

The Legal Guide on Contract Farming

prepared by UNIDROIT

Climate Change Aspects

1. Unidroit has recently launched a new project, the preparation of a “*Legal Guide on Contract Farming*”. Some aspects could be of interest to the members of the AIDA Working Party on Climate Change. This short communication intends to describe the initiative, with which I have the chance to be associated.

2. Unidroit is an intergovernmental organisation, created in 1926. Its purpose is to work on law harmonization and unification. There have been many accomplishments in various fields. Unidroit has done pioneer work in harmonizing the law of international sales, resulting in the Hague conventions of 1964 (later superseded by the Vienna Convention of 1980). There are Unidroit conventions on matters such as factoring, leasing, stolen or illegally exported cultural objects, international interests in mobile aircraft equipment and intermediated securities. Unidroit has also produced the highly successful “*Principles on international commercial contracts*”, a soft law codification of the general rules of contract law which exerts much influence not only on arbitrators, but also on legislators in search of inspiration for reforming their law of contracts.

The new project on contract farming is intending to create a soft law instrument of another form : a legal guide.

3. Contract farming is a method to organize the production and marketing of agricultural products, based on the setting up of durable contractual relations between the local producers and the agribusiness purchasers.

Instead on buying agricultural produce by successive spot operations, the purchaser enters into a durable contract with the producer. The purchaser undertakes to purchase the whole production of one or several seasons (or part of it) and to provide several inputs such as seeds, planting material, fertilizer or equipment, as well as technical assistance concerning methods of production and possible financing. The producer is obliged to follow the production methods prescribed by the other party, to produce the agreed quantities and to sell them to the contractor.

Contract farming has become an important tool of agricultural production and marketing in many parts of the world, not only in developing countries, but also in the United States and other economically advanced countries.

4. The formula has advantages for both parties. The producer is guaranteed a market for its production, and it benefits from technical inputs to improve its methods of production. The purchaser can organize and control its supply. Of course, there are also dangers for both sides, but especially for the producer, who is usually the weaker party : this appears in many contracts which tend to be unbalanced.

The idea of a Legal guide is to provide advice on contract drafting, to draw both parties' attention to the different issues the contract should cover and to the various possible ways to meet them, but also to suggest balanced solutions, fair to both parties.

5. Unidroit is not working alone on this project. Close cooperation has been established with the FAO (Food Agricultural Organization), the IFA (International Fund for Agricultural Development), the World Food Program, the World Bank and the International Finance Corporation, the World Farmers' Association and representatives from the Food manufacturing and marketing industry.

Working sessions have been organized over a period of two years, and a working group of experts has just started to prepare first draft chapters of the future Guide (I am personally in charge of the chapter on the producer's obligations).

6. This project could be of interest to our Working Party in Climate Change, because agriculture is one of the sectors which is bound to be especially affected by climate change. Agricultural production contracts necessarily have to include provisions related to climate change, and the Legal Guide on Contract Farming will contain some developments on the subject.

Obligations to produce certain quantities of agricultural goods are of course affected by climate change. Agricultural production has always been dependent on the weather (hail, draughts, etc...), but the problems tend to increase and take new dimensions with climate change (increasing occurrences of draught, floods, bush fires, spread of diseases, etc...). This will more and more affect some contractual terms. Some methods of production may have to be adapted to ensure better protection against climate change (irrigation, drainage, storage, use of improved seeds or planting material, etc...). Force majeure clauses may have to be redrafted to adjust to changed weather conditions. And obviously, contractual clauses concerning insurance obligations have to take into account the new defensive measures insurers may take (such as new cases of exclusions), but also the new products which are appearing (such as new formulas of coverage of natural catastrophes, or weather derivatives).

For my work on this project, I would of course welcome any comments or contributions you may have now or in the future. On my side, I shall keep our group informed of what the Unidroit working group on contract farming will have to say about the impacts of climate change.

Thank you very much.

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