



**Asia-Pacific  
Economic Cooperation**

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**International Institute for the Unification of Private  
Law Instruments for Dispute Resolution and  
Prevention - Papua New Guinea**

Submitted by: UNIDROIT



**Workshop on the Use of Modern  
Technology for Dispute Resolution and  
Electronic Agreement Management  
Particularly Online Dispute Resolution  
Port Moresby, Papua New Guinea  
3-4 March 2018**



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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March 2018



**Asia-Pacific  
Economic Cooperation**

## **APEC Workshop on the Use of Modern Technology for Dispute Resolution and Electronic Agreement Management**

**UNIDROIT Instruments for Dispute Resolution and Prevention**

**Papua New Guinea**

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## Overview

UNIDROIT has produced instruments on dispute resolution and prevention both in relation to:

- Dispute resolution and prevention by parties through contracting.
- Systemic standards for dispute resolution.

1. UNIDROIT Principles of International Commercial Contracts
2. Legal Guide on Contract Farming
3. Transnational Civil Procedure Regional Rules
4. Effective Enforcement Project

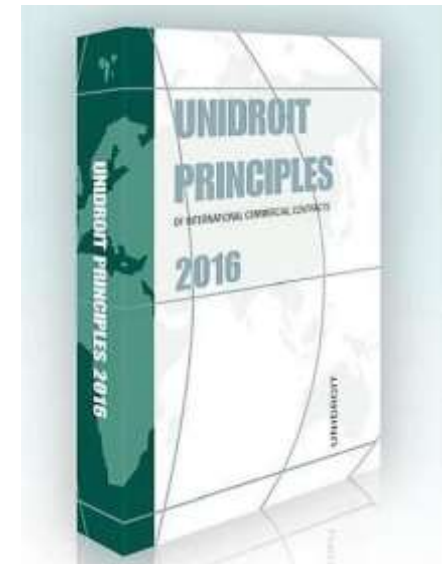
Instruments are not specific to electronic contracting or online dispute resolution, but the underlying principles are applicable (e.g. UNIDROIT Principles)



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## Principles of International Commercial Contracts

- A well-drafted contract is the best mechanism for preventing commercial disputes
- **UNIDROIT Principles of International Commercial Contracts**
  - formation,
  - **interpretation,**
  - validity,
  - **performance,**
  - **non-performance and remedies,**
  - agency,
  - third party rights,
  - **set-off,**
  - assignment of claims and transfer of obligations,
  - **limitation periods**





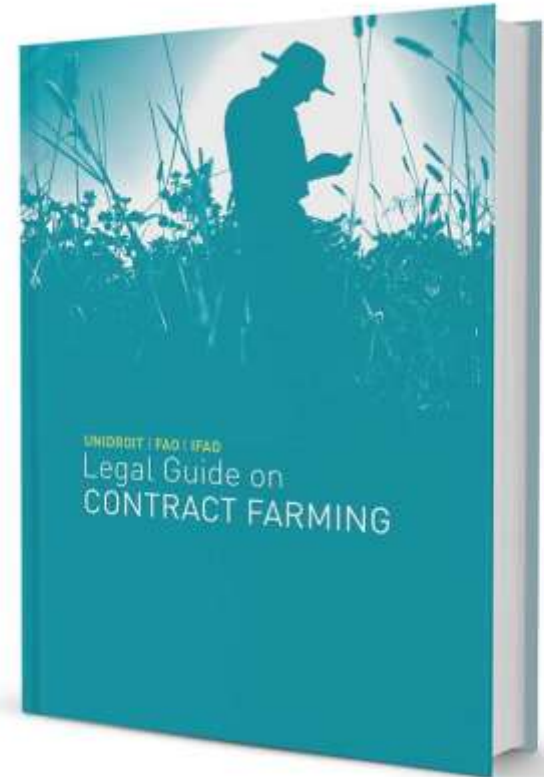
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# Legal Guide on Contract Farming

- Published in 2015

Joint project between:

- the International Institute for the Unification of Private Law (UNIDROIT),
- the Food and Agriculture Organization of the United Nations (FAO) and
- the International Fund for Agricultural Development (IFAD).



Food and Agriculture  
Organization of the  
United Nations



**IFAD**

Investing in rural people



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# Legal Guide on Contract Farming

## What is Contract Farming?

- *“Agriculture production carried out according to an agreement between farmers and a buyer which places conditions on the production and/or marketing of the commodity.”*
- *“Contract farming is a form of supply chain governance adopted by firms to secure access to agricultural products, raw materials and supplies meeting desired quality, quantity, location and timing specifications, whereby the conditions of exchange are specifically set among transaction partners by some form of legally enforceable, binding agreement.”*

# Legal Guide on Contract Farming

## Why is Contract Farming important?

- **Industrialisation of agriculture**, move away from fragmented production.
- Retreat of Government from subsidising agriculture, need for **private sector finance** to fill vacuum.
- **Contract farming is a credit mechanism** for agricultural producers.







# Legal Guide on Contract Farming

## Benefits of Contract Farming

- Allows the contractor to **optimise operations** by securing a steady supply of quality products, following a precise processing method, without having to acquire land.
- Offers **greater certainty for the producer** in terms of marketing its products, cheaper and better quality inputs, access to credit, and opportunities in new markets, while **shifting part of the production risks to the contractor**.
- **Protects both parties** from market fluctuations by providing certainty and stability.
- Contract farming can also have **wider positive economic, social and environmental advantages**, not only for the parties but also for the community at large.





# Legal Guide on Contract Farming

## Risks of Contract Farming

- Contract farming may involve a number of risks, in particular deriving from the **power asymmetry between the parties** or **significant shifts in the market**.
- When the contractor arguably holds a **greater bargaining power**, it may draft clauses in its favour, with the potential for driving the producer to unsustainable levels of debt.
- Changing markets might prompt **unfair or fraudulent practices** by both parties, e.g. the producer selling the products intended for the contractor to a third party, because the market price is higher than the contract price (side-selling).
- **Enforcement of the contract** may be problematic in certain jurisdictions due to inadequate judicial proceedings.



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# Legal Guide on Contract Farming

## Development of the Legal Guide

- Consultations with stakeholders in Addis Ababa, **Bangkok**, Buenos Aires and Rome
- Primarily addressed to parties to a contract farming relationship, however also provides practical guidance to governments, international organisations and legal practitioners.
- Guide promotes stable and balanced relationships in order to assist parties in designing and implementing sound contracts and developing good practices.



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# Legal Guide on Contract Farming

## Matters covered by the Guide

- Parties, formation and form
- Obligations of the parties
  - Risk allocation, product quantity and quality, production, delivery, price and payment
- Excuses for non-performance
  - *Force majeure*, change of circumstances
- Remedies for breach
- Duration, renewal and termination
- **Dispute resolution**
  - **Mediation, arbitration, judicial dispute resolution, access to justice and enforcement**



# Legal Guide on Contract Farming

## Dispute Resolution

- Comprehensive guidance on dispute resolution in Chapter 7 of the Legal Guide.
- **Preventative approach** – focus on addressing dispute resolution in agricultural production contracts, considerations that parties should take into account:
  - Nature of the dispute, time factor, interim relief
  - Fairness, confidentiality
- If a dispute occurs, specific guidance on both judicial and non-judicial (mediation, conciliation and arbitration) dispute resolution, as well as enforcement by public authorities and private enforcement mechanisms.



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# Legal Guide on Contract Farming

## Implementation of the Legal Guide

- Utilised as a guidance instrument **for policymakers**

*“the Philippine Government utilizes the Legal Guide in framing the issues and setting the benchmarks on contract growing arrangements entered into by smallholder farmers, including those that are family farmers. .... the Legal Guide [...] informed the regulations being crafted on agribusiness investments with smallholder farmers who are property rights owners of lands emanating from the agrarian reform program”*

Mr Lupino Lazaro, Jr. (Agricultural Attaché, Embassy of the Philippines in Italy) - UNIDROIT Conference 27 April 2016



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## UNIDROIT Regionals Rules of Transnational Civil Procedure

### ALI – UNIDROIT Regional Rules

- In 2004 the Governing Council of UNIDROIT adopted the Principles of Transnational Civil Procedure prepared by a joint American Law Institute/UNIDROIT Study Group.
- The Principles, consisting of 31 provisions, aim at reconciling differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones. They may serve not only as guidelines for code projects in countries without long procedural traditions, but may also initiate law reforms even in countries with long and high quality procedural traditions; they may also be applied by analogy in international commercial arbitration.





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## UNIDROIT Regionals Rules of Transnational Civil Procedure

### ALI – UNIDROIT Regional Rules Scope and Implementation

These Principles are standards for adjudication of transnational commercial disputes. These Principles may be equally appropriate for the resolution of most other kinds of civil disputes and may be the basis for future initiatives in reforming civil procedure.

#### **24. Settlement**

24.1 The court, while respecting the parties' opportunity to pursue litigation, should encourage settlement between the parties when reasonably possible.

24.2 The court should facilitate parties' participation in alternative-dispute-resolution processes at any stage of the proceeding.

24.3 The parties, both before and after commencement of litigation, should cooperate in reasonable settlement endeavors. The court may adjust its award of costs to reflect unreasonable failure to cooperate or bad-faith participation in settlement endeavors.



## UNIDROIT Regionals Rules of Transnational Civil Procedure

### ELI – UNIDROIT Regional Rules

- Based on success of ALI/UNIDROIT Rules, in 2013 UNIDROIT and the European Law Institute.

*Recent years have seen the emergence of a growing body of rules at European level in the field of procedural law, in the wake of the enlargement of the EU competences towards judicial co-operation. The joint ELI / UNIDROIT project will serve as a useful tool to avoid a fragmentary and haphazard growth of European civil procedural law. It may further represent a first attempt towards the development of other regional projects adapting the ALI / UNIDROIT Principles to the specificities of regional legal cultures, leading the way to the drafting of other regional rules.*

- Expected completion: 2019.



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## Effective Enforcement

- Although the ALI-UNIDROIT Principles are comprehensive, they are designed to give guidance for first instance procedures and only minimally address issues of enforcement. In particular, Principle 29 emphasises the need for speedy and effective enforcement, but the comment makes it clear that the topic as such was beyond the scope of the 2004 Principles.
- In 2016 a preliminary feasibility study was conducted by Professor Rolf Stürner. The Study provides a detailed analysis of the legal obstacles created by the lack of general principles on enforcement mechanisms in transnational civil procedure and of the advantages of filling in the gaps of the ALI/ UNIDROIT Principles of Transnational Civil Procedure in this regard.
- Adopted on UNIDROIT Work Programme 2017-2019 (lower priority)



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## Further Resources

- Legal Guide on Contract Farming (English, French and Spanish)
  - <https://www.unidroit.org/instruments/contract-farming/legal-guide>
  - <http://www.unidroit.org/community-of-practice/home>
- ALI-UNIDROIT Rules:
  - <https://www.unidroit.org/english/principles/civilprocedure/ali-unidroitprinciples-e.pdf>
- ELI-UNIDROIT Rules (work in progress):
  - <https://www.unidroit.org/work-in-progress/transnational-civil-procedure>
- Principles of Effective Enforcement (work in progress):
  - <https://www.unidroit.org/work-in-progress/effective-enforcement>



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**Thank you for your attention!**

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