutually agreeable solution is reached, the resolved matters are included in a settlement document which, upon its execution by the parties, is imbued with enforcement features similar to those of a judicial decision. The mediator does not, however, have the ability to impose the decision on the parties.

136. *Conciliation.* Conciliation is a voluntary independent process which may propose settlement terms or offer a non-binding evaluation.[123] Unlike adjudication, the conciliator cannot impose an outcome; any resolution depends on party agreement. Conciliation is useful where a pragmatic, guided compromise is desired (e.g., shareholder or partner deadlocks, valuation or payment-schedule disputes). If agreement is reached, it should be recorded in writing (such as a settlement agreement or company resolution) so it can be implemented or enforced under applicable law.

137. *Arbitration*. By contrast, in arbitration, the parties refer the dispute to one or more neutral third parties who are empowered to make a binding decision. Such a decision is generally referred to as an arbitration award, which is enforceable and, under the laws of most jurisdictions, final and not subject to appeal. Arbitration tribunals are usually entitled to set their own rules, which sets arbitration apart from the traditional rules of procedure of State courts, which tend to be more rigid and complicated. As a result, arbitration awards can usually be issued more rapidly by comparison with judicial decisions. If arbitration has been agreed upon by the parties, courts of general private

[123] Some legal systems use "mediation" as an umbrella term that includes conciliation; other frameworks distinguish the two in practice, often by assigning the conciliator a more evaluative or proposal-making role, and in rare systems empowering the neutral to render a decision after a defined period. See the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (Rome, 2015), Chapter 7 ("Dispute resolution"), section B, on mediation and conciliation mechanisms.

law jurisdiction are pre-empted from adjudicating any company law dispute between the parties governed by the arbitration clause or agreement. Arbitration can involve significant costs (filing, administration, and tribunal fees), which may limit access for weaker parties. In a company-law context, this risk can be acute for minority shareholders. To mitigate it, drafters may consider fee-shifting or cost-capping provisions, opting for expedited or a single arbitrator procedure, specifying an accessible seat and language, permitting joinder or consolidation of related claims, and ensuring clear standards on appointments, security for costs, and interim relief.

138. *Other alternative dispute resolution mechanisms*. In jurisdictions with weak judicial infrastructures, in addition to being costly, private enforcement may be an unreliable mechanism to resolve disputes in an impartial and expedited manner. In this context, other dispute resolution mechanisms have arisen as an alternative to judicial litigation.

B. State mechanisms

139. *State mechanisms — definition.* State mechanisms are dispute-prevention, management, and resolution processes established by or under the authority of the State. They encompass courts and administrative bodies empowered to supervise companies (e.g., corporate registries and sectoral regulators) and to issue binding, enforceable decisions and interim measures. Operating under public law, they apply mandatory rules, ensure due process and transparency, and provide avenues for review or appeal. State mechanisms may be triggered by public authorities (public enforcement) or by private parties (private enforcement), and they interact with non-State mechanisms by supporting, supervising, or, where required, setting aside private outcomes (e.g., recognition/enforcement of settlements or awards, injunctive relief, insolvency stays).

140. *Judicial litigation – public enforcement*. State enforcement is generally divided into two broad categories: public and private enforcement. The former relates to the ability of governmental agencies to impose sanctions on companies for breach of rules, regulations and legal provisions. Although most of the agencies entitled to carry out public enforcement deal exclusively with publicly-held (or "listed") corporations, in some jurisdictions, administrative governmental entities can also deal with violations taking place in closely-held ("private") companies.

141. *Judicial litigation – private enforcement*. The latter category − private enforcement − takes place when a shareholder or a third party (for instance, a creditor) brings a complaint before the judiciary in order to enforce a legal or contractual provision or to claim damages, etc. Judicial litigation is often the most expensive, lengthy and complex method for resolving disputes arising from the formation or operation of an agri-company.

C. Remedies

142. *Company law remedies.* Different jurisdictions provide different remedies to shareholders seeking to bring a claim by way of private enforcement. The next two paragraphs provide examples of two remedies that are frequently seen in statutes governing business corporations. Consideration should be given to whether the statutory remedies that are provided will be sufficient or whether it is desirable to supplement them with contractual provisions intended to provide additional protection: for example, contractual provisions that require unanimity or a high level of approval in order to proceed with specified transactions (e.g., a transaction between the company and a majority shareholder). Similarly, if the members wish to have access to remedies intended to discipline a member who is not contributing to the collaborative venture in the way that was expected, it may be desirable to address this in a contract (such as partnership agreement or a shareholder agreement) since statutory provisions are often more limited in their focus, concerned especially with ensuring that the company or a majority of its members do not take advantage of the minority.

143. *Derivative action.* The derivative action allows a shareholder to bring a lawsuit on behalf of the corporation itself against a party that has harmed the corporation, such as a director or a third party, in circumstances where the board of directors is unwilling to bring an action (as may be the case if the claim is against a director). The derivative action therefore serves as a kind of safety valve, enabling shareholders to bring an action for such matters as a director's breach of fiduciary duties (discussed in paragraph [108] above). To move forward with a derivative action, leave of the court is required in many jurisdictions that provide for this remedy. The complainant will typically have to demonstrate that it is in the corporation's best interests that the action proceeds, that they are acting in good faith, and that the directors have been given proper notice but nevertheless refuse to initiate an action. Although the court is often given broad discretion to grant a remedy not only to the corporation but also to the complainant, the derivative action can prove a time-consuming and uncertain way to pursue a remedy since leave of the court is required before one can proceed with the action itself. This is one reason why some jurisdictions have also enacted the oppression remedy (discussed in the next section) which does not require that a shareholder first obtain leave of the court.

144. *Oppression remedy.* The oppression remedy is a remedy found in some countries' corporate law statutes that allows a shareholder, and sometimes other parties such as debtholders and creditors, to seek court intervention when their interests are treated unfairly by the company, its management, or a controlling shareholder. The oppression remedy has often been added to corporate law statutes where existing law does not provide that the corporation or its majority shareholders owe a fiduciary duty to minority shareholders. Under the oppression remedy, *c*omplainants can seek a court order to remedy the oppressive or unfair conduct in question, with courts often having broad discretion to issue appropriate orders. The scope of this remedy and the orders that courts may issue can, however, vary significantly from one jurisdiction to another and so it is important to consider the breadth of interests that are protected under a particular jurisdiction's version of the oppression remedy, as well as breadth of the remedial power that is given to courts under the statutory provisions governing the oppression remedy.

145. *Breadth of oppression remedy.* In some countries, the oppression remedy has become a very developed remedial provision that the courts have worked with for decades. In those countries, it has therefore proven to be a highly flexible tool that allows minority shareholders, as well as other kinds of specified complainants such as debt holders, to pursue a tailored remedy that is designed to address the behaviour that is the subject of the complaint. Similarly, courts in these countries are given broad discretion to grant remedies that can range from orders awarding damages against the company or a majority shareholder, to orders that require the complainant's shares or debt to be bought out, directors or officers of the corporation to be removed, and/or that the corporation or majority shareholder cease engaging in specific conduct that is harmful to the complainant. Courts may also be empowered to appoint a receiver or to issue an order requiring the corporation to be dissolved (and the collaborative venture therefore brough to an end). Jurisdictions with a developed history of decisions under a broadly worded oppression remedy therefore offer important legal tools that enable minority shareholders to initiate legal action intended to bring oppressive behaviour to an end and to secure an appropriately tailored remedy that will address the harm suffered. In other jurisdictions where minority shareholder rights may be less developed and where the remedy has only been adopted more recently, for example in common law countries, it will, however, be important to assess both the breadth of the wording of the remedial power granted to the courts and the experience that the judicial system has in that country with the remedy. Judicial experience with the remedy may be more limited and this may have a significant impact on the ability of minority shareholders to obtain a satisfactory remedy in circumstances where the collaborative nature of the venture has broken down because one or more members are of the view that the corporation or another party such as a controlling shareholder is seeking to profit at their expense.

CHAPTER IV

DIGITAL PLATFORMS IN AGRICULTURE

TABLE OF CONTENTS

I. INTRODUCTION

1. *Digital platforms as form of collaboration*. This Chapter discusses the "digital platform" as a form of collaboration which is functionally distinct from companies, cooperatives, and multiparty contracts (MPCs), but is not a legal structure on its own. Digital platforms are online infrastructures within which individuals and organisations can interact. They make possible the exchange of goods and services (transaction platforms) or the development of new digital products and services (innovation platforms). While digital platforms can be developed and used by collaborative legal structures, they perform functions that merit separate, additional analyses. Instead, digital platforms are typically operated by legal structure, such as cooperatives and companies (*i.e.*, "platform operators"), and do not function autonomously of corporate or human control. As such, laws and regulations concerning digital platforms are usually targeted at platform operators, who are responsible for ensuring compliance (e.g., with rules requiring the verification of sellers' identity and products when using a platform). The platform operator ensures that members/users of its digital platform comply with these rules through private ordering, broadly through various contractual agreements and IP licenses. Despite the growth of automation, and the emergence of decentralised autonomous organisations (DAOs) in certain sectors (e.g., financial markets), fully autonomous digital platforms that can act without human intervention and enter into agreements with other legal forms of collaboration are not yet a common phenomenon in the agricultural sector. In addition, the relationship between platforms and conventional legal forms may change over time due to the rapid technological change both are experiencing. Many of the contracts, cooperatives, and companies managing agricultural activities are being digitised and digitalised across the globe, as discussed throughout this Chapter.[124] Digital platforms represent one important example of digitalisation.

2. *The role of platforms in addressing needs and challenges.* Digital platforms can respond to the needs and challenges identified in the General Introduction, in particular by facilitating access to markets, market resources and financial services; addressing power imbalances and increasing participation in decision-making; promoting innovation. The possibility to facilitate the achievement of some or all of these goals depends on many variables, some of them external to the platform's architecture, some of them intrinsic to it (e.g., its governance design). In general terms, digital platforms are capable of improving the quantity and quality (in terms of reliability and speed) of the information exchanged between the parties, which is a crucial factor in pursuing the goals addressed in this guide. At the same time, the design of digital platforms can have a significant impact on power asymmetries within an agricultural ecosystem, either reducing or exacerbating them. For example, participatory platforms can increase democratic involvement in decision processes within the value chain by making information transparently available and/or by allowing forms of peer monitoring. On the other hand, non-participatory platforms can increase power imbalances, centralise monitoring functions, limit access to information and/or create new dependencies on third parties.

3. *Transaction costs*. Digital platforms play an important function in reducing transaction costs. Platforms can reduce search costs for agricultural inputs as well as the matching of buyers and sellers of agricultural produce. Their design can facilitate interactions between different players in the agrifood chain, including the three forms of collaboration considered under this guide. This relates not only to the exchange of commodities, but also to the sharing of information and the provision of services and other forms of support. For example, a company, acting as a buyer, might create a new digital platform or join an existing one in which its suppliers can exchange information with the buyer (e.g., about quality of the product to be supplied), obtain feedback whether the production process they implemented complies with the buyer's standard/expectations, or receive support on how to use a given input. There might be other cases where the technical architecture of the digital

[124] Digitisation and digitalisation are two different concepts. While digitisation focuses on converting and recording data, digitalisation develops processes and changes workflows to improve manual systems. Digitisation can contribute to the process of digitalisation.

platform is co-designed by the different members/users or evolves over time thanks to the input of the different actors in order to enhance collaboration among members/users. Moreover, digital platforms can help reduce the monitoring costs of smallholders by enabling the real-time and continuous collection and analysis of data on crops, market dynamics, etc. The benefits of digital platforms are discussed at greater length in section IV.A.

4. *Goal of the chapter*. This Chapter aims to provide key insights and highlight certain variables that can be relevant for smallholders and other stakeholders (such as agri-MSMEs) in the agrifood chain in deciding whether or not to join an existing digital platform or to create a new one. In identifying such insights and variables, a functional perspective will be adopted in order to underline how digital platforms, by interacting with existing legal structures or acting on their own, can enhance or hinder collaboration among smallholders.

5. *Agricultural digital platforms*. Digital platforms are becoming widespread and are present in different sectors (*e.g*., labour, finance, insurance, etc.). This Chapter will focus on platforms that operate primarily in the agricultural sector, even if there may be an overlap with platforms active in other sectors (*e.g*., in the case of digital platforms providing access to credit also to farmers). In the case of the agricultural sector, access to digital platforms by smallholders is often fraught with challenges; therefore, the Chapter will address the identification of the features that should be included in digital platforms to meet their needs.

6. *Digitalisation*. In the past decade, the use of digital platforms has grown in step with the general digitalisation of the agricultural sector. In FAO's 2024 *Towards Digital Inclusion in Rural Transformation*, authors observed that between 2013 and 2023, low and middle-income countries have implemented more than 700 new digital agricultural solutions. This has been particularly common in sub-Saharan Africa (*e.g*., Kenya) and South Asia (*e.g*., India and Bangladesh). However, while the farmers using such solutions in sub-Saharan Africa are primarily smallholders, in South Asia, only about 33% of smallholders make use of these technologies. It is believed that the COVID-19 pandemic also spurred the adoption of digital platforms and other solutions as there was an urgent need to find alternative ways for public and private sector organisations to reach farmers (and *vice versa*).

7. *E-commerce*. Digital platforms can play an important role in facilitating the sale of agricultural products, in particular through e-commerce. Even if e-commerce can take many different forms, in many cases it involves a set of bilateral relations (e.g., between the seller and the digital platform; between the seller and the buyer) rather than a multiparty relationship. But there are also cases where e-commerce is one of the many modules of a multiparty relationship which operates through a digital platform. The opportunities and challenges presented by e-commerce differs partly based on whether the e-commerce transactions are domestic or international. In the first case, access to infrastructures, trust issues, and digital literacy can have an impact on the adoption of e-commerce solutions, requiring investments and support by regional governments as well as regulations related to data management and security. Most agricultural e-commerce activities cater to a domestic market. In the second case, states and international organisations have long recognised the opportunity and obstacles that small and medium enterprises can have in engaging with cross-border e-commerce,[125] including in the sale of agricultural produce, and have stressed the need for inter-state cooperation in overcoming these difficulties. Cross-border agricultural e-commerce can raise additional complex legal and jurisdictional issues for smallholders as it engages with multiple legal frameworks, including e-commerce law, international trade law, customs and tariffs, and regulations concerning the standardisation, labelling, inspection, and testing of agrifood products. When deciding to use digital platforms for facilitating cross-border e-commerce, these issues must be addressed.

---

125 United States-Chile Free Trade Agreement, 2003 Article 15.5(a); Central America-Dominican Republic Free Trade Agreement, 2004, Article 14.5(a); UNCITRAL, *Taxonomy of Legal Issues Related to the Digital Economy* (United Nations, 2023), page 51.

8. *Risks of digitalisation*. The choice of joining a digital platform or employing other digital solutions must take into account the fact that digitalisation in general, and digital platforms in particular, represent an important opportunity for rural development, but at the same time imply some risks. Farmers risk losing part of their operational autonomy when the platform (or the operator providing the digital service) automates some decisions For example, a company might develop an integrated computer vision, robotics, and crop management platform that automates the spraying of herbicide on weeds, targeting only the spots where needed and in the amount which is required to optimise weed control. This may yield efficiency gains but may also undermine the farmer's judgment and experience. In addition, depending on the operator who controls/manages the platform, platforms can exacerbate and exploit power asymmetries between users such as smallholders and the business entities that primarily operate these platforms. This can manifest in the control that platform operators can exercise over users through technical measures such as digital rights management where users have limited or no option to opt out. The platform operator may use personal and non-personal data in opaque and potentially harmful ways, from the perspective of users and other relevant stakeholders. Reliance on boiler-plate contracts have contributed to this dynamic. For instance, in the absence of privacy rules in some countries and/or the weak regulation of personal/non-personal data, contractual and licensing agreements, as well as private regulatory initiatives, fill gaps in how agricultural data is governed. The choice of an existing collaborative legal structure to use a commercial third-party digital platform, should then take into account such risks in order to minimise them to the extent possible.

9. *Informality*. Digital platforms can functionally contribute to formalising smallholders, even when they do not have a recognized legal structure, since they can contribute to collecting and structuring data about their activities and map their existence. At the same time, digital platforms can perpetuate informality by making traditional legal structures redundant since individuals can collaborate with each other without using a legal structure.

II. FIVE DISTINGUISHING FEATURES OF DIGITAL PLATFORMS AS A MODE OF COLLABORATION

10. *Distinguishing features.* Digital platforms are functionally different from the three forms of collaborative legal structures considered in the CLSAE Guide because of five factors:

(a) *Coordination of a large number of participants*. While MPCs, cooperatives and companies can have a large number of members, there are practical constraints on how such large collaborative legal structures can grow while retaining their core features and identity (*e.g.*, practising internal democracy). Managing organisations of such a size implicates not only matters of contract governance, corporate governance, or cooperative governance, but inevitably entails the use of governance technologies to run meetings, count votes, resolve disputes, etc. Through the use of digital platforms, much larger member-governed and participatory organisations can emerge. There are examples of distributed networks of local agri-food hubs which span on many countries and have onboard thousands of producers, which are coordinated through the use of a digital platform.[126]

(b) *Making multiple layers of collaboration possible*. A digital platform allows users to create and/or magnify collaborative projects which are distinct from the collaborative form represented by the platform itself. In other words, in a platform there can be two layers of collaboration: the first layer involves the collaborative endeavour permitting the existence and operation of the platform and involves the *members* of the platform. The second layer involves the other instances of collaboration that *users* develop thanks to the digital infrastructures and services made available by the platform. There

[126] https://openfoodnetwork.org/

are now e-commerce platforms that, for instance, connect a large number of producer cooperatives to rural consumers. The first layer of collaboration happens between the collaborative legal structures involved in building the e-commerce platform, with a separate second layer of collaboration taking place between the business and individual users of the platform. In effect, the platform operator organises a second tier of collaboration. This buttresses the point that platforms are not just intermediaries, but they also act as governance structures and can create ecosystems of organisations or individual actors. This aspect differentiates digital platforms from MPCs, cooperatives and companies, where special projects or more specific types of collaboration are possible, but they are limited to members. The idea that digital platforms can allow the coordination of much larger numbers of members than in the other forms of collaboration and are capable of organising second-tier collaboration can have an impact on the governance structure and, in particular, on the choice between a centralised or decentralised governance structure. The organisation of second-tier instances of collaboration can favour a more decentralised governance structure, since this spin-off collaboration will have some degree of autonomy vis-à-vis the first-tier collaboration. This point is elaborated further in sub-paragraph (e) below.

(c) *Specific intermediation procedures*. The intermediating function characterising platforms differs from the intermediating function in other forms of collaboration. The difference lies in the fact that intermediation is often the main task of platforms, an economic activity *per se*, while in other forms of collaboration, intermediation is an ancillary function. The economic viability of a digital platform is contingent on the generation and maintenance of network effects, which requires this intermediation function to attract and balance the user groups on different sides of the platform. A common business strategy to achieve this balance is to provide "subsidies" and other incentives to the user groups that are low in supply at a given time. These are not necessarily direct financial subsidies or incentives. For instance, there are now digital platforms for hiring agricultural equipment that matches equipment owners with farmers looking to temporarily book the equipment. As many smallholders do not have smartphones, some platform operators have deployed agents to help smallholders place bookings. This makes the equipment booking process easier, while also increasing demand for the equipment on the platform.

(d) *Easy entry and exit of members and resources*. Digital platforms have porous boundaries relative to MPCs, cooperatives and companies with regard both to the inclusion of users and the use of assets. Platform organisations enable co-production and the drawing of resources from a wide range of stakeholders with minimal friction. Take, for example, mobile communication platforms that aggregate production from individual farmers, cooperatives and community organisations. They enable forward contracting with buyers, providing a predictable and structured market for key crops. Such digital platforms also facilitate the delivery of extension content and training through text and voice messaging, and allows farmers to register production data, request loans and receive payments via mobile money.[127] In doing so, linkages are made between actors within a given collaborative legal structure and actors external to the structure. The other collaborative legal structures in this guide are relatively less porous. Cooperatives have strict rules with respect to entry and exit of members, and MPCs and companies have some membership and contracting rules as well. The use of a digital platform by these collaborative legal structures can alter the ease of entry and exit of users and resources.

(e) *Governance mechanisms*. The governance mechanisms for the digital platform are often different from the governance mechanisms of the platform operator. For

127 IFAD 2026, e-Granary example, active in Rwanda, ESA

instance, in online marketplaces for farmers, the governance of the first, technical layer may involve regular updates of the open-source software, which is related but still distinct from the governance of organisations running food hubs.

11. *Enabling new functions*. Digital platforms can be conceived as enablers of new functionalities and dynamics. An example is offered by the pursuit of sustainability goals: since sustainability can be conceived as a systemic goal, requiring the extensive coordination of a large number of stakeholders, digital platforms can introduce entirely new features and dynamics. For example, there are now digital hubs that, among other things, enable the gathering and sharing of agricultural and climatic information, to support smallholders, livestock keepers, and rural entrepreneurs.[128] The platform can thus be used to monitor the environmental harm that is potentially caused by actors, such as *farmers*, and enable them to adjust their activities based on the exchange of data relating to their environmental performance. Thus, digital platforms could be employed as a tool by the other three collaborative legal structures to govern the value chain by allowing a more advanced and sophisticated level of monitoring and coordination.

III. THE PLATFORMISATION OF CONVENTIONAL COLLABORATIVE LEGAL STRUCTURES

12. *Platformisation.* Digital platforms do not only have distinct features from the other collaborative legal structures, 'platformisation' is transforming the features of conventional legal structures as well. Platformisation refers to the penetration of digital platforms within "infrastructures, economic processes and governmental frameworks, as well as the reorganisation of cultural practices and imaginations around *these* platforms". Thus, platformisation does not only refer to a technical infrastructure, but also business models and an organisational and cultural logic that emerges from the use of digital platforms across the global economy.

13. *Platformisation of the governance of companies and cooperatives*. The phenomenon of platformisation has significant implications on the membership and governance of both companies and cooperatives as well as their financing. Digital platforms *are now* widely used to run meetings (e.g., annual general meetings/assemblies). In addition to *making* remote communication possible, digital platforms can allow the direct participation of a greater number of people synchronously and asynchronously in a meeting (e.g., through meeting recordings and auto-transcriptions), without the use of proxies or representatives. Consequential decisions can be made using these platforms, including voting on proposals and resolutions. These platforms have thereby created the possibility of diminishing organisational hierarchies, between the board/senior management and members in particular, although the degree to which these platforms are used for communication and engagement differs widely. This platformisation has been supported through legal amendments explicitly permitting online meetings and decision-making. The use of digital platforms can also involve new stakeholders (i.e., users), who depending on applicable terms and agreements, may have decision-making power over the platform and even over the legal structure operating the digital platform (*e.g.*, if the user also becomes a member). While digital platforms can enable greater involvement in the governance of agricultural cooperatives and agricultural companies, there are also significant challenges. Power imbalances may arise between those with less technical sophistication and those with a more advanced digital literacy, which might paradoxically limit communication and participation rather than improving them. How the inclusion of users in platform governance will affect organisational liability has also stirred controversy, as discussed in relation to Decentralised Autonomous Organisations (DAOs) below.

14. *Platformisation of the financing of companies and cooperatives*. The use of digital platforms also opens up new sources of financing for agricultural firms. Both debt-based and equity crowd-funding, for instance, primarily use digital platforms to raise funds, convey information, and make

[128] IFAD 2026, We Connect Farmers example – Gambia, WCA

disclosures. Some of these crowdfunding platforms specifically focus on sustainability, seeking to match sustainability-conscious investors with sustainable firms. More recently, the use of a digital platform to issue crypto-tokens in exchange for certain financial and/or control rights over a project (*e.g.*, access, profit-sharing, etc.) has also been a lucrative alternative financing arrangement. Increasingly, digital platforms are also being used by companies for direct listing and private placements, with the latter involving accredited investors. Ultimately, this can change the traditional capital structure of an agricultural firm, with these diverse creditors and investors having varied interests and expectations of the firm, its leadership, and its strategic planning.

15. *Platformisation of multiparty contracts*. Multiparty contracts in the agrifood sector involve an intricate web of relations among the different contractual parties ranging from sharing information to setting prices, from providing instructions to monitoring compliance. In order to optimise the management of such relations parties could establish, or make recourse to, a platform which could, for example, offer monitoring services on real-time, on-line knowledge-building activities, and quality assessment to determine the product's final price. In addition, similar to what has been underlined in paragraphs 13-143, platforms can also have an impact on the governance of the (multiparty) contractual networks as well as on their financing.

16. *Platformisation leading to datafication*. As discussed further in the subsequent section, the use of digital platforms inherently involves the collection, analysis, and use of data. This too can be applied to transform the conventional legal structures as the data can be used to optimise organisational and financial decision-making, through the generation of new metrics and analytical insights. At the same time, datafication involves issues related to proper data management in order to minimise risks that data can be used at the detriment of data holders' rights and interests; such risks might also impact negatively on the number of farmers willing to join platforms.

IV. DEFINITION AND TAXONOMY OF DIGITAL PLATFORMS IN AGRICULTURE

A. Definition

17. *ICT4D*. Digital platforms are part of the broader domain of Information and Communication Technologies (ICT) for (agricultural) Development (ICT4D). The term "platform" has been used in different ways in various scientific disciplines and fields, in *particular* in (industrial) economics, industrial organisation and management, information systems, law, marketing, and software engineering. Different criteria have been used to define digital platforms across these fields and disciplines.

18. *Digital platform definition.* At the international level, digital platforms have been generically described as "online platforms", with the UNCITRAL Taxonomy of Legal Issues Related to the Digital Economy building on the definition developed by the OECD[129] and UNCITRAL's own texts on e-commerce. UNCITRAL has previously defined an online platform as "a service that: (i) is provided via the Internet or some other *communications* network by electronic means (i.e. an online service) and (ii) facilitates interactions between persons who interact using the service". UNCITRAL notes that a similar definition is used by UNCTAD,[130] as well as the ITU and the World Bank.[131] In this chapter, digital platforms are defined as online infrastructures within which individuals and organisations can interact, making possible the exchange of goods and services (transaction platforms) or the

---

[129] The OECD defines a platform as "a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the Internet." OECD 2019: 21.

[130] Digital platforms are "the mechanisms for bringing together a set of parties to interact online." UNCTAD 2019: xv.

[131] Digital platforms act "a marketplace, bringing together and reducing transaction costs between distinct groups of customers." ITU and World Bank 2020: 31.

development of new digital products and services (innovation platforms) in ways capable of creating nonlinear increases in utility and value. Nonlinear increases in utility and value mean that the addition of each individual user exponentially increases the value of the platform. This integrates the earlier international definitions, while highlighting certain functional uses of digital platforms.

19. *Different functional types*. The definition above captures three different functional types of digital platforms. It is possible to broadly distinguish: (i) transaction platforms, in which members use the platform for direct exchange of existing goods or services, from (ii) innovation platforms which offer the technological infrastructures for developing products and services which are new and complementary to the platform. A digital platform for booking tractors is an example of a transaction platform. A digital platform facilitating farmer registration and enabling the reporting of disease or pest infestation is an example of an innovation platform, as it can be used to make third-party agricultural subsidy provision more efficient and plan interventions to address disease or pest occurrences. While transaction platforms typically generate income through advertisements, subscriptions and transaction fees, innovation platforms generate income through licensing or selling products. There are now digital platforms that combine these transaction and innovation functions, leading them to be described as (iii) hybrid digital platforms. This might be the case with digital platforms which not only facilitate farmer data collection for third-party services (*e.g.*, financial credit provision for farmers) but also enable the matching of farmers with complementary service providers for value chain linkages.[132]

20. *Level of platform's maturity*. Another element to be considered in distinguishing among digital platforms is whether the platform is in its early development or in its maturity phase. In the first case, the platform will favour network effects in order to increase its scale, even to the detriment of profits; in the maturity phase, the platform will focus on profitability.

21. *Network effects.* A crucial part of the definition of platforms is related to the network effects they can generate. Network effects are primarily divided into two broad types: direct network effects and indirect network effects. The former refers to how the value of a platform changes because of an increase in the number of users on the same side of the platform. A digital platform providing access to a "data commons" that contains agricultural data grows in value for everyone when more relevant data contributors join these digital data commons. A growing wealth of data available on such a digital platform enables users to benefit from richer insights from data processing. On the other hand, indirect network effects occur when an increase in the number of one group of users leads to another group of users on a different side joining the platform. For instance, an increase in the number of food producers contributing to a platform offering their produce can draw more consumers and communities due to the variety and quantity of fresh, organic produce available. Conversely, an increase in the number of consumers and communities that join the platform can make the platform attractive for food producers due to the number and variety of consumers available for their agricultural produce. The value created for the group of users on the other side of the platform enhances the overall value and economic sustainability of the platform, as these platforms typically receive a fee for each transaction that is completed.

22. *Technological evolution*. Digital platforms in agriculture are not static and evolve as a result of changes in the wider environment in which they operate. Consider how agricultural enterprises process and use information. Before the emergence of digital platforms, agricultural market information systems - often operated by public authorities - systematically gathered data and made this verified data available to farmers and other stakeholders through traditional media. These systems that gathered *important* market, weather and agricultural commodity data were gradually integrated into digital platforms (e.g., Whatsapp),[133] overshadowing the state-backed stand-alone market information systems that some perceived as being ineffective and financially inefficient. In

---

132 IFAD 2026 – BanhJI Rural Enterprise (Cooperative Digital Solution) in Cambodia, APR is also an example.

133 IFAD 2026 – AMIS (Whatsapp Platform), Nigeria, WCA.

contrast, the potential of digital platforms to generate network effects, including through the use of information systems, became a more economically viable option.

23. *Platform's new features*. In response to rapid technological change, digital platforms are integrating features from adjacent yet unrelated industries. The integration of various agricultural solutions, from supply chain linkages to financial services, into a single digital *platform* has been described as the creation of digital "super platforms". This trend is, in part, due to the importance of data in digital platforms and the economy at large. The collection, processing, and use of data are not only necessary for the generation of beneficial network effects; data can be used by other software applications integrated into the digital platform to provide new services. For example, a State can, as part of an effort to digitalise all public services, allow farmers to create digital identification systems for their land and cattle in order to get access to information relevant for their production activities.[134] Platforms can, for instance, help farmers decide when to plant a given crop, using years of rainfall and crop production data. Moreover, data provided by farmers can help credit providers, from microfinance institutions to traditional banks, make more informed decisions to extend farmers credit, or even use the data itself as a form of collateral to receive start-up working capital.

24. *Data categories*. There are three broad categories of agricultural data that agricultural enterprises may collect, process, and use via their digital platforms: (i) farm data, (ii) complementary environmental data, and (iii) proprietary data relating to the performance of agricultural input. Agricultural enterprises may wish to do so for sustainability reasons, including economic (*e.g.*, cost cutting, increasing productivity), social (*e.g.*, improving working conditions) and environmental (*e.g.*, reducing harmful waste) sustainability. The application of various AI systems, for tasks including planning, reasoning, monitoring, and interacting with the physical environment, further enables the realisation of these benefits but requires the intensification and diversification of data collection.

25. *Data collection*. From smartphone applications to sensors installed on farmland to drones, there are many sources for collecting the data necessary for "agricultural AI". Sensors, for instance, can be used to collect real-time data on humidity and temperature to improve crop yields, while optimising water use.

B. Taxonomy of Applications

26. *Platforms' applications.* The increasing presence of digital platforms in agriculture requires developing a taxonomy to make it easier to navigate among their different types. This taxonomy should be built *around* the different applications that transaction, innovation, and hybrid digital platforms perform in the agricultural sector. Taking digital platforms' applications into account, it is possible to identify the following types:

(a) online marketplaces;

(b) access to equipment;

(c) provision of information and agricultural advisory services;

(d) supply chain management;

(e) improvement of decision making in market transactions;

(f) provision of financial services and payments management;

(g) provision of training and education; and

(h) data management.

---

[134] World Bank 2019: 28.

27. *Categories of platforms' applications.* These application types can be grouped into three main categories, taking into account the main goals of the digital platform: (i) exchanging commodities (*e.g.*, inputs, raw materials, final products), (ii) offering services (*e.g.*, agronomic services, financial services, educational services/equipment services), and (iii) improving management processes (*e.g.*, management of the supply chain, data management, more efficient decision making). Nonetheless, it is becoming increasingly frequent to have digital platforms which perform multiple functions at once, for example by integrating products and services.[135]

1. Exchanging commodities

28. *Platforms as marketplaces*. In some cases, digital platforms operate as marketplaces in agriculture, either in the B-to-B or in the B-to-C contexts (or in both), acting as intermediaries or suppliers for agricultural inputs and/or goods). Some of these online marketplace platforms are custom-made, having been developed to cater to the particular needs of a local farming community or agricultural sector. Yet, many farmers also use major commercial social media and instant messaging platforms to sell their produce due to the low costs involved and the large group of consumers that they could potentially attract.

2. Offering Services

29. *Service intermediation.* Digital platforms can also be a means for farmers themselves to gain access to tractors and other expensive farm equipment. The platform, in this situation, intermediates and matches farmers with tractor owners through a smartphone application or text messaging.[136]

30. *Financial services.* An important application of digital platforms is for the remittance and disbursement of payments for produce, wages, and state subsidies (*e.g.*, for remitting seed money to rural youth involved in agriculture). Other financial services that are dispensed through digital platforms include small-scale credit and saving schemes, insurance, and crowdfunding.[137] Examples range from platforms designed to offer a comprehensive digital financial operating ecosystem in order to improve access to financial services[138]to platforms integrating different functions such as financial services (i.e. loans), purchase of agro-inputs and linkage to traders/buyers.[139]

31. *Education and training.* Digital platforms can represent a means for providing education and training for farmers. This can occur within an integrated supply chain, when the chain leader transfers technology, know-how and other relevant information as a way to promote the efficiency of the chain and better integrate the different actors. In other cases, the platform offers education and training which are complementary with respect to the provision of other goods and services. For instance, a digital platform for milk can enable the sharing of knowledge and resources about cow health, workspace disinfection, and other good dairy farming practices. An agricultural 'chatbot' can provide advice to farmers about sustainable farming practices and reducing waste. There might be other cases where the platform offers education and training for purely altruistic reasons or for supporting their members. Alternatively, the digital platform may operate in a more peer-to-peer manner, where farmers share knowledge and insights with each other. Relatedly, digital platforms can be used to promote networking and peer-learning between young farmers and rural youth organisations. This has also contributed to the burgeoning growth of agri-influencers on social media.

135 https://climate.com/en-us.html

136 https://www.trotrotractor.com/; https://trringo.wordpress.com/about/; World Bank 2019: 14.

137 IFAD 2026 – BanhJi Rural Enterprise (Cooperative Digital Solution) - Cambodia, APR.

138 https://banhji.com/

139 https://agrinnovators.org/news/e-granary-digital-platform-for-east-african-smallholders/

3. Improving Management

32. *Data collection and management.* Digital platforms can also represent a means for generating, sharing, and managing data and information for agricultural purposes. For instance, some platforms offer farmers a place to store and share agricultural data, while others enable the tracking of important datapoints for a specific farming activity (e.g., flock size, vaccination schedules, feed consumption for poultry raising).[140]

33. *Advisory services.* This management function can be connected to the provision of agri-consultancy and advisory services,[141] but it can also be independent from it. For example, the data collected could be shared by the platform with input providers in order to provide them with field data about the performance of their inputs and/or for improving their efficacy, by benchmarking their operational data with those of other farmers.[142] There are also cases in which the platform provides both services and hardware, such as in the case of operators providing data analytics and tailored prescriptions (*e.g.*, on seed rate, crop protection, fertility), but also selling some hardware components.[143] This kind of solution is adopted by some agricultural machinery producers as well.[144]

34. *Value chain management.* In some instances, digital platforms are employed to better manage the value chain in terms of logistics, compliance with regulatory standards, tips to value chain members, production planning, marketing and the like. For example, software and platforms can be developed for collecting field data from farmers and giving them management tips and benchmarking data (*vis-à-vis* the performance of other members). The data can also be used to organise logistics, production planning and marketing.[145] For instance, a state-run digital platform can be used to reduce wastage in the public procurement of produce from farming organisations for school meals.[146]

35. *Provision of information.* Digital platforms can provide information to farmers to allow them to make better decisions and to be competitive in market transactions, for example, by offering mobile- and web-based data collection solutions with the goal of improving decision-making and market interactions. "[147] Another example isrepresented by those companies which provide real-time price data, disseminating them among small farmers in order to allow them to effectively bargain for the prices of commodities.[148]

V. THE MAIN ACTORS IN DIGITAL PLATFORMS IN AGRICULTURE

Platform Operators

36. *Definition platform operators.* Digital platforms are often conflated with the various legal structures that build, maintain, and own these platforms. It is important to distinguish "platform operators" from the members and user groups of a platform: the first refers to the organisations creating and running the platform, and the second to the individuals and organisations taking advantage of the services offered by and/or through the platform. The ELI Model Rules on Online Platforms define a platform operator as "a trader who operates a platform",[149] with a trader being

---

140 IFAD 2026 – My Poultry Manager – Nigeria, WCA; https://datacollaboratives.org/cases/joindata.html; https://djustconnect.be/en/how-does-it-work..

141 https://agrevolution.in/; https://www.fbn.com/

142 https://datacollaboratives.org/cases/growers-information-service-cooperative-gisc.html.

143 https://climate.com/en-us.html.

144 https://www.deere.com/en/digital-tools/.

145 EIP-Agri 2016 : -11.

146 IFAD 2016 – Mobile app for public purchases of school mean program, Guatemala, LAC

147 https://www.esoko.com/about.

148 https://dataimpacts.org/project/market-data-raise-farmer-income/.

149 Article 2(b), ELI Model Rules on Online Platforms.

"any natural person or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to its trade, business, craft or profession…".[150] Digital platform operators can be for-profit businesses, in which the business is typically financed by venture capital and generates income from mediating transactions between the "sides" of the platform (*e.g.*, through a transaction fee). There are also not-for-profit digital platform operators, like collaborative networks aimed at making available food via local online platforms. The distinction between a platform and a platform operator requires investigating, as does the relationships tying them together. A prominent reason why platforms are conflated with platform operators is because the operator itself sometimes uses the platform to interact with users, rather than only intermediating user groups. UNCITRAL, for example, notes that an e-commerce platform operator can directly become involved in the sale of goods and services alongside, and in competition with, other user groups.[151]

Platform Members

37. *Definition of platform members.* In addition, it is possible to distinguish between types of user groups. There are users and, separately, there are "members" as a particular sub-category of users who join a platform by entering into a membership agreement with the platform operator.

Platform Users

38. *Definition of platform users.* In contrast, users are actors who engage with the intermediary services offered by the platform without formally being a member. This distinction is strictly interwoven within the management structure of the platform. There can be platforms where there are only operators and users (*i.e.*, the operator does not allow the entry of users as members), where there are only members (*i.e.*, the operator requires users to become members in order to use the platform), and where there are both members and users (*i.e.*, depending on the fact that the prospective members meet the standard to become a member and/or the user wants to "upgrade" her status and become a member to take part in the platform's management). This distinction reflects the idea that the platform needs management (i.e., layer one collaboration) different from the management of the activities that take place on the platform (i.e., layer two collaboration).

Blurred Categories

39. *Platform management.* Another way to understand the distinction between users and members is by referring to their participation in the management of the platform. Members are those subjects who have a managing role/participation in the platform (*e.g.*, right to vote to appoint platform managers), while users are those who have access to and/or use the services hosted on the platform without having managing roles/participation. The distinction between members and users can represent an oversimplification to some extent of what occurs in some instances - there might be peer platforms where there are no delegated managers but all users have voting rights - but this distinction is nevertheless a useful starting point for analytical purposes in order to grasp the differences in terms of roles, powers and responsibilities between the different actors interacting within a digital platform ecosystem.

40. *Users outside the platform.* In addition, the distinction between those user groups that are "inside" the boundaries of a platform operating firm and those that are "outside" those boundaries is not always clear. Multi-disciplinary research shows how digital platforms and their ecosystems have begun redefining the boundaries of firms, including the collaborative legal structures that are the focus of this Legal Guide. Once platforms begin organising activity across supply chains and ecosystems, they access services and resources beyond those provided by a firm. For instance, innovation and hybrid digital platforms, and the firms that operate them, often come to rely on the expertise of software developers who are not directly employees or members of the firm. This is

[150] Article 2(i), ELI Model Rules on Online Platforms.
[151] UNCITRAL 2023, p. 53.

significant as the governance of digital platforms is shaped by the technical choice of platform designers, with ramifications for *what* a platform does and *how* it does it. Consequently, information systems theorists have advised the careful consideration of how platform decision rights are partitioned between developers and the firms operating the platforms, how these firms control the output and process of software development, and how they decide on whether the ownership of the digital platform should be proprietary or shared.

VI. BENEFITS AND CHALLENGES OF DIGITAL PLATFORMS IN AGRICULTURE

A. Benefits of Digital Platforms in Agriculture

41. *Potential benefits.* There are several potential benefits of using digital platforms in agriculture. Digital platforms can enhance the productivity and efficiency of smallholders by reducing transaction costs and search costs (*e.g.*, reducing the costs of finding consumers or suppliers), for example easing the procurement of soybeans for farmers. Relatedly, aggregating data through the use of digital platforms can also help farmers to negotiate the price of inputs with suppliers at a greater scale. Digital platforms that operate as online marketplaces can potentially help farmers bypass rent-seeking middlemen and directly access national and international markets. This can support the integration of global value chains. Consequently, digital platforms can broadly contribute to increasing the income of farmers, including women and young farmers.

42. *Resource efficiency.* In broader terms, the use of artificial intelligence and other emerging technologies is also considered to be advantageous as it can help smallholders reduce the waste of energy and resources. This is beneficial for climate change adaptation and mitigation efforts. Digital platforms can thereby contribute to food security and even rapid, "leapfrog" development and modernisation.[152]

B. Challenges of Digital Platforms in Agriculture

43. *Market failures.* At the same time, the rapid growth of the platform economy and the data economy has generated significant market failures that may eventually require remediation through State intervention. These failures include: (i) lock-in of farmers' data due a lack of technical and data interoperability, (ii) the weak bargaining position that farmers have vis à vis the size of platform and data operators; (iii) the presence of data sharing agreements that favour large players; (iv) the lack of trust farmers may have about the use of their data; (v) the conflict between the legitimate interest of actors like the state in accessing agricultural data with farmers' interests in protecting their farm data. In addition, infrastructural problems, such as lack of connectivity, limited access to technology or power shortages, might affect access to digital platforms by some groups of farmers.

44. *Digital divide.* Many digital platforms used in the agricultural sector are only pilot projects and have not been subject to impartial and rigorous research. There are practical concerns about digital platforms not being able to sustainably generate revenue and ensure the privacy and security of agri-data. The existence of a (gender) digital divide - even within countries - and disparities between urban and rural areas as well as literacy and language skills can also all impact the update of digital platforms.

45. *Corporisation and power asymmetries.* From a political economy and critical agrarian studies perspective, the use of digital platforms can contribute to the corporatisation of the agricultural sector, to the detriment of smallholders. These platforms may come to depend on, and earn income from, corporate agri-business, thereby creating new power asymmetries (as further discussed below). The generation of large quantities of data can itself be used as a tool for control and new

---

152 African Development Bank 2016.

colonial practices, by both extracting data from vulnerable agrarian communities without their informed consent and using this data to determine their choice of diet, farming practices, and other aspects of their life. This threatens the autonomy of farmers. By shaping preferences and behaviour - e.g., which farming practices, seeds, etc. are "optimal" as opposed to others - digital platforms potentially contribute to the creation of monocultures and can threaten biodiversity. The aggregation of data, and the transparency and legibility that data analytics ensures, can have broader implications beyond the agricultural sector. The digital identification and registration of land contribute to its financialisaton by making land more eligible for global purchase and exchange. The concentration of data, according to some, can also contribute to the concentration of markets. Transparency about farmers' data may have benefits in terms of alerting other actors in the value chain about, *e.g.*, spoiled produce, but as actors are not as transparent about their own data, the relative bargaining power of farmers can diminish.

C. Data-Related Problems in Agriculture

46. *Recognising the "data ownership" rights of farmers*. The combination of high switching costs, significant barriers to entry to digital agriculture, and data fragmentation privileges the largest agricultural enterprises that could afford to be first-movers and establish themselves in the market. This works to the detriment of newer actors, such as small agricultural cooperatives. However, for integrated agricultural giants, exploiting these market failures and benefiting from data-driven "smart farming" can be a means to recoup some of their losses incurred through a shrinking of their traditional business (*e.g.*, sale of seeds, fertilisers), which in part is due to the efficiencies and cost-savings achieved by large and small agricultural enterprises alike through the use of new technologies. A prominent proposal for addressing these concerns is recognising the "data ownership" rights of farmers. Data ownership continues to be an important, contentious discussion point globally, as it could potentially enhance farmers' trust in new technologies and data sharing and reduce data lock-in. However, such ownership rights may valorise an individualised notion of ownership and, on their own, do not strengthen farmers' bargaining power relative to larger agricultural enterprises, leading to newer calls for strengthening data access.

47. *From Data Ownership to Data Access.* The latter seems to be the approach adopted more recently by many institutions, which have rejected the idea of data ownership due to the risk that such an exclusive right might cause excessive fragmentation and create obstacles to the establishment of a data-driven economy. Data access seems to represent a concept more in line with the need to allow for the circulation of data and to promote data-driven products and services. It appears that, so far, this type of approach has been followed in the agricultural sector as well. For example, the codes of conduct, developed in both the EU and USA, dealing with agricultural data sharing, while recognising that data belong to farmers, focus on data access and the use of contractual arrangements for sharing data.

48. *Data access.* In the context of digital platforms, similar dynamics are expected, with emphasis on data access rather than on data exclusivity. Data access may therefore be a potential solution to this data-related problem.

49. *Data sovereignty.* The focus on data access can nevertheless represent a double-edged sword for farmers. On one hand, power dynamics in which farmers represent the vulnerable parties can be exacerbated by the predominant role that contracts play in the context of data access and data sharing: farmers may be unable to negotiate fair contractual terms and may accept standard contracts that favour stronger parties. In some cases codes of conduct can reinforce these dynamics where the recognition that data belong to farmers can be 'bypassed' by contractual arrangements and information consent, which are likely to lead to the spread of boiler-plate clauses. The same might be true in the case of digital platforms in which farmers are mere passive users. On the other hand, in those instances in which farmers are capable of being active users, either because they

have established a digital platform themselves (for example through a farmers' data cooperative) or because they have been actively involved in the management of a platform established by a third party, they can enjoy some level of 'data sovereignty' and benefit from the use of data.

50. *Quality or Absence of Data*. Digital platforms may also begin integrating emerging technologies like blockchain to overcome another data-related problem: the dubious quality or absence of data. A core property of blockchain technology is transparency about certain data, such as the time at which a transaction took place and was recorded "on-chain". This property can be leveraged in any industry or context in which data about a transaction is necessary and there is no reliable third party to conclusively make such a determination. Agrifood supply chains provide a clear example of this, as there are many parts of the supply chain in which a party may fabricate the provenance of a commodity or commit fraud. To address this, blockchain-based provenance platforms have been developed. One such platform was developed to combat food fraud incidents in the transnational beef supply chain, by making the entire chain more transparent and traceable. Consumers that are concerned about the origin of their beef could use the prototype platform to not only read about the product's provenance and watch a video about each stage of the supply chain, but could also personally check if the supply chain data had been tampered with. Yet, blockchain-based systems are not necessarily a panacea for data authenticity, as they are still vulnerable to the "garbage in, garbage out" problem. If, for instance, the original data has been tampered with, then all the unique hash value tells us is that the file was validly stored on the blockchain at a particular time, not the "truth" about its contents. Even if an individual were to view the image or video, they may not be able to discern a fake image or video from authentic ones. Thus, caution must be exercised when using blockchain technologies for solving issues of data authenticity.

51. *Digitalisation is not neutral.* The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018) recognises the double-edged sword that digital technologies can be. On the one hand, it calls for States to facilitate technology transfers as well as "access to and sharing of accessible technologies" with developing countries, particularly accounting for the needs of women to have equal access to digital technologies (among other things).[153] On the other hand, the declaration also recognises the need for States to regulate "transnational corporations and other business enterprises" to "respect and strengthen the rights of peasants and other people working in rural areas".[154] Members of civil society have also pointed out that digitalisation is not neutral; rather it can exacerbate existing asymmetries in the agrifood system by favouring large-scale industrial players. The implications are that, on one side, there is a need for extensive regulation of digitalisation and, on the other side, a need for bottom-up digitalisation by giving producers more control over data collection and analysis.[155]

VII. GOVERNANCE OF DIGITAL PLATFORMS IN AGRICULTURE

52. *Multiplicity of collaboration and participants.* A digital platform ecosystem can have multiple layers of collaboration and include different participants, both agricultural and non-agricultural (tech firms, financial players, etc.), within the governance structure. Similarly, they can have multiple layers and forms of control, such as the control of organisations and the ownership and control of physical and intangible resources. These forms of control, while distinct, are relevant for understanding access to, and entry and exit in, digital platforms; the type of participants (e.g. agricultural vs non-agricultural) can affect the governance structure as well. In turn, the different arrangements that characterise the control of the organisation and of the resources determine the participatory or non-participatory nature of the platform. The distinction between participatory and non-participatory digital platforms is useful from an analytical perspective; from an operational one,

---

153 Articles 2(6)(d), 4(2)(g), UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.

154 Article 2(5), UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.

155 https://www.scholacampesina.org/wp-content/uploads/2021/07/Data-FINAL.pdf

participation and non-participation represent the two poles of a spectrum within which the different platforms can be placed. The participatory pole is represented by a model in which all the actors of the platform are fully involved in the management of the platform, without any distinction in terms of roles between members, users, founding members, etc.; the non-participatory pole is represented by a model in which one entity controls all the aspects in the management of the platform, with the other actors having only passive roles.

A. Participatory Platforms

53. *Platform design choices.* In designing the governance structure of the platform, in terms both of participatory/non-participatory nature and of the types participants to be included, smallholders should take into account different factors: 1. the number of members/users (e.g. with regard to the transactions costs in coordinating them); 2. the types of resources to be shared (e.g. exclusive ownership over the resources vs joint ownership over them; common resources vs public resources); 3. the nature of the future members/users (e.g. farmers only; non-agricultural *participants*; public entities; the role/power/resources these subjects have); 4. the availability/capability to develop the services/products within the group of the platform's members.

54. *Non-hierarchical participation.* In participatory models, collaboration is non-hierarchical and, in most cases, horizontal. The different participants (founding members, additional members, simple users) partake to some extent (depending also on their role) in the management of the platform, for example by having voting rights, by taking part in peer monitoring, or by being applying to become a member. Compared to non-participatory ones, participatory platforms are particularly apt in addressing power imbalances through broad-based involvement in decision-making, while at the same time promoting access to markets, market resources, financial services and innovation. Control over resources is more widespread and disseminated than in non-participatory models. This also has implications in terms of management of these resources which can be decentralized and/or held in common between members and/or users. In a participatory agricultural marketplace platform, software would be co-developed by individual users and organisations globally, while suppliers and buyers would be locally rooted in democratically-controlled food hubs. At its simplest, a local food hub would require a smallholder to create an online shop, list their products, and set up a payment and food delivery method so that their produce reaches the final consumer.[156] The software, website, and brand may be managed at a global level, deployed under a copyleft license and stewarded by a non-profit foundation, enabling contributions beyond the members of the local food hubs.[157]

55. *Entry and exit.* In sum, in participatory digital platforms, the boundaries of the platform allow relative easy entry and exit for the purpose of accessing, operating, and using the open-source platform software. It is not strictly necessary to become a member to gain these benefits, but adherence to copyleft licence requirements may be needed. In some cases, a local food hub may have to use a specific collaborative legal structure (e.g., a cooperative) to meet branding and licensing requirements.

B. Non-Participatory Platforms

56. *Hierarchical collaboration.* In non-participatory models, collaboration is hierarchical and, in most cases, vertical. Control over the management of the platform is in the hands of one or more entities, who have voting rights, monitoring functions, veto power on new members/users, control over dispute resolution, etc. Non-participatory platforms can operate according to an exclusive model, where one or a limited number of subjects have the control of the platform without the possibility to include new members, or to a club model, where the members of the club control the

156 Open Food Network 2021; Open Food Network 2024a.
157 Open Food Network 2024b.

platform but new members can be included. Compared to participatory ones, non-participatory platforms are used particularly when control over given resources (e.g. information, innovative products) is kept restricted in an exclusive/proprietary way, with the further implication that access to the resources exchanged and/or available through the platform is centralised. In vertical models, it can often be the case where the governor of the platform wants to keep control over some strategic resources, at the same time promoting some level of collaboration and/or innovation with other players who can benefit from joining the non-participatory platform to access new markets, resources, services or innovation processes.

57. *Entry and exit.* In contrast to the participatory model, in non-participatory digital platforms the boundaries to access, operate, and use the platform are far less porous. In proprietary digital platforms, only people and organisations who meet strict membership and use requirements are allowed to benefit from the services of the platform. Breaching of terms of service can lead to exclusion or banning from the platform. At an organisational level, these more closed agricultural digital platforms are owned by the private sector, public sector, or third sector organisations that develop and operate them, with no broad-based equity ownership involving local farmers or other stakeholders.[158]

VIII. LEGAL STRUCTURES FOR GOVERNING DIGITAL PLATFORMS IN AGRICULTURE

58. *Design of the legal architecture.* In designing the legal architecture of a digital platform operating in agriculture, many approaches are possible with different allocations of regulatory, monitoring powers and dispute resolution mechanisms as discussed in the subsequent sections.

59. *General models.* In terms of general structure, two main macro-models can be identified:

(a) purely contractual;

(b) organisation-based.

A. Purely Contractual Platforms

60. *Peer-to-peer governance.* In the case of a purely contractual platform, there is no separate platform operator, and the digital platform is governed purely on a peer-to-peer basis between members and/or users of the platform. The governance of the platform may be more centralised or decentralised, depending on the technical and operational features of the platform (e.g., some members may have more control rights over the digital platform than others).

61. *Contractual relationships.* In terms of legal relationships, there is:

(a) The membership contracts between each participant which establish the rights and duties of each member and/or user to each other and the entire 'community'. In their turn, the membership contracts can have either a bilateral or a multilateral dimension. In particular, it is possible to have:

  (i) platforms as networks of linked bilateral contracts (with a strong ultra-vires dimension supporting the community setting of the digital platform); or

  (ii) platforms as a multi-party contract, i.e., as a common contractual infrastructure setting the rules governing the community and the membership.

(b) A contractual relationship defining the management of IP (content policy).

158 https://ccsniam.gov.in/img/Benefit-of-eNAM-process-to-Farmer-A-Study.pdf.

(c) A digital service contract between each platform user (including member and, if allowed, non-member users), defining rights, duties and liabilities.

(d) A third possible relationship in the case of purely contractual marketplace platforms relates to the contracts between suppliers and buyers. The opportunity to include this third layer needs to be considered because it is required to assess to what extent this contract differs from an equivalent contract stipulated outside the platform and, in a different realm, how the membership agreement impacts such contract (e.g., in case of breach of duties provided under the membership agreement).

62. *DAOs.* The emergence of Decentralised Autonomous Organisations (DAOs), leveraging the affordances of blockchain technology, have enabled the creation of purely contractual digital platforms. A DAO is a type of internet-based organisation that makes recourse to rules translated into computer code to coordinate people and resources. Notably, as a DAO is directly governed by members and/or users of the DAO on a peer-to-peer basis, a separate platform operator is not technically required to coordinate people, resources, or updates to the DAO's software. Instead, the DAO is governed through explicit and implicit agreements between DAO members, users, and/or software developers. While there are not many DAOs in the agricultural sector, a few have begun to be built[159] [160]. There is also growing recognition that DAOs may be used for international trade, to reduce costs, increase transparency and involve multiple stakeholder groups in network governance.[161] DAOs have also been used as a financing vehicle. While many DAOs describe themselves as being participatory and egalitarian, DAOs do not always operate in a fully decentralised manner. A group of people (*e.g.*, the initial founders and/or developers of DAOs) may maintain control over the DAO by, for instance, holding a significant share of the governance tokens of the DAO. In addition, some jurisdictions, notably in the USA, have held that certain DAOs are unincorporated legal entities with unlimited liability, thus generating some level of centralisation as well as creating implications in terms of members' liability, tax duties, etc.[162]

B. Organisation-Based Platforms

63. *Organisation structure.* The platform operator can, in some instances, be an organisation that can be joined by platform users, blurring the separation between the first and second layers of collaboration described previously. Platform ownership and control is defined within the organisation in accordance with its general structure and internal rules.

64. *Legal structures.* The organisation may be legally structured in different ways, including as:

(a) foundations and similar non-profit organisations;

(b) associations;

(c) for-profit companies;

(d) cooperatives;

(e) consortium companies;

(f) trusts; and

(g) general partnerships163.

---

159 https://devpost.com/software/agrodao-a-dao-community-for-farmers-zp5gt2.

160 https://www.nature-dao.com/.

161 UNCITRAL, Legal issues relating to the use of decentralised autonomous organisations in trade: Note by the Secretariat, 28 April 2025, A/CN.9/1225, para 9.

162 UK Law Commission UK 2024: 13.

163 UK Law Commission UK 2024: 51ff.

65. *Contractual relationships.* In terms of legal relationships, there might be:

(a) A separate digital service contract between each platform user and the platform operator, setting out the rights, duties and liabilities of the users, and if applicable the link with the membership agreement.

(b) A contractual relationship defining the management of IP (content policy).

(c) A third, possible relationship in the case of market-place platforms relates to the contract between platform users, such as buyers and sellers. The opportunity to include this layer needs to be assessed because it requires assessing to what extent this contract differs from an equivalent contract stipulated outside the platform and, in a different realm, how the platform membership agreement impacts on such contract (e.g., in case of breach of duties provided under the membership agreement).

66. *Examples.* A data platform operated by a non-profit cooperative may, for example, have set of three different legal documents regulating its operation: (i) the bylaws (on membership, managing bodies, income distribution); (ii) the membership agreement; (iii) the agricultural data use Agreement (about how agricultural data is stored, used and shared). Additionally, the cooperative can enter an information sharing and an information marketing agreement with any person patronising the cooperative. These agreements can have different content, such as the gathering, handling, organizing of data related to the patron's farms, operations, product output; the amount of patron's data which can be disclosed to third parties and/or limits to the persons who can access the data; sharing of patron's data with lenders, governmental agencies, crop insurers.

IX. REGULATORY AND MONITORING POWER WITHIN DIGITAL PLATFORMS IN AGRICULTURE

67. *Participation in regulation and monitoring.* It is possible to distinguish between more and less participatory models of regulation and monitoring within digital platforms. In many commercial digital platforms, there is minimal to no involvement of members and users in the governance of the platform, with decisions ultimately being made unilaterally by the operator of the platform and its employees (*e.g.*, administrators, moderators). In the case of less participatory digital platforms that offer services, such as booking platforms for hiring tractors, the party contracting out tractors to smallholders can use a GPS monitoring device to supervise how their tractor is being used. This is an example of how smallholders can be regulated and monitored by digital technologies, often in a top-down, hierarchical manner. There are, however, more participatory models in which decision-making powers rest with, for example, the members of the platform, the users of the platform, or both.

68. *Subsidiarity rule*. In a more participatory model, decisions might follow the subsidiarity rule by which every member maintains its own decision-making process for those decisions that are within its perimeter.[164] A democratically-governed local food hub would, for instance, set local platform rules, content policies, privacy policies, and codes of conduct as it falls within their perimeter of authority.[165]

69. *Mutual peer monitoring.* In these more participatory models, rather than a moderator employed by the platform operator monitoring illegal behaviour, there will be a greater emphasis on mutual peer monitoring. As is now well known, many digital platforms with less participatory governance systems operate rating and reputational mechanisms to discipline members and users and produce technology-mediated trust. While these systems enable the generation and standardisation of interpersonal trust at great speed and scale, there are concerns about the control

164 Open Food Network 2021, clause 12.
165 Open Food Network 2021, clause 12.

and power exercised through them. More participatory digital platforms sometimes eschew the use of ratings and reputation systems, or make major changes to how they function to reduce these risks of “algorithmic management” from arising.

X. ENTRY AND EXIT WITHIN DIGITAL PLATFORMS IN AGRICULTURE

70. *Differences between early-movers and latecomer members.* There is no inherent difference between early-movers and latecomer members and users entering a digital platform, however the business model deployed may offer incumbency/first-mover advantages (e.g., preferential rates for early members). Moreover, the requirements for entering a digital platform may differ depending on how participatory or not a digital platform is. There are instances in which a potential member, such as a local food hub, can become a part of a participatory digital platform only if they agree to the community values of the platform and comply with a set of additional requirements.[166]

71. *Mediation in entry.* In less participatory digital platforms entry into the platform may be mediated by other actors. Take the example of a booking platform for tractors. While it is possible for farmers to directly hire tractors through this application, it might be common in some countries for booking agents to raise awareness about the availability of tractors and pool demand for tractors in a specific area. This is convenient for smallholders who may not have access to smartphones or trust digital transactions, but it creates an additional layer of bureaucracy for using the digital platform and the additional cost of paying the booking agent a commission. That being said, a particular challenge of a relatively permissionless process of entry into a digital platform in agriculture is that there may be heavily skewed demand and supply during particular seasons. Smallholders may especially demand tractors in one season, far outstripping the supply of tractors.

72. *Community governance forum.* Different rules may apply to voluntary and involuntary exits from a digital platform, with the rules also being contingent on the actor being a member or a user of a platform.[167] For example, if a member wants to voluntarily leave a participatory platform, they might be required to publicly state this o and give reasons for their exit, before being removed. In addition, they might have to transfer (material or immaterial) resources related to the platform to other platform members.[168] There are also circumstances in which a member might be removed from the platform because they became inactive, violated licensing conditions or did not meet other commitments. The member might also be required to remove references to the participatory platform and shared branding from their products, services and website a.[169] In contrast, in less participatory digital platforms, members may simply cease to use a digital platform (*e.g.*, when it is off-season) or be unilaterally removed from the digital platform for violating the service agreement with the digital platform (*e.g.*, destroying the GPS that monitors use of equipment obtained through the platform).

73. *Exit.* When it comes to the exit of users, a user of both participatory and less participatory digital platforms can - as with digital platforms generally - just choose to not use the platform any longer. As there are typically no (or minimal) costs to simply using a platform, abandoning the platform or switching to another platform is a viable option. For enterprise users, however, a business may wish to delete an enterprise from the local platform.[170] In the context of many other commercial and less participatory digital platforms, the administrator and/or “moderator” of the digital platform

166 Open Food Network 2024.
167 Open Food Network 2021, clause 3.
168 Open Food Network 2021, clause 2.
169 Open Food Network 2021, clause 11.
170 Open Food Network 2022b.

is given the ability to suspend or ban accounts or remove content if the user violates the platform's terms of service or content policy.

XI. LIABILITY MANAGEMENT WITHIN DIGITAL PLATFORMS IN AGRICULTURE

74. *Liability implications.* Each type of digital platform has different liability implications, which are particularly affected by the conduct of the platform's members and users with one another as well as with the platform operator. In this section we consider how liability is managed differently in a more participatory digital platform, as opposed to a less participatory digital platform.

75. *Conflicts between platforms and members*. Conflicts between a participatory digital platform and its members are mediated or avoided by terms of service and applicable community guidelines. These terms can include, for example, the prohibition of uploading or posting content that is harmful, threatening, hateful or illegal; of transmitting materials that the person does not have the right to share; transmitting materials that violate IP rights of other parties; of interfering or disrupting the services provided through the platform; of impersonating other persons or of allowing usage of the account by others. Members may also be required to not use the platform in a manner that leads to the platform operator being implicated in the aforementioned prohibited uses and actions. [171]

76. *Liabilities and obligations to users and third parties.* In less participatory platforms, the platform may try to contractually shift the sole responsibility for any obligations or liabilities to users or third parties onto members (*e.g.*, through a services agreement). This will typically be accompanied by a liability indemnification clause and a liability limitation clause, to protect the platform operator from any form of damages arising from the activities of the members, business losses, or data losses.[172]

77. *Conflicts between platforms and users*. In the case of participatory platforms, a key option that the platform has is to terminate or otherwise restrict the account of a user in the event of a breach of an agreement between the users of the local platform and the affiliate. Specific procedures might be provided for in the terms of service, such as for example the need to notify the termination of a users' account or use of a service by specific means, the obligation to state the reasons for the termination, and offer the possibility to appeal the termination decision. [173]

78. *Indemnification and limitation of liability clauses.* To avoid the possibility of enterprise users of the participatory platform implicating local instances in any liabilities or harm, the terms may include an indemnity clause and limitation of liability clause. [174] These clauses, among other things, address liability risks that may arise between platform users, such as enterprise users and consumer users of a local platform.

79. *Agreements between platforms and users in non-participatory platforms*. Indemnification and limitation of liability clauses are also common when it comes to agreements between platforms and users of non-participatory platforms. In this case, the limitation may concern users and third parties and may cover different damage claims (e.g. direct, indirect, punitive). The terms and conditions of the non-participatory platform may establish the obligation of indemnifying the platform operator for claims made by third parties with regard to acts carried out by a user in connection to the use of the platform.

80. *Disclaimers.* In addition to the ability of digital platforms to deplatform users, a digital platform can seek to avoid liability for third-party content offered by users through the use of

171 OFN UK 2024, clause 3.

172 IFAD 2026 Banhji Rural Enterprise - https://banhji.com/terms

173 OFN UK 2024, clause 9.

174 OFN UK 2024, clause 8.

disclaimers. This may relate to the for example related to products, services or other types of content promoted through the platform via third party links.

81. *IP and licences.* Similarly, to avoid the breach of intellectual property rules, more participatory digital platforms may require members and users to represent that they are posting content that is lawful, in conformity with the IP rules that are applicable to them, and is in line with the licence they have with the platform to use software products.

82. *Restrictions on user-generated contributions.* Less participatory platforms also seek to prevent content from being posted on the platform that could violate the IP of third parties or breach the law in other ways. This might include, for example, restrictions placed on user-generated contributions, for example providing that by making available any contribution, the member or user warrants that they have the necessary consents and rights, that the contributions are not false or inaccurate or that they do not represent unauthorized advertising. The terms and conditions of these non-participatory digital platforms might also include contribution licenses by which the user, by making a contribution available via the platform, automatically grants a licence to the content to the platform itself.

83. *Liability management strategies.* Depending on the type of participation model, as well as the applications of the digital platform, smallholders may wish to draw on the above liability management strategies and clauses accordingly.

84. *Relevance of the organisational structure.* Finally, the organisational structure that "wraps" the digital platform - as opposed to the legal structure of the platform operator - may be relevant. For example, if the second layer of collaboration between platform users is deemed to be a general partnership or an unincorporated association by a court or public authority, the collaboration would typically not have separate legal personality. Specific default rules on certain key issues, such as who controls the organisation, who funds it and how, and terms of entry and exit, might be lacking. If this second layer of collaboration between users is deemed to be a general partnership, in many jurisdictions, the partners would by default be jointly and severally liable for the debts and obligations (*e.g.*, contractual liabilities) of the platform, as well as wrongful acts or omissions arising in the ordinary course of business of the partnership.

85. *Liability in the case of DAOs.* While the number of agricultural DAOs is currently insignificant, the fact that these platforms are centred only around contracts has meaningful implications in several respects, not only with regard to liability, but also access to credit, insurance policies, and the like. For example, if we consider liability issues, the contracts can provide for liability exemptions, penalty clauses, third-party liability limitations, etc. At the same time, it should be noted that usually it is impossible to completely carve out liability through contractual clauses. Additional issues concerning liability might arise from the fact that in some decentralised types of organisations (*e.g.*, some types of DAOs), the real identities of some partners might be unknown and that getting liability insurance can be problematic in the case of such a purely contractual, anonymous network.

XII. REMEDIES, DISPUTE PREVENTION AND RESOLUTION IN DIGITAL PLATFORMS IN AGRICULTURE

86. *Multiplicity of means available.* Disputes may be resolved in digital platforms through a variety of means. In less participatory platforms, dispute resolution can take the form of informal negotiation or mediation, followed by binding arbitration. Dispute resolution clauses might be included in the Terms of Use a platform and specify the grounds for activating a dispute resolution mechanism as well as the terms that govern the dispute resolution process.[175]

[175] https://hellotractor.com/terms-conditions/.

87. *Online dispute resolution.* Given the costs involved in pursuing arbitration or litigation, there is an increased use of online dispute resolution in many digital platforms. Online dispute resolution refers to the out-of-court settlement of disputes between businesses and consumers (e.g., failure to deliver goods and services) through the use of a digital platform. Online dispute resolution is a feature of digital platforms involved in the exchange of commodities[176] and the offering of services.[177]

88. *Court-like mechanisms of dispute resolution.* As part of the burgeoning legal technology industry, private actors have developed third-party online dispute resolution systems that can be used by digital platforms, without requiring the development of bespoke ODR systems. The features of such third-party ODR systems can differ and include, for example, court-like mechanisms of dispute resolution with randomly chosen jurors deciding upon a dispute. These systems are potentially able to incentivise people to resolve disputes, including small-scale disputes, in an honest and truthful manner. These third-party online dispute resolution tools may be used by digital platforms in agriculture to resolve disputes between smallholders and suppliers or consumers.

89. *Community meeting and online forum.* In participatory digital platforms in particular there may be a bespoke manner of resolving disputes that arise between community members, so as to avoid adversarial dispute resolution processes. For example, such platforms could provide that any tension should be discussed during community meetings or openly in a community on-line forum.[178]

90. *Mediation-oriented conflict resolution.* Such a mediation-oriented conflict resolution mechanism may be appropriate for digital platforms in agriculture that require regular, repeated collaboration between user groups (e.g., small-holders, suppliers, consumers).

176 https://pages.ebay.com/services/buyandsell/disputeres.html

177 https://www.oversightboard.com/

178 OFN UK 2024, clause 13.

DRAFT CHAPTER V

COMPARING AND CHOOSING LEGAL STRUCTURES FOR COLLABORATION IN AGRICULTURE

TABLE OF CONTENTS

I. INTRODUCTION

1. Choosing a legal structure for collaboration in agriculture involves consideration of multiple elements. This chapter provides guidance on the most relevant of these elements, particularly from the perspective of smallholders and agri-MSMEs.

2. Among the legal structures considered in this Guide, none is better than another for collaborating in agriculture. This Chapter does not aim to identify the best legal structure for collaboration. Instead, participants should consider the context in which they seek to facilitate and organise collaboration, identify factors that are particular to that context, and assess whether such factors may lead to preferring one or more options of legal structures. Each legal structure has its own characteristics and, even for the same activity, the differences in contexts, external political and market conditions, and the nature of the value chain, as well as legal, business and agricultural cultures, may lead to using different legal structures in different countries.

3. While there is considerable flexibility when choosing a legal structure, since each of the legal structures considered in this Guide can in principle be used for collaboration in agriculture, some structures may be better suited to addressing specific objectives or challenges. The Chapter therefore examines some of the questions and factors relevant to deciding whether one structure may be better suited than another to pursuing particular purposes or activities and addressing specific challenges.

4. Smallholders and agri-MSMEs are generally free to select among a range of legal structures for collaboration, including the ones considered in this Guide. However, State policies, sector-specific regulation, land tenure regimes, and tax incentives may channel or constrain those choices to varying degrees. Similarly, marketing structures, the standards and requirements of supply chain leaders, and the practices and expectations of creditors, may significantly impact the choice of a legal structure for collaboration in agriculture. Section I highlights the influence that such contextual elements may have on the selection of a legal structure for a particular collaborative venture in agriculture. Section II introduces guiding questions for choosing a legal structure for collaboration. The questions are meant to help participants in a proposed collaborative venture identify important attributes of their venture and understand how such attributes may point towards one legal structure over another, or towards a combination of different legal structures. Attention is paid not only to the advantages of particular legal structures but also to their limitations. Both are relevant factors that should be kept in mind of the context in which collaboration is being considered.

II. ELEMENTS INFLUENCING THE CHOICE OF LEGAL STRUCTURE FOR COLLABORATION IN AGRICULTURE

5. When choosing legal structures for collaboration, smallholders and agri-MSMEs may be influenced by, and should consider not only their own needs but also, various contextual and legal elements, especially if they operate in complex global value chains. For example, national legislators, local communities, chain leaders, creditors, data providers, trade associations, and other stakeholders operating at the national and international levels may play a significant role in constraining or incentivizing the selection of a structure through their norms, practices, actions or otherwise. The interests of participants in a collaborative venture do not necessarily coincide with those of external actors. As noted in the introduction, while external factors and actors may provide significant constraints, the participants ultimately remain responsible for choosing a legal structure within the bounds of private autonomy.

<u>*State policies and legal infrastructure*</u>

6. Collaboration may be voluntary, incentivised or coerced. Collaboration may not always be a choice: the need to collaborate can derive from or find its origin in a legal rule and be imposed by

the law. Many examples of regulatory requirements may influence the choice of structure ranging from taxation requirements to the introduction of mandatory sustainability due diligence requirements in global value chains. States can incentivise collaboration to promote growth that increases efficiency and competitiveness. Often State legislation defines specific legal structures for use in agriculture and to a more limited extent in agrifood. Agrifood supply chains have recently become the subject of legislative intervention influencing both horizontal and vertical collaboration. States may have different policies and priorities, and for the same type of collaboration different legal structures may be adopted within the value chain for the same activity. For example, processing coffee may be done on the basis of contract between the farmer and the processor or by creating a company between them.

7. *Private autonomy versus agriculture-specific constraints and incentives*. Reasons for which countries may adopt a more or less sector-specific approach regarding company legal structures for agricultural enterprises relate, amongst others, to the political economy, to land law, to the relative importance of smallholder farming, to the level of effective or desired integration in global markets, to food security, to environmental stewardship, and to conceptual understandings of the nature of agricultural activity within legal traditions. Often, the more a country treats agriculture as a market activity, the more it relies on general sector-neutral business law for structuring agricultural activities. Conversely, the more a country considers agriculture to be a strategic social and economic sector, the more it embeds agricultural policy in organisational law and the more significant is the influence of public law on how agricultural activities are structured. This tends to reduce private autonomy in choosing a legal structure for operating in agriculture, since choice is more constrained or channelled within a legal and regulatory framework that may favour or incentivise certain legal structures over others.

Participants' needs

8. Participants' needs in collaborative ventures may differ depending on the activities performed. For instance, collaborative legal structures among agricultural producers may reflect different needs from those of the processing and distribution industry: participants may need a collaborative legal structure that enables them to define the rights and duties of participants by considering their different roles within the value chain. In such case, a multiparty contract may more easily accommodate such differentiation than the cooperative structure, in which members usually have the same rights and duties. The latter approach may be more easily used among agricultural enterprises carrying on the same type of activity and sharing similar needs in relation to the collaborative project.

Supply chain leaders

9. The chain leader's objective of reducing transaction costs and improving suppliers' capacities results in both horizontal and vertical collaboration along its chain. Chain leaders may not only promote collaboration but also express preferences for one legal structure over another. The role of the chain leader in a global value chain is particularly relevant to the choice of legal structure. Not only does the chain leader define general terms and conditions of contracts, but it also contributes to defining forms of collaboration among the enterprises participating in the chain. This is usually the case for process requirements like environmental impact on products and communities that require collaboration among chain participants.

10. In a value chain where regulatory power is concentrated, it is likely that the choice of the legal structure for collaboration will be driven by the chain leader. In a decentralised value chain, where regulatory power is distributed, participants may enjoy a higher degree of discretion and a greater ability to choose the collaborative legal structure that reflects their preferences. Collaboration may arise as a response to the need to counterbalance chain leaders' powers and to create a sufficiently strong combination of resources, skills, infrastructures, and products to access markets

and value chains. In this case, NGOs, financing institutions, municipalities and other "intermediaries" may play an important role supporting the collaboration. For example, farmers may collaborate to negotiate with the processor or the final buyer in order to get better prices or reduce their costs.

11. The needs of the participants may not coincide with those of the chain leader when the enterprises operate in a value chain. It may, for example, happen that participants would prefer a lighter form of collaboration, whereas the chain leader requires a more stable and structured legal form that calls for accountable relationships and reduces transaction costs.

Creditor practices and expectations

12. Among the third parties that may engage with collaborative legal structures are different kinds of creditors (e.g., suppliers of goods or services, data providers, parties who provide credit, banks, non-bank lenders, and providers of equity or debt capital). These different kinds of creditors, may, in turn, have different requirements on the optimal legal structure for the collaborative venture that they propose to interact with. Well-established financial institutions such as private-sector banks may have well-developed risk management practices that mean that they will only finance certain kinds of legal structures, whereas other kinds of capital providers (for example, a government-backed export development agency or a non-bank private credit provider) may be less risk-averse and more willing to extend financing to legal structures that a bank would not finance, or on terms and conditions that a traditional bank would not offer given the risks associated with the legal structure in question. In turn, some suppliers, for example trade creditors who supply inventory in exchange for payment within 30 days, may have a much higher tolerance for risk and be more willing to engage with a collaborative venture regardless of its legal structure because they do not seek to take security in anything other than the inventory being supplied. Other kinds of suppliers (e.g., data providers), however, may be concerned about the entity they are dealing with and who has legal rights over the data provided to it, and may therefore have developed preferences with respect to the kinds of legal structures with which they engage with.

13. Differences may also arise depending on whether the creditor, lender or capital provider is being asked to provide long-term financing to an entity engaged in an ongoing collaborative venture or is instead being asked to finance specific stand-alone projects, since this too may have an important impact on the nature of the assets that the capital provider can look to as security (e.g., the assets of the collaborative venture as a whole vs. assets that have been or will be segregated for purposes of a specific project). Whether the collaborative venture is a formally-recognised entity with a separate legal personality capable of owning its assets in its own name, and whether its liabilities are distinct from those of the parties that have set up the collaborative venture will also be of particular interest to third-party financing sources. Institutions that provide capital may also be interested in monitoring, designing, or being involved in aspects of governance that ensure the effective achievement of the collaboration's purposes, which, in turn, can affect the economic viability of the venture and return of capital. This is especially relevant when the venture is aimed at pursuing specific objectives such as sustainability goals that require strict compliance and controls throughout the value chain.

14. Similarly, when a group of producers seek financial resources for a common project it is likely that the institution providing financing (e.g., by way of a secured loan) will prefer dealing with an organisation rather than with a group of producers who have concluded a multiparty contract. The reduction in transaction costs involved in dealing with one entity instead of multiple parties is also accompanied by the ability to deal with an entity whose assets and liabilities are separate from that of individual participants. Asset partitioning, and the segregation of those assets in a way that ensures that they are only available to the parties providing financing to the entity (rather than the individual participants' personal creditors), can be very important to parties providing financing, and it is therefore highly relevant in the choice of legal structures. Hence, in general the choice of a contract-based legal structure is more likely when the activity has only internal effects, whereas the

choice of organisational forms governed by a statute that confers a distinct legal personality and provides for clear boundaries between the organisation's assets and those belonging to participants is more likely when the group needs to interact with third parties who insist on financial accountability based on asset partitioning.

15. Different kinds of creditors, financial institutions, government agencies, and public or private funding sources may therefore have developed guidelines with respect to the form of collaboration with which they will interact. It is important to consider potential funding sources and their preferences when deciding on which legal structure to adopt.

III. GUIDING QUESTIONS FOR CHOOSING A LEGAL STRUCTURE FOR COLLABORATION

16. A number of questions should be considered when choosing a legal structure for collaboration in agriculture. The first question is "why" the collaboration takes place and about "what". A third question is "how" the objectives can be achieved through collaboration and whether the objectives can be pursued through a single or multiple legal structures. Accordingly, another aspect to be considered is the relationship between, or the combination of, two or more legal structures. In that regard, consideration of the contextual framework of the collaborative legal structure is key and should be considered prior to, or contemporaneously with, any comparative analysis.

17. *Focus of questions*. Set out below is a list of questions that could be considered when deciding on the legal structure that is best suited to a particular collaborative venture in agriculture. The questions are suggested to guide smallholders, agri-MSMEs and their advisors as they deliberate over selecting, designing and eventually combining one or more collaborative legal structures. The questions focus on primarily legal aspects relating to the selection of a legal structure for operating an agricultural enterprise. While non-legal variables must undeniably be considered when starting an agricultural enterprise and are likely to influence the selection of a legal structure, they are not discussed in this Chapter as such an exercise goes beyond the scope of this Guide (see Preface, para. […]).

18. Circumstances are specific and can also change. A decision on the optimal legal structure is a matter of judgment that requires an assessment of the relative importance of the issues identified below. The weight placed on each consideration will vary from one collaborative venture to another. This relative weighting will help decide on the most appropriate legal structure for a particular collaborative venture. It may also help participants evaluate the option of using more than one legal structure simultaneously for achieving different purposes. It is important for participants to keep in mind that the relationships among themselves, the venture, and the environment in which it is conducted will change over time, and that the legal structure they choose for their collaboration will itself need to adapt to such evolving circumstances.

19. *Periodic consideration*. The list of questions below is not exhaustive. However, it identifies factors that are central to deciding which legal structure is best suited to a given collaborative venture. Each of these questions should be considered from the outset when analysing the most appropriate legal structure. The questions should also be revisited from time to time to ensure that the legal structure chosen continues to best suit the collaboration and how it is evolving.

A. Purpose of collaboration

<u>Question:</u>

What is the purpose of your collaborative venture?

Discussion:

20. As noted in the Introduction to this Guide (see paras. […]), collaboration can relate to different activities: exchange of information, exchange of goods and services, purchase of inputs, sale of outputs, use of common material and non-material resources, interaction with third parties within the chain, sharing a common trademark, data collection, common management of data, implementation of common standards (environmental, social, safety of products and processes), sharing some of the production activity, engaging in research, etc.

21. The choice of legal structure is influenced by the complexity of the project. Collaboration may be limited to one activity or encompass multiple aspects, giving rise to various projects among the same or partially different enterprises. Each activity may require a specific legal structure and, if more than one activity is part of the collaborative endeavour, different legal structures may be suitable. The choice is the result of a compromise among the various activities.

22. Usually, contracts tend to be used for simpler forms of collaboration, whereas organisational entities are deployed for more complex and longer-term projects in which more resources are invested and shared. However, multiparty contracts can establish a governance system to manage multiple complex projects even in multijurisdictional contexts. Freedom of contract naturally allows for the use of contracts even for complex projects and that of companies or cooperatives for simple ones. Higher complexity and longer duration would suggest the use of organisational forms, but that should not rule out the use of multiparty contracts either instead of, or in addition to, these organisational forms.

23. Therefore, the choice of legal structures for collaboration depends on the purposes and duration of the collaboration, as well as the level of trust participants have when they begin. Both the choice of legal structure and, within each legal structure, their specific features, are functionally correlated to different types of objectives, as further explained below.

Objective of profit and growth

24. A key factor in comparing legal structures is whether the objective of profit motivates the collaboration. The profit motive (or its absence) can shape both objectives and instruments of collaboration. Collaboration can be established to increase profitability or to pursue social objectives or both. Sustainability and the pursuit of environmental and social goals are compatible with all the collaborative legal structures covered in the CLSAE Guide. Many legal structures for collaboration usually have mixed objectives.

25. The profit-making objective or its absence influences the collaborative project, its stability and its end. A key factor is if and how profits are distributed. In multiparty contracts and even in companies, participants can decide that profits are to be reinvested in the collaborative projects. Alternatively, they can allocate profits to different projects and redistribute resources from the most to the least profitable ones.

26. Connected to profit, but not identical, is the objective of growth. Collaboration is often an instrument for agricultural enterprises to grow both individually and collectively. The path to growth may be internal or through collaboration with other producers or with enterprises located upstream (input providers) or downstream (processors). Especially at production level, the size of enterprises is usually rather small.[179] Often agricultural enterprises are family enterprises and collaboration,

---

[179] "There are over 550 million family farms worldwide, accounting for more than 90 percent of the total 608 million farms, and almost all of them are smaller than 5 hectares. Collectively, family farmers produce 80 percent of the world's food in value terms, and their produce supports healthy, diverse and culturally appropriate diets". For more information, see: https://openknowledge.fao.org/items/9d32c24b-9442-4291-a8b6-3181a6e05174

including digital collaboration, is a necessary condition for these smaller actors to access national and international markets.

Objective of technological innovation, data collection and management

27. The choice of legal structure may be influenced by the degree of technological innovation that characterises the collaborative project. The use of technology may concern the process of production or the environmental protection of common resources like water and air where farming occurs. Collaboration may be limited to data sharing or data collection, and management can be instrumental to a more complex collaborative project.

28. Data has become strategic resources in agriculture. The legal structures for collaboration used in agriculture may depend on the objectives of data collection and management. Collaboration may be limited to data collection or may integrate data gathering into a more complex collaborative project aimed at developing new techniques for farming or processing. Artificial intelligence requires a larger amount of data than digitalisation of agricultural production. Hence the breadth and duration of collaboration differ when using artificial intelligence. Both input providers and large buyers promote the collection of data for the purpose of generating artificial intelligence. Data collection and management require costly technologies and complex management. Legal structures may change depending on whether the use of data is centralised or decentralised.

29. Depending on the chain, governance collaboration may include all the chain participants or only a group thereof. In instances involving centralised governance of the chain, data may be acquired through contracts and then managed by companies owned by the input providers or by the large buyers at the end of the chain. In instances involving decentralised governance there might be a company with all the enterprises in the chain participating, and data purchase may occur through contracts between the company and the members. In the case of cooperatives, the process of data collection and management usually occurs entirely within the organisation. The example of farmers' cooperatives formed to collect and manage their data suggests that organisational forms may be better suited to this task than contracts.

Objective of access to markets

30. Access to markets, including local, regional and international markets, is a relevant driver of collaboration. Access may require large volumes, higher standards to be certified, and use of process technologies. Collaboration to increase the quantity of supply differs from collaboration concerning process standards. The objective may be pursued by different types of collaborative projects depending on what are the main factors that condition market access. Importers or chain leaders located in the market of destination may play a significant role in the selection of the legal structure.

Objective of facilitating research

31. If collaboration mainly concerns research, the legal structure needs to define how background knowledge is protected, how costs of research are allocated, which type of investments are needed (whether financial or in the form of human capital), who bears the risk of failure, how rights over new knowledge are shared or assigned, whether new knowledge is accessible within the collaborative community and possibly beyond, and whether and how profit from the commercial use of knowledge can be distributed or should be reinvested.

32. One of the key issues is the use of research and, in case of termination, how the results are distributed. The different ways in which assets may be distributed upon termination may influence the choice of the legal structure of collaboration. If, for example, the research results in a patent, the parties need to define how the patent will be used, and who will have rights with respect to the patent, after the collaborative project ends.

Objective to share resources

33. Collaborative projects may require the use of shared resources or may operate without shared resources. The use of shared resources to collaborate is a key factor in selecting the appropriate legal structure. Sharing resources has become a very relevant factor when developing collaboration. It requires the definition of a property regime concerning the use of the resources and the possibility to transfer ownership or license their use to third parties. Different ownership regimes result in different instruments to regulate the use of the resources by the party and the possibility to grant access to third parties.

34. The property regime, and consequently the liability regime, for the use of the resource is a key dimension when choosing among different legal structures. It is important to distinguish between sharing material resources like land, water, machinery, and sharing immaterial resources like data and know-how or licences to use technologies. Common ownership increases transaction costs, separate individual ownership increases agency costs. The choice of the legal structure depends on the preferences about the separation of ownership between members and the legal entity and the implications related to the destination of the resource once the collaborative project ends. Immaterial resources, especially knowledge and data are hard to keep separate and are more likely to fit with a collective ownership regime.

35. Multiparty contracts normally envisage collective ownership apart from cases with ownership vested in a single or a few participants but with the others having rights to use; companies and cooperatives may allocate ownership to the separate legal entity. When ownership is allocated to a separate legal entity participants can regulate its use via agreements.

36. Other factors relevant to the choice are the number of participants involved in resource sharing, the limitation of the resource's use to the participants only, or the possibility that third parties not involved in the collaborative project may use the resource, and the necessity to protect the resource from potential interferences by third parties.

37. Shared resources may also be connected with limited or unlimited liability. The choice of ownership model of the resources should be correlated with the desired limitations on liability. This limitation of liability characterises limited liability companies and cooperatives, as opposed to partnerships and multiparty contracts, which are normally characterised by an unlimited liability regime. Hence the desire to protect shared resources may lead to the choice of an organisational structure that provides for an entity that will have its own distinct assets and liabilities. However, there are instruments that can allow some degree of protection even when multiparty contracts are used. The easiest way to combine the contractual form with limited liability of strategic resources is to create a company owned by the parties to a contract to manage the resources they put into the company. Other instruments like trusts and their functional equivalents can be used to protect the assets and the resources directed at the collaboration. Hence should participants have a strong preference for multiparty contracts, the objective of limited liability can be achieved with the creation of an organisation to manage common resources and limit liability.

Nature of contribution

38. The choice of legal structure may also be influenced by the correlation between the nature of contribution and decision-making power. There are different modes of contributing to the collaborative project. Participants can contribute financially; they can provide goods or services or work. A collaborative project usually seeks to have some correlation between the level or quality of participation and decision-making power: i.e., the stronger the participation, the greater the decision-making power. The company model usually correlates the share of individual power with the value of the contribution. A key factor is the allocation of decision-making power between the members and the board. In multiparty contracts, parties can decide to have a single criterion based

on the contribution, financial and non-financial, or the level of participation, or multiple criteria, if they want to incentivise active participation but they need resources to establish the collaboration.

B. Number of participants

Question:

Does the number of participants influence the choice of legal structure? How many participants will be in the collaborative venture initially and will they all have a similar role, or will there be different types of participants?

Discussion:

39. *Number and role*. Consideration of the initial number of participants in a collaborative agricultural venture, of their expected number over time, and of the role that each participant will have in the venture, may help guide the choice of a legal structure for the venture. The following example illustrates this.

40. Four smallholder farmers operating their farms as sole proprietors wish to collaborate in order to acquire and share expensive machinery for harvesting their crops, namely a motorised thresher. They are open to one or two other neighbouring farmers joining their arrangement in the future should they become interested but not more since too many users of the thresher would overly limit access to it. The four farmers plan to acquire the thresher jointly in order to share its use, as well as the responsibilities relating to storage, maintenance, and repair of the equipment. Given that the financial means, the size of acreage, the nature of the crops, and the technical skills of the four farmers diverge, the duration of use of the thresher, responsibility for its maintenance and storage, and the financial contributions towards its purchase and repair will be allocated based on needs and capacities.

41. In this example, the initial number of participants is small (less than ten), and is expected to remain small due to the nature and objective of the collaboration (e.g., facilitating acquisition of the equipment while ensuring sufficient use of it), and the role of each participant in the venture is similar albeit not identical (e.g., they will all use the thresher and make financial and/or in-kind contributions to acquire and maintain it). Considered together and independently from other characteristics of the proposed venture, the small number of participants (both initially and at a later stage) and the similar roles of the participants in the venture both point towards the multiparty contract model; alternatively, a partnership may be well suited to serve the needs of the farmers and of their collaboration. Reasons for this are explained below.

42. *Multiparty contracts*. In principle, the number of participants does not affect the choice of whether to form multiparty contracts, as these can be concluded by a small or large number of parties. The choice is more dependent on the objective. A contract or agreement to share information can be concluded by a large number of participants. A contract or agreement to comply with an environmental or safety standard can be concluded by a large number of participants. A contract to process crops or to organise packaging can be concluded by a medium number of participants. Once the multiparty contract is chosen as the vehicle for collaboration, the number of parties to the contract largely affects the governance structure, the definition of rights, duties and responsibilities, and the rules on entry and exit.

43. *Cooperatives*. Where there are many participants, especially many small producers with similar interests, the cooperative legal structure may have advantages. Cooperatives are known for fairness and institutional stability; the primary focus is to promote the interests of members (who generally have similar interests), and growth is possible with (democratic) control.

44. *Single-member businesses.* A significant proportion of farms and enterprises operating in agrifood systems are individually owned and, in several jurisdictions, operate informally. For many such enterprises, formalisation into a single-member business form is likely to be the first step towards participation and collaboration within agrifood value chains.

45. *Partnerships.* By their very nature, general partnerships arise from – and require – relationships of mutual trust. Trust is easier to build and to observe when behaviour is visible and assessable, and it is more easily reinforced where there is a shared understanding of values, strategies, and challenges. These conditions are generally present in ventures involving a small number of participants who have the same kinds of roles and responsibilities. In ventures with high levels of mutual trust, the need for formalised or complex governance structures is reduced and trust may act as a substitute for such structures. This can be advantageous in smaller-scale projects such as the one described above. This advantage also explains, at least in part, why general partnerships are prevalent amongst small-scale, family-run and/or early-stage agri-businesses.

46. *Corporations*. That said, due to the very fact that partnerships rely heavily on trust, they are not easily scalable, often requiring increasingly complex agreements between the partners in order to do so. This should be kept in mind from the outset when assessing the most suitable legal form for a given project. In the example above, if the farmers believe they may expand and/or diversify their operations in a way that is likely to require more participants in the venture, other legal structures such as the shareholder corporation may be more appropriate. The corporation would also be better suited to ventures where the type of participation varies. In ventures where participants are divided between those who finance the venture with an eye to getting a return on their investment and those who actively participate in the venture, limited partnerships may also be considered.

47. *Digital platforms*. The participants in a collaborative legal structure may decide to create a digital platform because they wish to reach and engage with a large number of people and organisations as members or users, but for very different reasons. An agricultural company may deploy a non-participatory digital platform simply so that its large base of consumers can instantly receive information and updates about machinery they purchased from the company in a variety of automatically translated languages (e.g., a tractor). By contrast, an agricultural cooperative may deploy an egalitarian, participatory digital platform to enable its large body of cooperative members to communicate with each other and the cooperative outside of formal meetings.

48. There may be exceptional situations where an online community, for example, a disparate group of smallholders who met online through a social media platform, may wish to formalise and regularise their collaboration by adopting one or more legal structures. They may wish to do so to own property (including intellectual property), to enter into agreements, to participate in legal proceedings, and for tax reasons. The number of participants alone will not determine the choice of legal structure(s) or even the need for a legal structure at all, since a simple platform like a bulletin board or online forum can be created without any legal structure and have thousands of members or users. However, if the collaborative venture requires more frequent online and offline interactions with members or users and third parties, requires the implementation of a business model (e.g., subscriptions, advertising) to keep up with web traffic, involves greater financial transactions that have tax consequences, or requires the development and/or ownership of intellectual property, then the online community is likely to adopt one or more legal structures.

C. Formation

Question:

Are administrative and managerial costs relevant for the choice of legal structure? Does flexibility with respect to the time and money needed to establish, operate and scale up the venture matter?

Discussion:

49. Consideration of the time, cost, and administrative burdens involved in setting up, operating and eventually scaling up a collaborative venture in agriculture may help participants decide on the legal structure best suited for the venture.

50. *Two aspects*. One aspect of this question relates to the time needed to set up a formal business association, which varies depending on the type of legal structure and the jurisdiction in which it is to be established. As noted in the recommendations given by many international organisations (such as the World Bank, the OECD, UNCITRAL, etc.), the time employed for business registration is a relevant factor in fostering formalisation; many countries are undertaking company law reforms to reduce formalities and time required for incorporation and business registration. A second aspect concerns the time and financial resources that the participants are able and willing to devote to establishing and operating the collaborative venture, and possibly scaling it in the future. These two aspects should be considered in conjunction.

51. *Multiparty contracts.* The time and costs inherent in the preparation of a multiparty contract depend mostly on the level of cohesion among the parties to the contract and the extent to which they have shared and agree upon the design of their collaborative venture. In terms of formality and legal procedures, these are normally either absent or relatively limited. Taking this into consideration, participants in a collaborative venture may wish to start their collaboration through a relatively basic multiparty contract and later consider the option to increase complexity, either within the contractual structure or by establishing a company or a cooperative.

52. *Cooperatives.* Formation of cooperatives can be a complex process because cooperatives may have a wide range of objectives, depending on the expectations/needs of individual members. It is therefore important to allow sufficient time and space (with guidance) for the initial brainstorming and development of concrete ideas, so that a shared vision can be developed and then formalised. This is essential so that the management knows how to steer the cooperative. The more successful this is at the outset, the better and more sustainably the benefits of cooperative activity can be realised. Nevertheless, start-ups are often supported by existing associations, which can help to facilitate the process of finalising the concept and highlight legal requirements that must be strictly observed when drafting the statutes of cooperatives.

53. *General partnerships.* In many jurisdictions, a partnership is very easy to establish and does not require filing documentation with the State. This can be convenient in situations where participants know each other well and where there is a high degree of trust. However, as the partnership evolves, with additional partners joining and the business requiring a more developed management structure, it may be necessary to prepare a partnership agreement. This is a contract which may be relatively simple for a smaller business but which can become complex and expensive to manage for a larger business with multiple partners.

54. *Limited partnerships.* Limited partnerships typically come into existence once documentation has been filed with the government since governing statutes usually condition the creation of a limited partnership on such a filing being made. While it is in theory possible to run a limited partnership without a written agreement between the members, in practice they will enter into a limited partnership agreement. As is the case with general partnership agreements, the simplicity or

complexity of the limited partnership agreement that is required will depend on the number and nature of the members and the scale of the business. Nevertheless, as with general partnerships, there are typically legal costs to be incurred in drafting, and subsequently amending, an agreement of this kind.

55. *Corporations.* Corporations come into existence once the required documentation, such as articles of incorporation, has been filed with the government. The complexity of the rules governing the content of the articles and the filing fees can vary significantly from one jurisdiction to another, as can the speed with which different governments issue articles of incorporation. While many jurisdictions have worked to reduce the burden associated with such filings, others can be more cumbersome and expensive to navigate. Regard should also be had to ongoing filing requirements, as corporations in many jurisdictions are required to make annual filings. These should be reviewed, as should the question whether there are filing fees associated with those filings.

56. *Simplified legal forms.* In many jurisdictions, an effort has been made in recent years to facilitate the creation of simplified legal forms that are not subject to the more cumbersome filing requirements (both initial and ongoing) that apply to legal forms such as corporations. Attention should be paid to whether a given jurisdiction makes such a simplified form available and the respect in which it has simplified matters. For example, some jurisdictions today provide that a simplified corporation need not have a board of directors and is exempt from some requirements that might otherwise govern the preparation of financial statements (e.g., the need for them to be audited).

57. *Digital platforms.* There is no fixed time period for creating a digital platform. On the one hand, it is becoming increasingly easy and inexpensive to create a simple digital platform, in some cases in a matter of minutes. Large, existing digital platforms can also enable interested individuals or organisations to launch a platform within their own platform "marketplace". On the other hand, gaining a sufficient number of users or members for the digital platform to be financially sustainable is more time-consuming and costly. Marketing of the digital platform itself can be expensive, as can be the offering of subsidies to have users or members join the platform. In the case of agricultural digital platforms, for instance those that support agricultural e-commerce or information sharing, there is also a need to build trust and support smallholders to accurately display information about their produce online. There may also be a need for the digital platform's technical features to be continuously updated, which also requires resources and expertise. In short, the relatively short time it may take to launch some digital platforms does not necessarily mean that it will immediately become a sustainable form of collaboration.

D. Ease of entry

<u>Question:</u>

How easy should it be for additional participants to enter the venture?

<u>Discussion</u>:

58. When contemplating what legal structure may best correspond to the needs of a collaborative venture in agriculture, it is important for the participants to reflect on the extent to and conditions under which, if any, the venture should allow new participants to join, since there are significant variations between structures. The degree of ease of entry and inclusiveness of a structure, or on the contrary the difficulty under which new participants — whether natural or legal persons — may join, affects who has control over who joins, growth models, the way the venture will be financed, and the level of mutual trust, to name but a few considerations.

59. A collaboration may evolve over time and require that additional participants contribute. Moreover, other enterprises may become interested in the collaboration later in time and seek entry

into an existing collaborative structure. Although all of the legal structures herein considered present some degree of openness towards new entrants, the ease and modes of entry may diverge.

60. Cooperatives. A key feature of cooperatives is the open-door principle, which makes it easy to join, provided this is in line with the cooperative's objectives, , and that the new member is able to use the services of the cooperative and is willing to accept the responsibilities of membership. No prior consent by the other members is usually required.

61. Partnerships. Partnerships typically require a high degree of consensus among members with respect to the admission of new partners (with unanimity often being the default rule, though this can typically be modified by means of a partnership agreement).

62. Corporations. Corporation law typically allows for a spectrum of possibilities ranging from a default position in which a board of directors is entrusted with the sole responsibility to decide whether and on what conditions new members may be admitted, to scenarios in which shareholder approval may also have to be obtained when required pursuant to a shareholder agreement.

63. Multiparty contracts. Multiparty contracts stand in the middle, with it being relatively simple for parties to regulate the entry of new participants through contract rules, but normally lacking a default "open door" principle. This means that, should parties not foresee any entry procedure, the contract will remain closed to new participants unless all preexisting parties agree unanimously.

E. Decision-Making

1. Distribution of decision-making rights

Question:

How does the distribution of decision-making power affect the choice of legal structure? Should all participants have equal say when making decisions together, or should voting rights depend on criteria such as the value of contributions, time spent, or others?

Discussion:

64. *Alternatives in decision-making power*. This question asks participants to think about the allocation of power among them with respect to the operation of their proposed collaborative venture. It asks them to think about how much weight they want each participant to have in the taking of decisions concerning the venture and the criteria or reasons on which this should be based. Do they want decision-making power to be proportional to capital input (alone or in conjunction with other criteria), or to the value of members' contributions, whether monetary or non-monetary? Do they wish that the allocation of decision-making power vary according to the issues to be decided upon? Do participants instead want decision-making power to be based on the nature of participation in the venture? Or is it fundamental that all members in the venture have an equal say?

65. *Considerations*. In order to best answer these questions and to consider which legal structure may best suit their needs, it is important that participants understand that:

(a) Decision-making power is correlated with value chain governance – in hierarchical chains, the decision-making power of participants in the collaborative project is limited;

(b) Decision-making power is a function of the balance between financial and operational contributions;

(c) Decision-making power is also highly dependent on whether financial resources are provided internally or externally, and a shift in where resources come from will significantly impact power dynamics within the venture; and

(d) Decision-making power is also a function of the distribution of liability – there should be correlation between decision-making power and liability.

66. *Equal power – partnerships and cooperatives.* If participants in a collaborative venture want to each have equal decision-making power irrespective of contributions, then legal structures such as partnerships and cooperatives should be considered. These models typically have as a default rule that each participant has an equal voice in decision-making. Cooperative laws do not normally allow for deviations from the "one member, one vote" principle in primary cooperatives. Exceptionally, plural voting rights are permitted within limits. Partnership and cooperative models are useful if the participants are willing to establish an egalitarian decision-making model. In the case of partnerships, there is a usual provision whereby, in the absence of an agreement between the partners deviating from the default position, the interests of all the members shall be deemed to be equal. As a result of this, all partners have an equal share in profits and the same voting rights. The partnership model, however, is subject to certain limitations related to the difficulty to reconcile equal voting rights (which provide control over the business entity) with uneven capital contributions. A partnership agreement should explicitly specify such proportionality, as parties contributing more capital generally demand a proportional participation in the business venture's benefits and decision-making power.

67. *Multiparty contracts*. Multiparty contracts also lend themselves to equal decision-making powers between parties since the contracting parties are normally conceived of as standing on equal footing vis-à-vis one another. Although equal power is the default, variations may be introduced based on freedom of contract. The contract can define tasks and allocate powers and responsibilities accordingly. A separate albeit linked issue concerns the modification of the initial contract; the default rule is that unanimity is required, which means that each party has a veto power vis-à-vis the others and may create imbalances when a majority decision is vetoed by a single party. This is why parties may choose to depart from unanimity and adopt different rules (e.g., qualified majority) to strike an appropriate balance between collective and individual power.

68. *Corporations.* Legal forms characterised by equal decision-making powers between members by default (e.g., partnerships) or by mandatory requirements (e.g., cooperatives) may be contrasted with legal forms where decision-making power varies between members dependent upon one or more elements (contribution, number and categories of shares, units, etc.). For example, corporate models may be useful for both large and small undertakings where the parties contribute different production factors (i.e., land, labour, money, etc.). The different types of contribution are generally asymmetrical in terms of value and relevance for the venture. Therefore, voting power is usually related to the contribution's importance to accomplish the ends set forth at the outset. Those who contribute more will naturally be inclined to demand voting powers that reflect the amount of their contribution. In a shareholder corporation, voting rights are attached to members' (shareholders') shares. Shares typically carry equal rights by default, thereby making members' decision-making powers proportional to the number of shares they own, which number is itself typically proportional to contribution to the venture. Corporate models are therefore well-suited to ventures where it is agreed that decision-making power should be a function of the value of the investment made in the business. This may be especially important to those who are providing significant amounts of capital to the venture. That said, where members contemplate the corporate model, they should also be reminded that the power imbalance at the shareholder level that derives from the logic of the corporate model can give rise to conflict. In these circumstances, corporate governance devices can be useful tools to protect the interests of minority shareholders against expropriation or abuse.

69. *Contributions and decision-making.* Adjusting decision-making power on the basis of financial contribution is not the only option; participants could also differentiate power based on their own

contributions to the collaborative venture from the operational perspective. Often collaboration does not depend on the amount of financial contributions, and parties' participation is more relevant to the success of the project. Decision-making powers and voting rights can be correlated with the level of effective participation and the performance by each enterprise. Parties to a multiparty contract may depart from the usual egalitarian rule and differentiate decision-making power based on financial contribution and/or participation (e.g., the amount of crops annually conferred). Similarly, members of partnerships and corporations also have significant autonomy, albeit in varying degrees, to depart from default legal rules regarding the distribution of decision-making powers among members. Such legal structures, alongside multiparty contracts, may thus be distinguished from cooperatives, where, by law, members typically cannot derogate from the principle of one member, one vote that governs the distribution of decision-making powers. Exceptionally, plural voting rights are admitted with limits.

70. *Cooperatives*. In a cooperative model, formal equality among members is fundamental to the structure's organisation and underlying purpose. By restricting each member's formal decision-making power, equality in decision-making power among cooperative members seeks, amongst other things, to prevent the exclusion of members. It is also meant to deter and/or defer the pursuit of short-term individual advantages in favour of the common interest. In a context where members' contributions may be limited and/or may not be a valid indicator of commitment, correlating decision-making power with each member's contribution appears inappropriate and may lead members to favour the "one member, one vote" model of cooperatives.

71. Furthermore, in some circumstances, including where all participants of a collaborative venture are all more or less de facto equal (in terms of education, influence or according to other criteria) and where the number of participants in a venture is relatively limited, equality in decision-making has been shown to promote integration and trust among the participants, as well as between the participants and the organisation.

72. An equal decision-making power model may be attractive to participants of ventures where production contributions such as labour, knowledge, and management are not monetarily comparable. This is often one reason why participants may opt to form a cooperative rather than a corporation, where contributions may be more easily assessed and compared. This democratic approach supports development: long-term membership is secured and collective investments (e.g., in quality, infrastructure) are legitimised. On the other hand, incentives might be limited since those who invest more resources are not rewarded with stronger decision-making power.

73. *Digital platforms*. Digital platforms can be programmed to confer equal voting power to members and users, but they can also be programmed to confer decision-making power according to members' and users' financial contributions to the platform. It is also possible for digital platforms to confer voting power based on other types of non-financial contributions (e.g., contributions of computing power) and facilitate voting systems beyond the well-known "one person, one vote" and "one share, one vote" models. In certain instances, the governance of the digital platform will be separate from the governance of the collaborative venture, and the voting power in each governance system will be distinct. Significant differences exist between platforms, even within global chains, for compliance with due diligence requirements. Agricultural digital platforms may wish to extend voting power to users or members for purposes of coordination. As discussed in the digital platform chapter, there can be social and economic circumstances where it is desirable for users to have decision-making powers. In such cases, the decision-making power may relate to the technical design of the digital platform or even the governance of the "second level" of collaboration (e.g., user-to-user) enabled by the digital platform.

2. Delegation of Decision-Making Rights

Question:

Does the distribution of decision-making power affect the choice of legal structure?

Should all the participants decide on everything together, or should one person or a smaller group of persons make day-to-day decisions?

Discussion:

74. While a highly consensual approach may be feasible when there are only a few participants in a collaborative venture, as the number of participants increases, it will often become more difficult to manage the venture on a highly consensual basis. Delegation to a smaller set of decision-makers will often be desirable or necessary as the number of participants rises.

75. Usually, the higher the number of participants, the more likely delegation of ordinary management will be. However, technology should be incorporated into the modes of delegation; the number of participants becomes less problematic if technology can be used, for example, to enable participants to vote electronically.

76. If the answer is that the participants do wish to delegate decision-making rights, such delegation is possible under most legal structures. However, in some legal structures, this can only be achieved by having all of the participants enter into a contract that sets out the powers that are being delegated and to whom. Other legal structures are created under statutes that specify the default position as a board of directors entrusted with significant decision-making power that is, in turn, entitled to delegate some of that decision-making power to a management team without the need for a contract. Other legal structures will allow such delegation with or without a default rule in place.

77. *Multiparty contracts*. In multiparty contracts, parties decide both whether to delegate and what is delegated. They may decide which types of decisions may be delegated to one or more contractual parties or even a third party, how to identify these parties, and whether their decision may be challenged or their power revoked. Since general contract law does not usually provide for such default rules, parties need to introduce *ad hoc* mechanisms into the contract to set and define the modes of delegation.

78. *Partnerships*. In most countries, a basic partnership model typically requires that if decision-making power is to be delegated, then all partners must enter into a partnership agreement that sets out details of the decision-making structure. There will be costs associated with preparing such an agreement, and with adapting the agreement should changes need to be made to the agreed-upon decision-making structure, which may be necessary when parties enter or exit the partnership.

79. *Cooperatives and corporations*. By contrast, laws governing a cooperative or a corporate legal structure typically envisage that the organisation will have a board of directors to which significant decision-making power is entrusted, and which is also permitted to delegate decision-making on many matters to a management team. No contract is required for a board of directors to delegate decision-making on day-to-day matters; instead, the board may simply pass resolutions delegating decision-making authority. Accordingly, these legal structures provide for more efficient ways to delegate decision-making. However, in the case of cooperatives, all key issues relating to the cooperative's objectives and the nature of the cooperative are monitored through a specific (external) cooperative audit, which assesses whether management's actions are in line with the cooperative's objectives.

80. If the answer to the question is that participants do not wish to delegate decision-making power, some legal structures may be less attractive because they require that all participants enter into an agreement to remove decision-making power from a board of directors.

81. *Corporations and partnerships*. For example, statutes governing corporations would require that members enter into a unanimous shareholders agreement that specifies what power is being removed from a board of directors and given to the members. By contrast, under other legal structures such as partnerships, no delegation of decision-making power occurs unless the partners so decide because the default position is that all partners participate in decision-making.

82. It is usual for the legislation governing companies to provide alternative business forms from which entrepreneurs can pick the specific type that suits their business needs, ranging from partnerships, to limited partnerships, to privately or publicly-held corporations. Participants can rely upon default housekeeping rules without incurring the expense of negotiating and contracting. Corporate governance devices, therefore, define decision-making rules at the level of company organs such as the shareholders assembly and the board of directors. As a general default rule, in the absence of any agreement between the participants, partners of a partnership are entitled to equal participation in decision-making (the same rule normally applies to profits and losses, which are equal, unless the partners have contracted differently). Accordingly, there will be no delegation of decision-making power unless there is a clause providing otherwise. The opposite regime is normally applicable for corporations, i.e., decision-making powers are vested in a board of directors as a default rule.

83. *Multiparty contracts*. In multiparty contracts, different options are possible [as indicated in Chapter I] from collective decision-making (where all parties have an equal right to participate) to highly centralised decision-making (where parties delegate the power to one party). Absent a specific mechanism of delegation, all parties retain the same decision-making power and, unless decisions change the original contract, the default is normally unanimity of the parties.

84. *Cooperatives*. In cooperatives, delegation to the board or management may become crucial. Professional delegation may be necessary if and when international marketing requires contract negotiations with international buyers, logistics and export management, compliance with certifications, and foreign currency and risk management. Members of cooperatives are thus relieved of functional responsibilities for which they might not be prepared. But this is not and must not mean de-democratisation. In fact, members should retain strategic control, at times through a supervisory board or supervisory council where the law allows for that and/or where the bylaws or statutes regulate the details of such a body, while operational complexity is transferred to expert bodies.

85. *Digital platforms*. In the case of digital platforms, many different configurations are possible for decision-making. In some cases, the platform is organised in a hierarchical way, and all the power is in the hands of the platform operator. In other cases, the configuration is egalitarian and, thanks also to the capability of digital tools to coordinate large numbers of people (e.g., in terms of e-voting), all the members have equal powers. These represent the two poles of a continuum, yet one often finds intermediate solutions, for instance, where platform members delegate power to a specific board or committee. Furthermore, in some digital platforms there might be a distinction between members and users; typically, only the first have managing powers. There may be circumstances where users of a digital platform are conferred decision-making powers, although it is not very common in the agricultural sector.

86. More specifically, digital platforms can enable both proxy voting and similar forms of voting delegation, as well as direct voting participation, by members and users. Participation in voting is not geographically constrained by default, as members and users with an internet connection and a digital device (e.g., laptop, smartphone) should be able to access a digital platform. While this participation can be designed to allow members or users to vote directly on a vast array of decisions,

including vetoing certain decisions, the experience of online collective ventures shows that the opportunity for direct participation does not always translate into actual meaningful direct participation. There are problems of voter apathy, time differences, and cultural differences, in addition to challenges presented by a lack of digital literacy. The design of the governance system of a digital platform could also lend itself to abuse, for example, by allowing certain members or users to gain significant voting power and abuse this power for their own gain. Delegates and governance facilitators can also be vulnerable to corruption.

Strategic and ordinary decisions

87. *Corporations.* The majority principle under most corporate statutes and applicable to many business entities allows the holders of a controlling interest to determine the outcome of decisions at the shareholder meeting level. This principle also allows majority shareholders to elect the board of directors, who in turn appoint the managers, and thereby control the day-to-day affairs of the company. This principle may give rise to opportunistic behaviour and abuse. In order to protect minority investors, a number of legal protections can be relied on, where available, such as fiduciary duties of directors and officers, and certain procedural mechanisms, such as the possibility of challenging decisions of the shareholders' meeting (to have them set aside) or the availability of derivative suits or remedies found in some jurisdictions, such as the remedy of oppression. Under a flexible legal framework (with enabling default rules), participants should be allowed to define governance provisions intended to prevent deadlock in the decision-making process *ex ante*. Minority shareholders should also be allowed to negotiate and set up qualified majority voting approval levels and veto rights for specific decisions (such as profit distributions, the setting-up of reserves, amendments to by-laws, mergers, dissolution, etc.).

88. *Multiparty contracts*. Even if the parties to a multiparty contract decide to delegate decision-making power, they may wish to retain certain highly strategic decisions under the control of all parties. If so, they would normally be able to limit delegation to non-strategic decisions, or to expressly exclude those strategic decisions from delegation. When multiparty contracts are project-based, decision-making can be divided by projects, leaving the management of general collaboration to the contract.

89. *Cooperatives*. In cooperatives, there is generally reservation of strategic decisions. It is essential that members retain control over fundamental decisions, such as long-term purchase agreements, major investments, cooperation with multinational companies, taking on external investors, changes of purpose, or restructuring. This protects against relationships of dependency, such as contractual clauses with long-term binding effects at the expense of the entire group, and also demutualisation/commercialisation at the expense of meeting the three-fold (economic, social and cultural) needs of the members.

90. *Digital platforms*. Again here, there is no standard model which can be applied to digital platforms: the need for unanimity, majority, specifical approval, etc., depends either on the legal structure of the platform operator (company, cooperative, etc.) or on the specific arrangements that shape the governance structure of the platform. In a blockchain-based digital platform, for instance, transactions such as payments can be executed on-chain subject to approval by the "signers" of a multi-signature wallet that holds the cryptocurrency of the platform. Signers refer to specific public blockchain addresses that are given the collective authority to execute transactions on behalf of the platform as a whole. This usually requires some form of simple majority, such as five-out-of-seven or three-out-of-five signers approving a transaction, rather than unanimity. The governance of the platform is not necessarily identical to the governance of the platform operator, with the signers of the multi-signature wallet potentially different from the office holders or representatives of the collaborative legal structure that launched the platform.

F. Contributions and financing plans

Questions:

How does the provision of financial resources influence the choice of legal structures?

How do you plan to finance your venture?

Discussion:

91. Some legal structures are more attractive than others to potential investors and to potential lenders. If participants are focused on a collaborative venture that may require external capital, such that the revenue that the business generates and contributions from participants will not be sufficient to satisfy the venture's capital needs, consideration will need to be given to legal structures that are attractive to potential lenders and potential investors.

92. As noted in the first part of this Chapter, different kinds of creditors, lenders, and capital providers can have different views on the optimal legal structure for the collaborative venture that they propose to interact with. Well-established financial institutions (such as private-sector banks) may have well-developed preferences and risk management practices that mean that they have a strong preference for lending to certain kinds of legal structures (such as corporations) because the money lent and the assets securing the loan will rest within the corporation, insulated from the shareholders' personal creditors. Other kinds of capital providers (for example, government-backed export development agencies or non-bank private credit providers) may be more willing to extend financing to other kinds of legal structures because they have a mandate to, or are simply prepared to, take on risk that traditional lenders will not. In turn, some suppliers (for example, trade creditors supplying inventory under simple purchase orders) may have a much higher tolerance for risk and be more willing to engage with a collaborative venture without seeking to take security in anything other than the inventory being supplied, with the result that they will be prepared to extend trade credit to virtually any legal form. Other kinds of suppliers (e.g., data providers), however, may have developed preferences with respect to the kinds of entities that they will engage with because they are concerned over who will have claims with respect to the data that is provided and developed.

93. Providers of capital may also be interested in monitoring, designing, or being involved in aspects of governance that ensure the effective achievement of the collaboration's purposes. This is especially relevant when the venture is aimed at pursuing specific objectives such as sustainability goals that require strict compliance and controls throughout the value chain.

94. *Separate legal personality*. Lenders and investors may prefer to lend or invest in a legal structure that keeps the venture's assets separate from those of its members, and that thereby makes it more difficult for the members' personal creditors to have recourse to the venture's assets. Lenders and investors will therefore often prefer to deal with a legal structure that has a separate legal personality, such as a cooperative or a corporation, where the assets available in the event of default on the loan or debt are clearly owned only by the separate legal person, with the members having no proprietary interest in the assets. By contrast, legal structures such as a basic partnership may find it more difficult to secure loans or debt financing for the partnership venture because the assets that form part of the venture are not as easily segregated and insulated from claims from the partners' personal creditors.

95. *Corporations and cooperatives*. Equity investors may also find it attractive to draw a firm distinction between personal assets and those of the collaborative venture, and they may also wish to ensure that they will not have personal liability for the venture's legal obligations. Equity investors will therefore often prefer a legal structure that offers them limited liability. The corporation is a legal structure that was designed to be attractive to equity investors, in part because it offers them limited

liability while also providing for a legal vehicle that has a separate legal personality. This is one reason why very large business organisations are often corporations, as the model greatly facilitates raising financing from a multitude of dispersed capital providers. Indeed, large business organisations that seek listing on a stock exchange and to raise money from a significant number of retail and institutional investors will often be set up as corporations. They will, in turn, be known as public corporations because they will have raised money from the public, and will then often be subject to additional layers of regulation from stock exchanges and securities commissions that have enacted detailed rules intended to protect investors. However, in some sectors such as the agricultural sector, other considerations such as equality of decision-making power will carry great weight and may lead business organisations to prefer an alternate model, such as a cooperative, that may be less effective at attracting equity financing but that is still effective in attracting debt financing, while allowing for participation in decision-making in a way that members will find more attractive because it is rooted in an egalitarian model.

96. *Cooperatives*. Agricultural cooperatives are often dependent on pre-financing of harvests, investment in storage, processing, certification, and bridging seasonal liquidity gaps. Debt capital is often necessary, but external equity investors may have an influence on pricing and delivery volumes and may deviate from the purpose of promoting members' needs. Therefore, in cooperatives, investors should not have voting rights or, if they do, their exercise should be restricted to issues related to their interests and be limited in number and not allow them to outweigh the voting power of the user members (principle of autonomy).

97. *Multiparty contracts*. Multiparty contracts are normally characterised by unlimited liability. However, under certain legislation, mechanisms may be provided to limit liability. The aptness of these mechanisms to attract lenders or investors depends on the size of the common or segregated funds securing financing and, more generally, on the parties' ability to ensure sufficient revenues from the collaborative venture and therefore capital restitution and eventually remuneration. Should the limited liability mechanism provide an insufficient collateral for external financiers, additional guarantees may be sought.

98. *Digital platforms.* The use of digital platforms also opens up new sources of financing for agricultural firms (including both cooperatives and companies), as these firms can tap into global investor networks that are available online. Both debt-based and equity crowdfunding, for instance, primarily use digital platforms to raise funds, convey information, and make disclosures. More recently, the use of a digital platform to issue crypto-tokens in exchange for certain financial and/or control rights over a project (e.g., access, profit-sharing, etc.) has also been a lucrative alternative financing arrangement. However, the use of crypto-tokens for financing purposes raises a number of legal and regulatory risks for the token-holders, office-holders and representatives (if any), and the digital platform as a whole. Increasingly, digital platforms are also being used by companies for direct listing and private placements, with the latter involving accredited investors. The degree to which investors can protect their investments, for example through asset separation, will also depend on the legal form the platform adopts or the legal form of the platform operator.

G. Participants' Liability

<u>Question:</u>

How does limited liability affect the choice of legal structure?

Are you prepared to share risks associated with the collaborative venture and be responsible for more than what you contributed?

Discussion:

99. When deciding to collaborate with others, participants should consider whether they are prepared to be exposed to unlimited liability if, for example, debts go unpaid, a contract is breached, or harm is caused to a third party in the operation of the venture. Participants may wish to limit their liability exposure to the value of what they are contributing to the collaborative venture.

100. Different legal structures provide different levels of liability for the venture's participants depending on the default rules in the laws. Multiparty contracts and partnerships tend to be associated with unlimited liability, cooperatives with limited liability, and companies may be associated with limited or unlimited liability depending on the type of company. However, laws may also incite cooperatives to go beyond limited liability through their bylaws in order to improve their creditability.

101. The main issue is the relationship between decision-making power and liability. Risks of abuses arise when parties are exposed to liability and/or risk losing their investment but do not have control over the venture's decisions. At a minimum, there should be a strong correlation between the distribution of decision-making power and exposure to liability. A party whose liability is contained may be prepared to forego some decision-making power but will nevertheless wish to ensure that its investment is protected from actions that disregard the interests of that investor.

102. Some legal structures governing collaborative ventures, such as partnerships, provide that each member participating in the collaborative venture is responsible for all of the venture's liabilities. For example, in a basic partnership, the partners are typically responsible for all unsatisfied obligations, and they may be sued individually or collectively for the full amount owing, whether this is pursuant to a contract or to extra-contractual obligations. Agreeing to participate in a collaborative venture set up using this legal structure therefore requires a high degree of trust between the members. If that trust is present, the risk of unlimited liability may be outweighed by other attractive features of the legal structure (for example, the egalitarian nature of participation in decision-making with respect to the venture and the considerable contractual flexibility to design the partnership in accordance with the partners' wishes).

103. Other legal structures insulate investors from liability, exposing them only to the risk of losing the value of their investment. The corporation is an example of this kind of model because its shareholders are not typically responsible for the corporation's debts and liabilities. Instead, the corporation typically has sole responsibility for those liabilities. However, this feature (which can be attractive to investors) must be weighed in the balance, along with consideration of the decision-making model found in corporate law, which typically entrusts significant decision-making to a board of directors, with shareholders only having veto power over only a handful of particularly strategic matters (e.g., a sale of the business).

104. Historically, it has been common to many legal structures to see limitations on liability be accompanied by limitations on the ability to participate in decision-making about the collaborative venture. This is often explained as being a function of the need to have specialised management that can make day-to-day decisions about the business, and of the resulting concern not to expose investors to liability when they are not the ones involved in this decision-making process. It is also said that providing limitations on liability in this way reduces the need for shareholders to invest significantly in monitoring the actions of a board and management. Corporate statutes will instead typically provide that boards and management are subject to legal duties to act in the best interests of the corporation. In some countries these duties will extend to acting in the best interests of shareholders as well. It should also be noted that the State's enactment of statutory provisions that restrict liability, thereby benefiting investors and making a jurisdiction more attractive to those investors, have also been deemed as justifying the State's involvement in regulating aspects of how

a corporation is governed. This may be contrasted with legal models that envisage little if any State involvement and that provide broad contractual flexibility.

105. The linkage between limited liability and reduced decision-making power is not, however, immutable, and countries with legal structures providing limited liability to investors may still provide those investors with various participation rights in decision-making. For example, some legal structures providing for limited liability may restrict involvement to no more than providing non-binding advice – for example, this is the case for "Limited Partnerships" in some countries (e.g., Canada and England). Alternatively, they may instead spell out a more detailed package of participation rights, which means that the venture cannot proceed with certain initiatives without securing investor approval – thereby effectively giving investors veto rights – for example, this is typically seen with the participation rights given to shareholders under corporate statutes.

106. It is worth noting that some jurisdictions have, on occasion, created legal structures that go even further and that allow a venture to combine limited liability for its members (whether or not they are financial investors) with very broad participation rights. For example, some countries, in addition to providing a basic partnership model, have created special partnership regimes that do provide partners with both limited liability and significant participation rights. This is not, however, an option that all countries provide, and so care must be taken to assess whether a given jurisdiction has in fact created a special legal form of partnership that allows for this possibility.

107. Yet other legal structures, such as cooperatives, seek to balance limitations on liability for members with a decision-making model that provides those members with participation rights on an egalitarian basis (e.g., "one member, one vote"), rather than on a basis that links participation rights to the value of the contribution that has been made to the venture (e.g., where the number of votes a member gets is tied to the value of their contribution to the venture). This is a feature that accounts in part for the popularity of the cooperative model in some countries. At the same time, it is worth noting that, as with the corporation, this model also typically envisages delegation of meaningful decision-making power to a board of directors and a management team – something that parties deciding on the most appropriate legal structure will need to consider.

108. With respect to this spectrum of liability and decision-making power allocation, multiparty contracts are quite different from limited liability companies. Indeed, they normally provide, as the default position, for (i) parties' unlimited liability for obligations arising from the collaborative activity, including when causing harm to third parties, and (ii) direct and shared control on decision-making for all parties. However, depending on applicable law, specific mechanisms to limit liability exist for certain multiparty contracts (e.g., network contracts in Italy). In addition, it is possible to set up limited liability companies or trusts to manage resources devoted to specific objectives (like research and patent management). In these cases, since limited liability is established, some checks and balances may be provided, e.g., in terms of transparency and accounting.

109. It should be considered that for small farmers, unlimited liability may be harmful because individual risks threaten their livelihoods; moreover, personal liability has a deterrent effect and prevents collective organisation. It is also possible that legal enforcement is often asymmetrical and large players effectively have better opportunities. Based on these considerations, cooperatives enable limited liability with simultaneous co-determination and protection against "individual disasters" through "collective risk sharing".

110. In the case of digital platforms, participants can be either members or users, and their liability might differ accordingly. In the case of members who have financial and control rights over the digital platform (e.g., over the technical design of the platform, electing representatives, returns based on patronage of the platform), the allocation of liability is a key concern. If the operator of the digital platform does not have a legal form, the members of the platform may be exposed to joint and several liability when entering into business transactions. To avoid this, individual members of the

platform may use single-member legal structures to attempt to limit liability for torts or contract breaches (e.g., failure to pay rent on property). Even if the operator of the digital platform does have a legal form, if the members of the platform decide to enter into business transactions with each other, they may wish to use one or more legal structures to formalise their new undertaking and benefit from separate legal personality and limited liability. It is for this reason that member-led platforms, such as cooperative platforms or decentralised autonomous organisations (DAOs), use collaborative legal structures in a variety of ways. The "treasuries" or collective funds some digital platforms have may also be used in the event the platform is held liable for tort, contract breach, regulatory violation, etc.

111. A distinguishing characteristic of digital platforms as a mode of collaboration is that many of them are open for anyone to access and use, even those who do not have financial and control rights over the platform. In other words, users can use the platform to collaborate in many of the same ways a member can. In the absence of a membership agreement, this necessitates regulating users of the digital platform through contractual agreements and intellectual property licences, which in turn creates liability implications for users. Otherwise, the digital platform can potentially be burdened with litigation (e.g., for IP infringement) and reputational damage. Indemnification clauses, limited liability clauses, and disclaimers are used to manage and allocate liability between platforms and their users.

H. Ability to bind participants and remedies

<u>Questions:</u>

How important is it that participants in the venture expressly commit to collaborate for the pursuit of common objectives, the execution of agreed actions and projects, and the respect of agreed standards in the interest of the parties/members or of third parties?

If a participant does not collaborate properly, what kind of measures should you favour? Internal disciplinary measures, recovery measures, institutional remedies, and/or legal actions?

<u>Discussion</u>:

112. A breach or non-performance may give rise to remedies when a legal structure was created under a governing statute. There can be statutory remedies available to minority members, such as a derivative suit (which may allow a member to bring an action on behalf of a corporation), or in some common-law jurisdictions, the remedy of oppression, which is designed to protect the reasonable expectations of participants, and which gives the court discretion to fashion a remedy that can range from damages to removing members or changing the board of directors (see Chapter III, paras. [169-171]). However, when an additional contractual agreement has been put in place, for instance a shareholders' agreement, remedies are also available under the contract.

113. Consideration should therefore be given to whether the statutory remedies that are provided will be sufficient or whether it is desirable to supplement them with contractual provisions intended to provide additional protection. Similarly, if the members wish to have access to remedies intended to discipline a member who is not contributing to the collaborative venture in the way that was expected, it may be desirable to address this in a contract (such as a partnership agreement or a shareholder agreement) since statutory provisions are often more limited in their focus, concerned especially with ensuring that the company or a majority of its members not take advantage of the minority.

114. Oppression is a remedy found in some countries' corporate law statutes that allows a shareholder, and sometimes other parties such as debtholders and creditors, to seek court intervention when their interests are treated unfairly by the company, its management, or a

controlling shareholder. In some of these countries, oppression has become a very developed remedial provision. It has proven to be a highly flexible tool that allows minority shareholders to pursue a tailored remedy that is designed to address the behaviour that is the subject of the complaint. Courts in these countries are given broad discretion to grant remedies that can range from orders awarding damages against the company or a majority shareholder, to orders that require the complainant's shares or debt to be bought out, directors or officers of the corporation to be removed, and/or that the corporation or majority shareholder cease engaging in specific conduct that is harmful to the complainant. In other jurisdictions where minority shareholder rights may be less developed and where the remedy has only been adopted more recently, it will, however, be important to assess both the breadth of the wording of the remedial power granted to the courts and the experience that the judicial system has with the remedy in that country. Judicial experience with the remedy may be more limited and this may have a significant impact on the ability of minority shareholders to obtain a satisfactory remedy in circumstances where the collaborative nature of the venture has broken down because one or more members are of the view that the corporation or another party such as a controlling shareholder is seeking to profit at the expense of the other(s).

115. It is worth noting, however, that even in countries with a highly developed version of the oppression remedy, there are limitations on the extent to which one can use the remedy to discipline other members. The conduct one seeks to discipline may not be the kind of conduct that the remedy was designed to address, or the range of remedies that courts have provided may be insufficient to deal with the conduct that is of concern. This is why parties may wish to consider supplementing the statutory regime with a contract among the members that is specifically tailored to the purpose and objectives of the collaborative venture and that is, therefore, capable of being quite specific about the forms of conduct that will entitle other parties to the contract to seek a contractual remedy.

116. The multiparty contract allows for contracts that bind all parties to the pursuit of the specified purposes and the compliance of collaborative duties. Whereas in cooperatives and companies, the determination of collaborative duties often requires relying on a mix of separate acts (e.g., internal regulations, general meeting deliberations, board decisions, shareholders' agreements, members' agreements, etc.), this determination most often represents the core part of the multiparty contract as a collaborative vehicle, without requiring additional agreements. When collaborative duties are defined in multiparty contracts or in shareholders' agreements, their modification normally requires a unanimous decision by all participants. However, when they are defined in general meetings or board decisions, different decision-making rules will apply, and these are often based on the majoritarian principle.

117. Cooperatives often have effective internal preventive and corrective mechanisms, such as the statutes, internal regulations, member obligations, decisions of governing bodies, warnings, suspension of certain rights, duties to remedy breaches, and exclusion procedures. These instruments operate through the membership and governance structure of the cooperative. Cooperatives can require members to comply with common quality, safety, traceability, and sustainability standards. Compliance with such standards should first be promoted through training, technical support, monitoring, and corrective measures. Sanctions should be proportionate and remain a measure of last resort. Depending on the legal system and the statutes, they may range from warnings, the suspension of certain rights, the rejection of non-compliant products, and possibly also damages, to exclusion from membership.

118. In the case of digital platforms, the ability to bind parties to protect the internal collective interests or external interests is firstly determined by the legal structure of the platform operator or the legal form(s) the digital platform adopts. An act to bind the platform company by a director or office-holder will be subject to the same rules as any other company. Shareholders who bring a derivative action against directors on behalf of a company for a breach of directors' duties can also do the same against directors of a company that operates a digital platform. Secondly, digital platforms enter into contractual and licensing agreements with various parties, including users of the

platform, which can, among other things, set conditions and restrictions on the reuse, re-publication, or sharing of the platform's content elsewhere. Traditional remedies are available for violating these contracts and agreements. Thirdly, particularly in instances where a digital platform has not explicitly adopted any legal form, members of the platform might contract with specific parties to carry out certain functions or roles to protect the internal collective interest or an external interest (e.g., to be an agent for a narrowly-defined set of issues, to be a governance facilitator, etc.), in which case those specific parties can bind the platform as a whole. In addition to the traditional remedies, it is possible to geo-block specific IP addresses and proactively ensure that new accounts or profiles are not created by a user banned for breaching their collaboration duties.

I. Ability to establish contracts with third parties

Question:

Does your collaborative project involve the establishment of systematic relationships with third parties?

Discussion:

119. Depending on whether the collaborative venture systematically requires the establishment of relationships with third parties to pursue its objectives, a need could emerge for a stable mechanism of representation of participants' interests in such relationships. For example, the venture could be aimed at selling participants' products in local or international markets, or to collectively buy inputs from strategic suppliers. While companies and cooperatives include, by definition, agency mechanisms within their structure, setting out principles governing who is in a position to bind the company or the cooperative, these mechanisms need to be specifically designed by the parties in multiparty contracts.

120. Indeed, in order to establish a collaboration with third parties, the parties to a multiparty contract will normally need to vest an agent with the power to act on their behalf (and in their name). To avoid the burden of doing so every time that such external collaboration is needed, mechanisms exist to define powers broadly for a wide range of acts within the execution of the multiparty contract. This is not a default for contracts, which means that parties wishing to have a permanent agent need to draft the multiparty contract accordingly and provide for that power therein, or to draft a separate mandate with the same legal effects. Cooperatives allow negotiations with international buyers on an equal footing as negotiations for cooperation with NGOs, certification bodies, development agencies, and access to funding programmes and guarantees. Cooperatives act as a collective market player that reduces transaction costs, pools negotiating power, and centralises legal responsibility.

121. Certain kinds of companies, such as corporations, can facilitate dealing with third parties because the governing statute confers distinct legal personality on the legal entity itself that is distinct from that of its members. This can greatly simplify interaction with third parties since they can focus on developing a systematic relationship with the legal entity rather than with each participant in the collaborative venture. For example, the legal entity will typically be empowered under the governing statute to enter into contracts in its own name with third parties, including parties with which it wishes to enter into a short- or long-term systematic relationship. Moreover, it will be in a position to amend the contract in question without necessarily having to get the approval of its members. Third parties may therefore find this a more efficient way to deal with the collaborative venture, and they may have a distinct preference for dealing with legal forms that have this distinct capacity to enter into systematic relationships. Consideration should also be given to the preference that third-party providers of credit or financing may have for dealing with a legal structure whose assets and liabilities are segregated from those of its members, as this too is an example of a factor that may influence the ease with which the collaborative venture can enter into systematic relationships with

counterparties that, as part of a developed relationship, would be expected to provide credit or financing.

122. Due to their "porous" nature and also to the possible co-presence of both members and users, digital platforms can facilitate the establishment of collaboration with third parties. Collaboration at a technical level, for instance in terms of data access, data sharing, and data portability, depends on the legislation applicable to the platform and internal policies of the digital platform. This may also evolve over time, with digital platforms that have open policies of data access, sharing, and portability becoming more closed or vice versa. Certain digital platforms that are considered to be online gatekeepers (e.g., larger messaging applications) face particular legal and regulatory pressure to be interoperable. Financial collaboration can take place both at the level of the digital platform operator (e.g., a venture capital firm invests in the operator) and at the level of the digital platform itself (e.g., a wealthy individual or organisation buys crypto-tokens that confer financial and control rights in the platform). In sum, digital tools can, in general, help in coordinating a large number of participants, including third parties who are willing to cooperate with the platform's members/users.

J. Ease of exit and removal of a participant

Question:

How easy should it be for existing participants to exit the venture or be removed from it?

Discussion:

123. Consideration should be given to the extent to which different legal structures facilitate or frustrate the ability of participants to exit a collaborative venture without needing the consent of other participants and/or a governing body such as a board of directors. The answer to this question will often depend on the terms of a governing statute and any contract that the parties may choose to put in place. For example, many corporate statutes envisage free transferability of shares and, therefore, easy exit for shareholders from the corporation, but then go on to allow the company to impose restrictions on transfer such that board or shareholder approval is required. Indeed, whereas with larger public companies, shareholders are usually free to exit when they wish to, in smaller private companies, it is often thought desirable to include provisions that give the board the ability to control who may purchase shares from a shareholder that wishes to exit. These restrictions may be inserted to ensure that the board is satisfied that any applicable regulatory provisions governing who may be a shareholder have been complied with (e.g., under applicable securities law), or it may simply be thought desirable to have the ability to block an undesired party from owning shares in the company (e.g., a competitor).

124. It is desirable for minority shareholders in closely-held companies to be allowed to exit under certain defined situations. Exit rights may compensate shareholders for the reduced liquidity that ensues from the lack of a ready market in which trade their shares (which obviously exists in publicly-held corporations traded in highly developed and liquid markets). If such exit mechanisms are not included in company law statutes, investors may be discouraged from participating in business ventures. In fact, the risk of being held hostage in a firm typically deters business parties from investing, particularly if their shareholding does not represent a controlling interest in the firm. Typical dissenter remedies, which are normally accompanied by appraisal rights, are granted to minority shareholders in the events of substantial corporate changes (such as mergers and split-ups), internal conflicts, and redomiciliation, among others.

125. Regard should also be given to the ease with which one can remove a participant. As noted in response to question H above, some governing statutes may only contemplate the ability to remove a member in limited circumstances and through the use of remedies that require going to

court, such that it may be desirable to put in place a contract that spells out other circumstances in which a member may be removed. This would be important in circumstances where members wish to be able to remove a member who is not contributing to the venture in the manner that was expected of them, especially where that behaviour does not involve actions that are sufficient to ground a claim under provisions in the statute that would give rise to a court-ordered remedy involving removal of the member. For example, a party may not be contributing the time and effort expected of them, and may even be involved in another venture in a way that suggests that there is have a conflict of interest, and yet this may be insufficient to constitute oppressive behaviour under a statutory provision such as the oppression remedy. In these circumstances, it would be important to have provided in a contract that a board or the other members may take steps to remove the member.

126. For multiparty contracts, the freedom of contract permits a significant range of regimes from highly open with free entry and exit to very strict with limitations for entry and exit. The choice is for the parties and there is high flexibility. Whereas the default rule usually does not allow a newcomer to enter a multiparty contract, parties may wish to leave the collaboration open to new entrants at a later stage. In this case, they may define stricter or more open requirements for entry and/or a procedure for admission. In parallel, parties may decide whether to also allow parties relative freedom to exit, as they wish, or to limit voluntary exit in respect of timing or requiring a due justification. The latter approach could be advisable to preserve the value of the collaborative venture and of the specific investments made for the pursuit of collective interests. Contract law will also normally enable multiparty contract parties to force individual exit by those who commit a fundamental breach; again, freedom of contract normally allows parties to regulate the excluding mechanism with regard to the reasons for exclusion, the procedure and the effects.

127. In cooperatives, it is important to provide low barriers to entry in order to include as many small farmers or other members as possible. A regulated exit process to maintain flexibility and secure the cooperative's existence should be established. Cooperatives enable gradual capital accumulation. The shared infrastructure remains independent of the retention/withdrawal of individual members and there is an avoidance of lock-in effects that would be counterproductive to the readiness of the members to cooperate, on which the entire cooperative endeavour rests.

128. Digital platforms have porous boundaries by default when compared to the other legal structures considered under the Guide with respect to entry and exit mechanisms; this depends partly on the fact that entry and exit might work differently depending if a member or a user is considered. For instance, the membership agreement between the digital platform and the members will have established conditions for entry and exit, potentially including probation periods for entry and a minimum time period before members are able to withdraw their membership interest. Moreover, the requirements for entering a digital platform may differ depending on how participatory or not a digital platform is. In the first case, different requirements and procedural steps can be provided in order to guarantee that some community values and organisational features are shared among all the members. Exit is usually managed through governance mechanisms, such as, for example, an online governance forum. In some open-source software systems (including public blockchain systems), members and/or users of a digital platform can exit from the platform by creating a near-identical copy of the digital platform and migrating to that platform. In less participatory platforms, entry into the platform may be mediated by other actors and exit might occur through the ban or suspension operated by the platform's administrator with respect to a member or user violating the terms of agreement or other relevant obligations. The purpose and function of the digital platform shape the participatory (or non-participatory) nature of the platform, as well as the conditions for entry and exit.

K. Termination and dissolution

Question:

If a member leaves or passes away and the collaborative venture terminates, what should happen? How do termination rules shape collaboration incentives overall?

Discussion:

129. The way collaboration ends – how decisions are made, how assets are distributed, and how parties and creditors are treated – directly affects whether parties are willing to collaborate in the first place. Dissolution plays a very important role in the choice of collaboration. Who decides, how the decision is made, and what the effects of termination and dissolution are vis-à-vis the participants and the creditors are all key questions to be asked by those who want to engage in collaboration.

130. Dissolution may be voluntary or involuntary, as caused by objective factors beyond the will of the participants (e.g., the collaboration becomes impossible due to the loss of land caused by a huge flood). When dissolution is voluntary, distinctions should be made in relation to the decision-making power to terminate. Usually in multiparty contracts and in close corporations, unanimity is required as the default rule. In open corporations and cooperatives, majority or qualified majority can instead make decisions.

131. The default rule can be changed by the participants, and a majority rule can be introduced. However, it is very important that the introduction of such a rule be balanced with rules that adequately protect minorities from opportunistic dissolution harming the collective interest and the interests of minorities.

132. Differences may concern the liquidation of assets. These distinctions are particularly relevant not only for the protection of creditors but also for the criteria to distribute assets in the liquidation process (e.g., when do voluntary creditors have priority, and what is the position of involuntary creditors?). Regard should be given to the position of creditors in the event of dissolution. Statutory regimes governing legal structures for collaboration will typically provide that all debts must first be satisfied before the remaining assets or capital may be distributed to participants.

133. Regard should also be given to the way in which residual assets or capital may be distributed once debts have been satisfied. An important distinction is between cooperatives and some of the other legal structures. Whereas in cooperatives the assets are not really distributed to the members upon liquidation, except for the amount of the paid-up membership shares at nominal value, some forms of distribution take place in multiparty contracts and companies.

134. The criteria to distribute assets in the case of companies will depend on the legal form (e.g., partnership or corporation) and whether it has been supplemented by contract. The default position for partnerships is typically equality, whereas in companies the default position is typically pro-rata distribution based on the number of shares held. It is, however, possible to deviate from the default position through contractual agreements such as a partnership agreement or a shareholders' agreement to provide for another basis for distribution. This would be more common in partnership agreements, where parties may wish to have the entitlement on distribution correlated with the value of the initial contribution relative to other contributions. For corporations, it is more common to have distributions correlate to the value of the initial contribution made in exchange for the shares issued. However, depending on the wording of the governing statute, it may be possible to deviate from this practice thorough contract so that factors such as subsequent contributions to the corporation (e.g., labour) are to be taken into account. In the case of an MPC, an equal division of remaining assets is normally pursued unless other criteria are specified in the contract. The latter may include consideration for the intensity of collaboration throughout the venture, the type of activity carried out, or of the know-how shared. These criteria may be correlated to the criteria deployed to measure

the value of conferred resources, which may or may not be correlated to the distribution of decision-making power and in particular of the voting power.

135. Cooperatives are established with the idea of lasting over time. A number of their features attest to that. First of all, the objective of cooperatives does not aim at reaching one specific, concrete result, but to meet the needs and aspirations of the members, which may well, and do, change over time; secondly, because of the possibly changing needs of the members and supported by the so-called open-door principle, members will exit and new members will enter, notwithstanding that the success of the cooperative might depend on a certain number of members and that, over time, ties will have develop between certain members. In general, therefore, members will exit and not seek dissolution. This is also because they cannot gain anything from dissolution, from which, in addition, liquidation automatically ensues. Upon termination of membership or dissolution/liquidation, members will recover only their paid-up share contribution at nominal value.

136. This notwithstanding, there will be circumstances where the cooperative will dissolve and be liquidated, either by voluntary decision of the majority of the members (generally by a qualified majority decision at two consecutive general assemblies where the quorum of the second might be lower than for the first) or ex officio. The former may especially occur when the circumstances that prevailed at the foundation are no longer present, the latter when the legal requirements to establish a cooperative are no longer fulfilled. In both cases, all assets, tangible or not, will be liquidated. Generally, liquidation laws protect creditors over members. Cooperative-specific indivisible reserves, if any, that are not needed to pay-off debts (creditors' and members' shares) may not be distributed among the members. In general, they will be transferred to another cooperative organisation, possibly to the State. The logic behind this is to diminish the proclivity to liquidate, to improve the creditability of cooperatives. In voluntary dissolution cases, members have, of course, the possibility to agree on any distribution of assets before they decide to dissolve.

137. Companies are regularly dissolved when the purpose for which they were created (which may be a time-limited venture) has been achieved, or when it is clear that they are no longer financially viable. Most statutes governing companies set out a process that must be followed in order to dissolve the company, which usually requires member consent, with the degree of consent required (i.e., unanimous or majoritarian) depending on the governing statute and whether there are additional contractual provisions that the participants have agreed to. These statutes typically require that all outstanding debts be satisfied before distributions may be made to members.

138. Access to a digital platform can be disabled quickly and relatively easily. It may also happen inadvertently if, for instance, the platform operator fails to pay certain annual fees and charges – potentially due to being in financial distress or (voluntary/involuntary) liquidation. The existence of digital platforms can create some additional questions or considerations for a liquidator, such as the handling and management of customer/user datasets derived through the digital platform. The management and distribution of digital assets (if any) will also have to be addressed by the liquidator.