

Agribusiness

Contributing editors

Carol VandenHoek and Eric FW Johnson



2019

GETTING THE
DEAL THROUGH 

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Miller Thomson LLP

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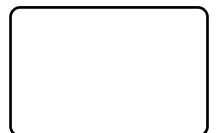


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CONTENTS

Introduction	5	Malaysia	54
Carol VandenHoek and Eric FW Johnson Miller Thomson LLP		Azman bin Othman Luk, Amelia Koo, Moy Pui Yee, Pauline Khor, Raymond Yong and Jack Yow Rahmat Lim & Partners	
Argentina	6	Mexico	62
John O'Farrell and Gonzalo Ballester JP O'Farrell Abogados SA		Alejandro Zeind and Antonio Zeind Zeind & Zeind	
Australia	14	Netherlands	69
Carolyn Chudleigh and Stephanie Lambert HFW		Jan Holthuis, Marc van der Velden and Iris Langenhuizen-Kuijken Buren	
Brazil	23	Ukraine	74
Flavia Marcilio Barbosa De Luca, Derenusson, Schuttoff e Azevedo Advogados		Nazar Chernyavsky and Andrew Zablotsky Sayenko Kharenko	
Canada	30	United Kingdom	81
Carol VandenHoek and Eric FW Johnson Miller Thomson LLP		Nicolas Carbonnelle, Sally Shorthose and Joanna Ketteley Bird & Bird	
China	40	United States	88
Jan Holthuis, Li Jiao and Shu Liu Buren		Arleen A Nand DLA Piper LLP	
India	48		
Krishan G Singhanian, S N Verma, Akshay Dixit and Sarjana Pandey Singhanian & Co			

Preface

Agribusiness 2019

Third edition

Getting the Deal Through is delighted to publish the third edition of *Agribusiness*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Carol VandenHoek and Eric FW Johnson of Miller Thomson LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
September 2018

Introduction

Carol VandenHoek and Eric FW Johnson

Miller Thomson LLP

Around the globe agribusiness continues to be a key economic driver. Whether dealing with large-scale commodity production or local differentiated products, food is necessary for us all. The world's population is becoming more conscious of how food is produced, packaged and delivered. The future of global agriculture is closely tied to trade, and international access for agricultural products continues to dominate trade negotiations.

Agricultural production is varied around the world, owing to a number of factors including development, climate and natural resources, access to technology and markets. Global agricultural output is shifting from high-income countries such as the United States of America to middle-income countries such as China, India and Brazil. Investments in research, both public and private, are changing production and productivity in this sector. In the next 50 years we can expect to see a greater importance on research, production and trade with the middle-income countries (Alston and Pardey, *Agriculture in the Global Economy, Journal of Economic Perspectives*, Vol. 28, No. 1, Winter 2014).

Continued developments and changes abound in regional trade agreements that are posed to change the face of global agriculture in a significant way. The now defunct Trans-Pacific Partnership (TPP) has been replaced by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) following the withdrawal of the United States from the TPP. At the time of writing, the CPTPP was awaiting ratification by several member states. Also at the time of writing, the Regional Co-operation in Asia and the Pacific is being negotiated to create trade access between 16 member states in Asia, Australia and New Zealand. These 16 states represent 46 per cent of the global population, and impacts on agriculture will be extensive as vast markets will be opened to trade.

The Transatlantic Trade and Investment Partnership, a proposed trade agreement has between the European Union and its 28 member states, and the United States was put in jeopardy in early 2017 as the initial positions taken by the new administration in the United States rejected such large-scale trade agreements. However, in June 2017, the US indicated that it remained open to a free trade pact with the EU and in 2018 there was a resumption of talks, the outcome of which remain uncertain.

In the background to these mega trade agreements is the World Trade Organization (WTO). Since 2000 the WTO has been negotiating agricultural trade reform to the WTO Agriculture Agreement to address subsidies and high trade barriers with a stated overall aim to establish fairer systems of trade to improve the livelihoods of farmers. Negotiations take place by session of the Agricultural Committee of the WTO.

The significance of these large-scale trade agreements for agriculture comes into focus when we look at the value of agriculture globally. World agriculture and agri-food exports in 2014 was valued at C\$1.45 trillion. The largest exporter was the European Union, representing 42.9 per cent of exports in 2014, followed by the United States at 12 per cent and Brazil at 6.3 per cent. The European Union also was the largest importer of agriculture and agri-food products, representing 44.4 per cent of the world imports, followed by the United States at 9.6 per cent and China and 9.3 per cent (*Agriculture and Agri-Food Canada, An Overview of the Canadian Agriculture and Agri-Food System 2016*).

Other trends in the agri-food sector include the increasing vertical integration of food supply chains, national and international standards for food certification and production, and traceability of foods. The consolidation of global agri-food businesses continues to generate a lot of attention in the agriculture space and will influence agriculture in years to come. In 2018, Bayer completed its takeover of the United States based Monsanto, which followed the merger of DowDupont in 2017.

Challenges in the sector include changing consumer preferences in relation to meat and dairy products, climate change, changes in primary production that drive towards more large-scale production and away from the family farm model, and concerns about food security. All of these challenges are influencing policy development around the world.

The challenges to the agri-food sector are addressed in each country through the development of policies and laws in a wide range of areas. Land use controls, export or import controls, food safety, food labelling, production controls, environmental protection laws, and many other areas must be considered when advancing an agri-food business anywhere in the world. It is our hope that this publication will assist people in understanding the landscape when they are considering doing business in a new country.

Argentina

John O'Farrell and Gonzalo Ballester

JP O'Farrell Abogados SA

Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

Depending on the specific agriculture and food industry involved, the supply chain may vary. For instance, the dairy supply chain involves milk production by farmers, dairy processors, the retail sector (eg, supermarkets) and the consumer, whereas the meat supply chain involves the farmer, cattle brokers, the slaughterhouse, the retail sector (butcher's shop, supermarket, etc) and the consumer. However, the following sequence can be generally found: producers, commercial participants (traders), industries and consumers. Some primary products are exported, which makes the supply chain shorter (producers and traders).

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The new administration led by President Mauricio Macri (who has been in office since December 2015) removed many restrictions imposed by the previous national government with regard to primary agriculture and food processors. No primary products have an export tariff, with the exception of the soya bean, which as of July 2018 has a tariff of 26.5 per cent, and this will continue to be reduced until December 2019, by 0.5 per cent per month.

Producers and primary food processors are required to comply with standards and regulations that relate to safety and health conditions. Many tax regulations have been issued to control the different participants in the supply chain and fight the informal market. The current administration is reducing and merging different reporting and sworn statements that farmers and other participants in the agriculture and food supply participants have to file with different governmental agencies.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

There are a number of non-governmental organisations and non-profit organisations in the agribusiness sector because of the historical importance of agriculture in Argentina. Some of the main organisations are the following:

- The Argentine Rural Society (La Rural), which was incorporated in 1866. It represents the major agricultural landowners, principally in the province of Buenos Aires.
- The Argentine Agrarian Federation, which was incorporated in 1912. It represents the small and medium agricultural landowners, mainly in the provinces of Santa Fe, Córdoba and Entre Ríos. It also represents very small agricultural landowners in the provinces of Santiago del Estero and Tucumán.
- The Argentine Rural Confederation (CARBAP), which was incorporated in 1943. It is a second-level association with a presence throughout Argentina and includes 13 confederations and regional federations.
- The Inter-Cooperative Agricultural Confederation, which was incorporated in 1956. It represents the agricultural cooperative sector. It is a second-level association formed by 10 federations. Their members produce approximately 20 per cent of the grain in

Argentina. It is also an exporter of grain and one of its members is SanCor, one of the main dairy companies in Argentina.

- The Argentina Federation of Agricultural Machinery Contractors, which was incorporated in 1986. It is a second-level association formed by eight associations that represent 3,500 owners of agriculture equipment.

There are several other non-governmental organisations and non-profit organisations in the agribusiness sector representing each agricultural product (eg, wheat, wine, olive, milk, corn and wool) as well as the different industrial and service agribusinesses (eg, manufactures or importers of agriculture equipment, grain brokers, food processors and seed companies).

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

With the exception of certain specific regulations regarding foreign ownership of rural land, transactions related to land located in areas of national security that are nominated by law as 'frontier zones', and local regulations that impose certain requirements that need to be addressed by the parties to a certain transaction (eg, surveys), property transactions are generally conducted under a similar legal structure than other kinds of real estate transactions, all of which are regulated by the Argentine Civil and Commercial Code (CCC).

After a preliminary negotiation with the seller through selling and purchasing agents (realtors and brokers), the transaction generally starts with the execution of a document called a 'reserve', signed and delivered by the purchaser and received by the realtor, by which the buyer offers a certain price and conditions for the acquisition of the land and deposits cash or a cheque with the broker as a guarantee of his or her offer. If the seller accepts the offer, sometimes the parties sign a preliminary sale agreement, a similar document by which the parties agree in detail with all the commercial conditions of the transaction, and the purchaser pays 10 per cent to 30 per cent of the price.

In other cases, the parties agree on signing the purchase deed directly without executing a preliminary sale agreement after a term that usually lasts between 30 and 90 days from the date of the acceptance of the reserve by the seller. If the seller accepts the reserve or executes the preliminary sale agreement, any 'down payment' is considered as confirmation of the transaction; however, it is customary to include a clause by which both the buyer and the seller can desist from concluding the transaction. If the buyer desists, the seller is entitled to keep the down payment as a penalty to the buyer. If the seller does not continue with the transaction, then the seller must reimburse the amount of the down payment and an equal amount as a penalty in favour of the buyer.

When the property is owned by a legal entity, the transaction usually is structured through a stock purchase agreement, for tax reasons.

The CCC provides for two requirements upon the acquisition of ownership: the transfer of possession and the title that is the public deed by which the seller transfers ownership to the buyer, which is formalised by a notary public. Then the deed is registered before the property registry of the province in which the land is located.

According to official studies, farmland is typically held by the owners. However, farmers have been increasingly cultivating land under a rural tenancy system. It is common to structure the agricultural production through annual contracts. In addition, farmland is also held, in a smaller proportion, by undivided estates.

In regards to restrictions related to measurement, survey, fences and rural roads, these are regulated by each province under their rural codes. For instance, in the province of Buenos Aires, apart from the Rural Code, there are other restrictions imposed by Decree-Law No. 8912/1977 on the use of soil and by Decree-Law No. 3202/2006 on environmental issues, and also by the Water Law.

Apart from the local restrictions, others established in the CCC relate to:

- an easement of transit: the owner of a field whose only access to a public road is through other fields may obtain an easement of transit by paying the value of the land and the damages;
- an easement of aqueduct: if the construction of an aqueduct is necessary to carry water to other fields for the economical benefit of another property or for a community without water supply; and
- receiving water from other fields if no interference in the water movements were made by man, or in the event that such interference was made, this new interference shall not have to cause any damage.

There is also a regulation in the CCC on the surface right by which an owner grants to a third party the right of planting, foresting or constructing a building on the owner's land. The maximum period authorised by law for constructions is 70 years and for planting or foresting is 50 years.

5 Outline any rules related to use of farmland for non-agricultural uses.

The CCC contains general rules related to hunting activities, although the activity is protected under National Law No. 22.421, regulated by the Decree-Law No. 666/1997, to which provinces can adhere. In provinces that have not adhered to Law No. 22.421, such as Buenos Aires, hunting is regulated by the Rural Code, including regulations on hunting preservation, breeding sites for wild animals and zoos.

Besides those non-agricultural uses, rural land could be used for the establishment of national parks, natural monuments and national reserves, as it is regulated by Law No. 22.351. For these uses a previous assignment or donation of the land shall be made by a private entity or a province, also considering assignment of jurisdiction, which generally requires a provincial law.

In addition, the provinces have the option of regulating the systems of protected rural areas, access to which can be made by donation from a private entity or via expropriation.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

There are no special norms that regulate loans secured with farmland, so general regulations on loans and guarantees established in the national and general legislation would apply.

Nevertheless, the limitations for the acquisition of rural land by foreigners settled under Law No. 26.737 and Decree-Law No. 274/20012, recently modified by Decree-Law No. 820/2016, must be considered for the acquisition of rural properties by any foreigner as a result of an enforcement or in the context of an insolvency or bankruptcy proceeding.

Further, provinces might pass agricultural emergency laws under which a temporary stay could be granted – between 90 to 180 days – against judicial or extrajudicial auctions based on debts with public bank entities, and occasionally provinces have issued rules that limit any judicial or extrajudicial auction over real estate or prevent the seizure of agricultural machines that have been offered as collateral security of banks or private loans.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

No specific regulation governs the rights of creditors against defaults incurred by farmers, except for the temporary stays mentioned in question 6.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

The CCC allows local public authorities to regulate a minimum size for real estate, when its division into smaller sizes means that it is no longer economical.

In case of a condominium, there are regulations in the CCC that entitle any owner of property to request judicial protection in order to avoid a division of the condominium when such division could be potentially harmful for the owners or for the main use of the property.

Some provinces have enacted regulations that define the concept of economic units (eg, La Pampa and Buenos Aires provinces) and have also established, in some cases, restrictions on the division of a property when its surface unit is lower than the minimum surface unit that is required in said jurisdictions for a rural piece of land to qualify as an economic unit.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Law No. 26.737 (enacted in 2012) imposes restrictions on the acquisition of rural land (farm property) upon foreign individuals and foreign entities. This Law was first complemented by Regulatory Decree No. 274/2014 and subsequently by Regulatory Decree No. 820/2016.

Any acquisition, conveyance or assignment of possession rights of rural lands in favour of any foreign individual or foreign entity requires previous authorisation by the Argentine National Registry of Rural Land, irrespective of the purpose, use or location of such rural land.

For the purpose of this Law, a foreign individual is defined as a person from a foreign country who does not have Argentine citizenship. Some exceptions shall apply to those foreign individuals who at the time of acquisition have:

- resided in Argentina for at least 10 years uninterruptedly, provided that their residence is permanent and accredited;
- Argentine descendants and have resided in Argentina for at least five continuous years, provided their residence is permanent and accredited; or
- been married to an Argentine spouse for at least five years, provided it is accredited that both spouses have resided in Argentina for at least five years uninterruptedly and permanently.

A foreign entity is defined as an entity that has been formed under Argentine or international regulations with at least 51 per cent of equity held by foreign individuals, foreign entities, governmental agencies, constructive association or partnerships, or an entity that allows foreign members (with the appropriate percentage of votes) the right to adopt resolutions of the entity.

The most significant prohibitions under Law No. 26.737 are that:

- foreign persons (whether individuals or entities) are not able to have domain or possession of more than 15 per cent of the rural lands in the whole country (said percentage also applies to each province, municipal department and administrative agency within the country);
- foreign persons (whether individuals or entities) of the same origin are not able to have domain or possession of more than 30 per cent within the total 15 per cent;
- no foreign entity or individual can be in possession of rural land adjacent to or containing perennial bodies of water or pools of water of importance such as rivers, lakes, streams, brooks and creeks, unless they are duly authorised to do so;
- no foreign entity or individual can be in possession of rural land located at international borders or security zones without prior authorisation by the government; and
- any single foreign entity or individual can only be in possession of up to 1,000 hectares in main rural areas. This acreage limit could be modified regarding specific places or locations by a resolution of the Interministerial Council of Rural Lands, an agency created to assure compliance with rural land acquisition regulations.

Finally, any act intended to conceal property vicariously held by a foreign entity or foreign individual under the appearance of being held by an Argentine entity or individual, as well as any act in violation of this Law, is considered fraudulent and is declared by the Law as null and void.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

By Resolution No. 24/10 (amended by Resolution No. 360/15) of the Ministry of Agriculture, the Federal Bicentennial Cattle and Meat Plan was created. This Plan aims to improve the stages of breeding, rearing and fattening of livestock, improving animal health and increasing production of different species of meat.

To subscribe to the Plan, the following must be submitted:

- the corresponding form with a certified signature;
- a copy of the identity of the beneficiary;
- certificate of registration with the tax authorities;
- the health certificate updated by the National Register of Agricultural Producers issued by the National Service of Agri-food Health and Quality (SENASA); and
- the required budget.

There are some programmes that involve granting loans with preferential rates for the sheep and goat market from public banks, such as Banco de la Nación Argentina (Argentina's central bank), for instance.

There are other programmes implemented by the National Institute of Agricultural Technology, a public agency that focuses on small businesses in the agricultural and agri-food sector.

There are different plans at provincial level.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

There are no specific programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness as the programmes available do not discriminate between local and foreign investors.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The legal framework applicable to primary processors of live animals is regulated by several laws, executive orders and resolutions of the Ministry of Agriculture, as well as the Ministry of Production at the federal level, as well as several laws and regulations on provincial and local jurisdiction.

Argentina's main food regulation is the Food Code, which contains the Mercosur (Common Market of the South) food standards, and other regulatory rules regarding quality, commercialisation and health standards and conditions. These regulations seek to ensure a high level of food safety, precluding the presence of any microbiological, toxicological or physical risk to public health.

On a national level, primary processors of live animals are regulated and controlled by SENASA, a decentralised entity within the Ministry of Agriculture. This entity oversees the hygiene and sanitary regulations applicable to processing and manufacturing establishments and storage facilities for animal products, among others. It is also responsible for regulating the movement of goods and animals within Argentina, and the import and export of, among others, plants, animals, food, agrochemicals and fertilisers.

The National Administration of Drugs, Food and Medical Devices (ANMAT) and the National Food Institute (INAL) are in charge of protecting human health, guaranteeing the safety, nutritional value and quality of food (and other products) that individuals consume.

The requirements for the release of livestock bound for the European Union (EU) that will be slaughtered is regulated by SENASA Resolution No. 15/03, which introduced the identification system of bovine livestock for export.

With the exception of the specific requirements imposed by certain foreign markets for the importation of meat and certain requirements established for the 'Hilton quota' (premium cuts of beef exported to the EU), there is no distinction made between meat for domestic consumption and meat for export in Argentina.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Decree No. 4,238, incorporated by SENASA Resolution No. 233/98, regulates standard operation procedures (POES). It requires that all establishments where animals are slaughtered, and food is developed and fractionated, apply these POES. It also establishes that a qualified employee will be responsible for checking and documenting compliance with the indicated corrective measures to prevent situations of contamination or alteration of the product and to keep the documentation available for controlling actions.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

Law No. 12,566 declares a nationwide fight against different species of cattle tick.

Cattle owners are required to use cattle dip tanks in order to eradicate parasites. Such anti-parasitic products must be approved by the implementing agency.

Owners and tenants must install a livestock clipping facility for the purpose of eradicating ticks in the event that circumstances require it (eg, in regions of the country where ticks are prevalent or have spread).

With regards to penalties, fines are most commonly applied.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

SENASA Resolution No. 412/02 regulates the criteria for assessment of foods derived from genetically modified organisms (GMOs) (Annex I) and requirements and rules of procedure (Annex II).

Point 8 of Annex I regulates the safety of genetically engineered (GM) food. This safety assessment is to determine whether there is any danger or other nutritional concerns. The assessment in question should include a compare analysis between the food derived from modern biotechnology and its conventional counterpart, providing differences and similarities between them.

Annex II of the Resolution No. 412/02 under consideration establishes that those who are interested in submitting their transgenic product's safety study must submit a note to the SENASA. After that, the petitioner should file a technical report outlining the background and analysis of the product. It must also attach a follow-up project monitoring genetic stability and the history of approval in other countries.

The following GM products are currently marketed in Argentina:

- RR soybean;
- Bt corn;
- Corn LI; and
- Cotton Bt.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

Food labelling is regulated by Chapter V, sections 220–246 of the Food Code. Annex II of this Chapter incorporates the Mercosur regulations (26/03 and 46/03) into the national food regulation, which should be applied to all food packaging, regardless of the country of origin.

Resolution No. 26/03 defines labelling as 'any inscription, image or descriptive or graphic material that has been written, printed, marked, embossed or otherwise attached to the food package'.

The above-mentioned Resolution also establishes how mandatory information should be given, specifying that all packaging should contain the ingredients list (nutritional labelling), with each ingredient listed individually, net contents, data of origin, batch identification, date of expiration, and instructions for use and preparation of the product when necessary.

Resolution No. 46/03 sets forth the provisions for nutritional labelling of packaged food. Such labelling must include, among other requirements, a description of the nutritional properties of a certain food.

If the above provisions are violated, warning sanctions, fines, suspension or cancellation of registration in the respective records, temporary or permanent closure of establishments and confiscation of products can be applied.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

SENASA Resolution No. 594/15 sets forth the Technical Standard for the Food of Animals in Argentina.

In order to register a national product as animal food, the applicant must be registered with the Coordination Unit for Feed Mill Inspection (COFIAL). The process involves submitting the application form signed by a technical representative.

If the applicant would like to commercialise an imported product, it should fill in the corresponding application and attach a certificate of free sale, issued by the competent authority of the country of origin, and the product's original packaging.

Resolution No. 594/15 also includes the application of good manufacturing practices, which are all the necessary procedures applied during food processing to ensure safety throughout the production chain.

SENASA Resolution No 377/16 sets the Animal Health Guidelines for Family Agriculture, directed to family farmers who own animals in their establishment for breeding, fattening, meat production, milk, eggs or other food for self-consumption, direct sale or commercialisation of raw materials for the elaboration of foods of animal origin.

18 What are the restrictions on the movement of animals within your country?

The transport of animals is regulated by SENASA Resolution No. 581/14. The Resolution defines 'means of transport' as the entire unit used in moving the animals. It is the carrier's obligation to register the means of transport that shall be used. The Resolution also provides the essential requirement of carrying a sanitary certification card.

19 Describe any restrictions on import of food animals.

There are many prior interventions regarding goods importation in Argentina. These interventions are identified in the nomenclature, and may be tracked in the organised and detailed list of goods. Mercosur (composed of 21 sections and 99 chapters) applies.

Goods are established in the nomenclature according to their tariff classification; in other words, a code number that has been previously agreed with the other states is assigned to a certain item. This tariff classification makes it possible to know:

- the governmental incentives;
- the requirements for the exportation of the product;
- the import and export duties;
- the statistical rate;
- the tariff treatment;
- the preferences for the product; and
- the prior intervention and its prohibitions.

With regard to the variety of goods that may be considered animal food, the SENASA, ANMAT and INAL are required to intervene. Animal meat can be divided into different categories, such as porcine, bovine and piscine. There is also a difference between animals that are raised for the food products they produce (eg, dairy products) and those raised to be slaughtered for food.

These aforementioned differences may be reflected in the nomenclature system, which provides each product with a tax code. These tax codes reveal the prior interventions that are required for the importation of the goods. If the product is subject to an import prohibition, the tax code will reflect this status.

If the importer does not comply with the prior intervention required by the tax code, the Customs Service will deem the product prohibited from import and certain penalties will be applied. The category of 'prohibited to import' includes goods that do not require prior interventions to be imported and are therefore legally restricted from entering the country. For example, the importation of bovine meat from Britain is prohibited, as provided by General Resolution No. 2146/06 of the Federal Administration of Public Revenue, in order to prevent bovine spongiform encephalopathy disease (BSE).

Prior authorisation from INAL is required with respect to the importation and exportation of non-animal origin products, and a certificate of free circulation must be obtained before such goods are imported. Food products that do not require any previous processing and are ready for consumption still have to be registered in the National Registry of Food Products under INAL's authority.

Cured meat products (eg, bacon and ham) are subject to microbiological tests to reduce risk. The values established by *Codex Alimentarius* – a collection of internationally recognised standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety – are applied in this instance, along with the International Commission on Microbiological Specifications for Foods guidance, and guidelines of other internationally recognised institutions.

With regard to the interjurisdictional transportation of perishable food, the Law establishes that because of the characteristics of such goods, thermographs of control and a register of temperature must be applied to ensure the correct cold chain from its origin to the place of destination (when the distance exceeds the set limit of 70km (kilometres)). The thermographs will leave their starting point sealed and may be controlled by the jurisdictional health authorities, which may verify the use of the thermograph.

With respect to BSE, SENASA has listed the products that require authorisation to be imported without the risk of introducing BSE.

Finally, the Ministry of Production issued Resolution No. MP 292-E/2017 (derogating Resolution No. 5/2015), which states that the goods included in all tariff positions of the Common Nomenclature of Mercosur shall apply for an automatic import licence. These dispositions shall govern all goods except those tariff positions determined by this resolution, or modifications which must apply for non-automatic import licence.

20 What are the regulations related to livestock slaughtering?

The Federal Meat Inspection Act (No. 22,375) regulates the authorisation and operation of facilities where animals are to be slaughtered.

This Act gives the SENASA the power to shut down slaughterhouses that do not comply with regulations relating to hygiene, construction, processing, etc. The SENASA must inform the local authorities of any action taken.

If any of the above provisions are violated, warning sanctions, fines, suspension or cancellation of registration in the respective records, temporary or permanent closure of establishments and confiscation of products can be enforced. Local authorities may also impose fines for matters under their control.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

ANMAT Resolution No. 8,224/16 incorporates Mercosur Resolution No. 18/10 into the Argentine legal system, regulating domestic sanitary disinfectants (pesticides).

This regulation seeks to establish definitions, general characteristics, active substances, presentation and warnings.

The provision classifies and distinguishes between insecticides, biological insecticides and repellents. It also sets chemical quality standards for each of these composition categories.

Finally, ANMAT Resolution No. 709/98 creates the National Registry of Sanitising Products and establishes the requirements for the registration of these household products.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Agricultural operations (primary production) are typically organised by individuals who independently run their agriculture business or company. In other sectors of agribusiness, it is also common to find cooperatives, such as the Argentine Cooperatives Association, which is involved in:

- the domestic and foreign trade of grains and oil seed;
- the industrialisation of soya beans;
- the service and logistics of storing grain;
- the development and commercialisation of agricultural products; and
- the operations of branches of foreign companies.

The most commonly used companies are corporations (SAs) and limited liability companies (SRLs).

The basic features of each of these entities, according to Argentine law and the regulations of the Public Commercial Registry of the City of Buenos Aires (IGJ), are set out below.

The basic features of an SA are:

- capital is represented by shares;
- transfer of shares is generally unrestricted, but certain restrictions may be included in the corporation's by-laws or articles of association;
- they may have one shareholder (single shareholder corporations);
- in principle, the shareholders' liability is limited to the capital contributed by them. The minimum capital required is 100,000 Argentine pesos; and
- certain stock corporations are subject to permanent government supervision and must have a statutory audit committee appointed at the shareholders' meeting, which can be fulfilled by an individual statutory auditor if the only reason for the permanent government supervision is the amount of the issued capital of the company.

The basic features of an SRL are:

- in principle, members limit their liability to their quotas;
- the transfers of quotas must be registered with the IGJ and may be restricted;
- the minimum number of quota holders is two and the maximum is 50;
- no minimum capital is required; however, the IGJ requires that the capital subscribed by the quota holders is adequate in relation to the corporate purpose of the entity; and
- the administration is in charge of an individual or collegial management. The appointment of a statutory supervisor or supervisor committee is optional for those SRLs that do not exceed a capital amount of 10 million Argentine pesos.

Similar rules apply to SRLs and SAs regarding partners' and managers' liability, with a few exceptions.

Foreign companies wishing to participate in an SA or SRL must register with the relevant public commercial registry, depending on where the company is located.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

No specific additional restrictions apply apart from those identified in question 9.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

According to Argentine labour regulations, agricultural work is regulated by Decree-Law No. 26,727, which entered into force on 6 January 2012.

This Decree-Law establishes the Agricultural Work Regime, which covers the rights and duties of the agricultural employers and employees. Provisions of Decree-Law No. 20,744 (Labour Contract Law), its amendments and complementary legislation are also effective where applicable and in cases where they are not opposed to the specific legal framework.

Agricultural labour contract apply to employees ('agricultural workers') who carry out farm duties, in any of its specifications, such as agriculture, cattle, forestry, poultry, horticulture, among others.

Decree-Law No. 26,727 establishes the following obligations:

- to carry an agricultural worker booklet, which proves the employment relationship and the social security contributions made by the employer. These contributions guarantee that the agricultural workers receive several benefits, such as unemployment aid and funeral service for an employed person;
- to provide good conditions regarding housing, food and transportation for the agricultural employees and their family;
- to enrol all agricultural workers in the National Registry of Agricultural Workers and Employers, which is a specific establishment in charge of registration, auditing and social security;
- to enter into a permanent agricultural labour contract without any probation period;

- to provide clean work clothes when employees are in contact with toxic or irritant substances;
- to identify (with proper labels) and treat hazardous waste;
- to refrain from employing children under 16 years old;
- to enable teenagers (between 16 and 18 years old) to begin working with prior authorisation of their parents or tutors, and only when a high school certificate and a medical certificate are presented;
- to prevent teenagers under 18 years old from working in dangerous or unhealthy environments;
- to provide adequate areas where the employees' children can stay while said employee is carrying on his or her duties;
- to pay minimum remunerations fixed by the National Agricultural Work Commission. Said remunerations cannot be lower than the adjustable minimum living wage, determined by month, week or hour. Minimum remuneration is currently from 12,648.96 Argentine pesos to 16,226.89 Argentine pesos, according to the corresponding category;
- to limit the work hours to eight hours per day (Monday to Friday) and 44 hours per week, and until midday on a Saturday;
- to limit night shifts (from 8pm to 5am of the following day) to seven hours per day or 42 hours per week;
- to apply the specific social security programme for agricultural workers. Agricultural work demands great physical effort and can have a great impact on a worker's health and may, as a consequence, result in premature ageing. Therefore, the retirement age is 57 years old, regardless of gender, as long as social security contributions can be accredited for a minimum period of 25 years; and
- to apply a special paternal licence with compensation of 30 calendar days for workers who carry out their duties continuously.

25 How is farmworker immigration regulated in your jurisdiction?

Decree-Law No. 25,871 governs the migration policy within the territory of Argentina. There is no specific regulation regarding agricultural workers; therefore, they are included in the general regime detailed below.

The National Direction of Migration governs the enforcement of the Law. Said organisation depends on the Ministry of Domestic Affairs.

As regards the immigration of foreigners with labour purposes specifically, it is extremely important that the employer, either a natural person or a corporation, is enrolled in the Single National Registry of Foreigners Applicant (RENURE), an organisation included in the National Direction of Migration.

Decree-Law No. 25, 871 considers several situations regarding the arrival of the employee and the time he or she will carry out his or her duties in the national territory. It provides the following options:

- Invitation letter: if the employee is going to carry out his or her duties for less than a month, it is recommended that he or she arrives according to the consulate proceedings. In this circumstance, the employer shall send a letter of invitation to the Argentine consulate in the country where the employee is currently living, specifying personal information of the invited person such as the reason of the trip, the length of time he or she will stay in Argentina, and the employer's information, such as its RENURE enrolment number and its main activity. In this letter, the employer shall expressly state that it is aware that once the visiting period has run out, the employee will return to his or her original country.
- Entry permission: if the employee needs to stay more than a month and less than a year in the country, an entry permission shall be requested to allow the foreign worker to enter and stay in the country to carry out his or her duties. The National Direction of Migration issues an entry permission that the foreign employee shall present in the Argentine consulate of the country where he or she is currently staying. With said permission, the visa to enter the country will be issued in the migratory authorised category.
- Residence: if the employee needs to stay in the country for more than a year, he or she shall proceed to request his or her residence, which may be permanent or temporary. The proceedings depend on whether the employee comes from a Mercosur member state or from another country.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Decree-Law No. 617/1997 regulates the legal standards of work safety and health for agricultural activities. The aim of said Decree-Law is to provide prevention measures so as to avoid dangerous situations at work and, therefore, make the employer responsible for developing permanent actions to improve security and protection levels. Further, it imposes obligations as regards the tasks that the employer shall carry out to improve the safety of the employee and third parties.

Moreover, on 24 June 2003 when Decree-Law No. 25,739 was enacted, Agreement 184 (ILO) on Agricultural Safety and Health was executed, and it was later adopted by the 89th Conference of the ILO on 21 June 2001.

Decree-Law No. 27,727 establishes that agricultural work shall be carried out in adequate safe and health conditions to avoid labour accidents or work-related illnesses. It also establishes that the employer shall provide health and safety protection equipment.

In addition, the National Commission of Agricultural Labour enacted, in 2011, Resolution No. 11/2011, which establishes general labour conditions for temporal, cyclic and seasonal agricultural workers. Among said conditions, minimum requirements regarding the houses where workers will live, the food they receive, safety elements and medical certificates are determined.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

In Argentina, the importation and exportation of agricultural products requires the prior intervention of different organisations.

As 'agricultural' covers a wide range of goods, it is convenient to consider, separately, the exportation and importation of vegetables, vegetable products and sub-products, and the exportation and importation of products, sub-products and derivative products of animal origin.

In order to ensure that the controls established for the importation of vegetable products, sub-products and derivatives, the customs clearing of the goods is subject to the prior authorisation of the Argentine Plant Sanitation and Quality Institute. The intervention of the Institute is required at the place of entry of goods into the customs territory.

If the involved organisation requires additional controls to determine the quality of the goods or whether such goods are fit for human consumption, considering the request of the importer, the Customs Service could deliver the goods without usage right if the importer, in a given period of time (approximately one month, starting from the deliverance date), obtains the respective quality certificate or confirmation that the goods are fit for human consumption from the health authority.

As a result of Resolution No. 2,146/06, which forbids the import of soil, vegetables that have soil in their roots are also prohibited.

It is also important to highlight that the Customs Authority has created a list of those goods that are prohibited from being exported or imported. Goods that require an authority certificate issued by the Directorate of Forestry and Wildlife are also listed.

For the purpose of exporting goods, the person possessing the documentation should state in the application for the product's importation to the destination country that he or she has requested the intervention of the Plant Sanitation and Quality Institute for the product's oversight and phytosanitary inspection, so the exportation is authorised.

To ensure the controls established for the importation and exportation of products, sub-products and derivatives of animal origin, the customs clearing is subject to the prior authorisation of the SENASA, which will intervene at the place of entry of goods into the customs area.

As well as the importation of vegetables, the exporter has one month to adjust the products to the additional controls that are required by the involved institute.

In December 2015, the Advanced Sworn Statement of Importation was replaced by the Integral Monitoring of Importation System (SIMI), which is employed for the management and processing of import licences. Its purpose is to optimise the functions of the licence in customs matters and to prioritise control measures and risk management over the goods, as foreign trade competitiveness and facilities. To enter data into the SIMI, certain information related to the importation is required that has to be rendered through the website of the Federal Tax Agency at least three days before the product is due to be imported.

Additionally, this system requires the processing of the automatic importation licences or non-automatic, depending on the case. In regards to agrarian products, we have observed that for the most part, they require an automatic importation licence. In this regard, we refer to the above-mentioned in question 19.

28 May tariffs, quotas or similar measures be put in place?

A large proportion of agricultural products that are imported are subject to an import tax duty of 10 per cent, with the exception of the goods detailed in the legislation, such as Decree No. 509/2007. The Value Added Tax Law establishes special treatment that reduces the VAT tax duty to 10.5 per cent for the following goods:

- live animals: cattle, ovine, camelid and goat;
- meat and edible offal of animals mentioned in the previous point;
- fruits, legumes and vegetables;
- seeds (cereals and oilseed crops, except for rice); and
- dried vegetables (beans, peas and lentils).

In addition, the importation transaction could be affected by a statistical fee (and also according to its tariff position), which shall be limited to 0.5 per cent if it is appropriate. The statistical fee cannot be more than US\$500, regardless of the value of the imported goods.

On the other hand, there are additional taxes, such as an income tax of 6 per cent for goods that are definitively imported and intended to be commercialised in the internal market (ie, those goods that are not destined for the importer's personal consumption). As an exception to the above-mentioned, if the importer is a natural person, he or she must pay income tax at a rate of 11 per cent if those goods are definitively imported for his or her consumption. In addition, the National Customs Service raises provincial taxes, such as gross income tax at a rate of 2.5 per cent.

In order to calculate customs charges and the statistical rate of importation, the cost, insurance and freight value of the product is used.

The final amount composed by duties and taxes must be paid before the formalisation of the customs clearance, except for special regimes.

With regard to the export of agricultural goods, the exportation tariff of the primary products that are listed in Chapters 1-24 and 41-53 of the tariff nomenclature of Mercosur, was eliminated, with the exception of the goods detailed in legislation, such as the Decree No. 133/2015 (and its modifications by Decrees 361/16, 640/16) and the Decree 1343/16.

However, in the case of non-export duties, it should also be considered whether the operation qualified as a 'triangular operation' and would therefore apply what is known as advance income tax payment in triangular operations (Regulation No. 3577/2014).

In order to calculate customs charges and the statistical fee of exportation, the free-on-board value of the product is used.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Within the framework of the Latin American Integration Association (ALADI), Argentina has signed several treaties, both in bilaterally with other states and in a plurilateral way, such as with Mercosur, of which Argentina is included as a founding member and signatory of the Treaty of Asunción along with Brazil, Paraguay and Uruguay. Venezuela and Bolivia signed up at a later date.

As a member of Mercosur, Argentina is currently in the process of regional integration, with the aim of promoting a common area that leads to trade and investment opportunities.

In 2007, a trade agreement was concluded with Israel that could be applied to the exportation and importation of products of animal and vegetable origin.

The tariff preferences that may have been granted between the signatory states of treaties or commercial agreements are established in accordance with the tariff position of the products or goods that are subjected to the trade between said parties. In this respect, in order to have greater certainty about the preferential tariff treatment that may have been attributed to a product, it is necessary to know its tariff classification.

Update and trends

One of the main issues is the discussion on a new plant varieties law or seed law that is currently under analysis between the different players in the seed business. The main points under discussion are the regulation of the farmers' privilege and the authority of the National Seed Institute, INASE.

The Macri administration has been very active in obtaining approvals from different nations in order to gain access to foreign markets, which should boost investments in the Argentine agriculture and agribusiness markets. Some examples of these are the authorisation given by the United States for the exportation of lemons and its derivatives, which has helped to open other markets; the increase on foreign markets of Argentine meat (cattle, chicken and sheep) and the increase in the production of grain, all of which are expected to generate significant investments not only in the seed and grain business, production and processing of lemons and meat processing plants but also in the agriculture equipment manufacturers, among other sectors in the agribusiness market. These positive trends can be further improved if a reasonable free trade agreement between the EU and Mercosur is reached.

Other sectors of the agriculture and agribusiness still need further actions from the national, provincial and municipal governments to reduce the tax burden and reduce internal excessive cost, such as transportation in order to improve their competitiveness. The national government has implemented several focus groups to discuss the specific problems and possible solutions that several sectors of the agriculture and agribusiness have when they do business in Argentina or try to export their products or services.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Plant breeders' property rights are protected under Law No. 20,247 (issued in 1973), its Regulatory Decree No. 2183/91 and Law No. 24,376, which approved the 1978 International Union for the Protection of New Varieties of Plants Convention. The Law seeks to promote seed production and commercialisation, to secure seed identity and quality, and to protect the ownership of new plant varieties, as long as they are new, distinguishable, homogeneous and stable. The term of protection is up to 20 years from the granting date (section 37 of Decree No. 2183/91).

This protection is also applicable to GMOs as the Argentine Law does not make any distinctions on how the new variety was developed. The only distinction is that there is a specific procedure (Regulation No. 701/2011) to test and obtain the approval of GMOs in order to commercialise said type of varieties.

There are three exceptions to plant breeders' property rights:

- farmer's privilege, which allows farmers to save a seed for their own (ie, personal and non-commercial) use (section 27 of Law No. 20,247);
- breeder's exception, which allows breeders to use seeds of third parties in their research programme of new varieties, as long as the breeder does not need to permanently use the seed of another breeder in order to produce the new seed (section 25 of Law No. 20,247); and
- restrictive public use, which allows the government to authorise the use of a variety by third parties, without the breeder's consent, when it is necessary to ensure an adequate supply of said product in Argentina and the owner does not satisfy such public need. The government has to compensate the breeder adequately if he or she makes use of this exception (section 28 of Law No. 20,247). However, this exception has never been used by the government.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

Farmers can only acquire crop varieties and plant technologies that are either 'original' or 'authorised multiplied seeds'. The original crop varieties and plant technologies are those that are sold by the breeders through the distributorship channel that they establish. The authorised multiplied seeds are those crop varieties and plant technologies that a third party multiplies for their commercialisation under a permit (authorisation) granted by the breeder.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Agribusiness, like any other business in Argentina, can seek the protection of intellectual property (IP) for its products and services, which includes patents, trademarks, registered designs, copyrights and confidential information. The length of protection varies depending on the type of IP (eg, patents are granted for a term of 20 years from the date of application and cannot be renewed, trademark registrations are granted for renewable terms of 10 years, and registered designs are granted for renewable terms of five years up to an aggregate of 15 years).

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The environmental impact of agricultural production is regulated by the Native Forest Law (No. 26,331). The national regulatory agency of said Law is the Ministry of Environment and Sustainable Development. This determines that each province should adopt its own legislation and appoint its own authorities for such matters. The Law sets the minimum standards for the conservation of native forests and incorporates minimum provincial considerations to promote the protection, restoration, conservation and sustainable use of native forests. Under the Law, destruction of forest and forestland is prohibited, as well as unreasonable use of forest products. Landowners, tenants and holders of natural forests must comply with certain requirements (such as obtaining an authorisation from the competent forestry authority for the cultivation of said forest land).

According to section 22 of the Native Forest Law, the landowner must submit an environmental impact report that evaluates the proposed activity in order to obtain approval to carry out deforesting, etc. Prior permission from each relevant local government for deforesting native forests or converting non-forested areas located in forested land for other commercial uses must be obtained. The authority must issue an environmental impact statement, approve plans for sustainable management of native forests, and ensure compliance with articles 11-13 of Law No. 25,675 (the General Environment Act).

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

National Law No. 25,688 sets the water management regime jointly with the General Environmental Act (No. 25,675). The provinces set their own legislation regarding the matter. These regulations and provincial regulations intend to promote the protection, restoration, conservation and sustainable use of water source. As an example, the province of Buenos Aires establishes the protection of human health, natural resources and agricultural production by requesting to use chemicals and biological products in a rational manner (Law 10,699). Air pollution is mostly regulated by local regulations, with a particular focus on the conditions that must be complied with for the application of agricultural products, mainly pesticides. The Ministry of Health and the Ministry of Environmental and Sustainable Development (MESD) regulate different matters of air quality and are the controlling organisms. Legislation targets are set for the prevention of air pollution by controlling the emissions of fumes and noises.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Besides the protection given by national laws (such as Law Nos. 25,675 and 25,688), several provinces have their own regulations by which they determine the standards to comply with regarding liquid effluents and waste for those who produce it.

Regarding waste (considered hazardous), Law No. 24,051 (HWL), enacted in 1991 and designed to legislate on all matters concerning hazardous waste is, in effect, the most comprehensive attempt at enacting environmental legislation, and covers solid, liquid and gaseous effluents and protects all recipient environments. The system provides for a full-cycle, 'cradle-to-grave' control of waste.

The HWL contains administrative (local) regulations, as well as civil and criminal (federal) provisions.

Administrative regulations are applied to the generation, operation, transport, treatment and final disposal of hazardous waste:

- when such activities are carried out in federal jurisdiction;
- when the waste generated within a provincial jurisdiction may cause damages to the persons or the environment beyond the boundaries of the province; or
- if there is a transport of waste between two or more jurisdictions.

The enforcement authority of the HWL is the MESD and the Law creates a Federal Registry of Generators, Carriers and Operators of Hazardous Waste. It is mandatory to obtain an annual environmental certificate and to pay an annual fee. The provinces have similar rules regarding hazardous waste.

In October 2016, Law No. 27,279 relating to phytosanitary products was enacted. It sets the minimum standards for environmental protection for the management of empty containers that have contained toxic products. This law was complemented by Regulatory Decree 134/2018 (February 2018) and Resolution 93/2018 (May 2018).



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Australia

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HFW

Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

Australia is a very large and environmentally diverse nation continent, and agribusinesses and rural industries cover around 60 per cent of Australia's land mass. There is a mix of dryland farming and irrigation. Australia produces more food than it consumes, therefore, the export market is very important to Australia's economy. It is also a large employer of people covering a wide variety of skills from horticulture to engineering, bioscience research to manual labour and management to finance.

Agricultural produce for consumption locally and for export includes:

- crops;
- horticulture;
- animal products (beef, pork, poultry, lamb and dairy);
- viticulture;
- cotton;
- aquaculture; and
- wool.

Australian food quality is considered internationally to be very high. Maintaining this high quality is a main driver for the Australian federal government departments that regulate rural industries and of significant interest to the federal government's agency for scientific research being the Commonwealth Scientific and Industrial Research Organisation (CSIRO). Transporting the food produce around the country and to the export ports in a timely, safe and cost-effective manner continues to be the main challenge because of the distances involved.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

Australia has a federal government, the Commonwealth, responsible for lawmaking and governance at the national level. There are also state and territory governments (New South Wales (NSW), Victoria, Queensland, Western Australia, South Australia, Tasmania, and the Northern Territory and the Australian Capital Territory) responsible for lawmaking in their states or territories. The third tier of government are local councils that are responsible for managing regions and cities.

The regulatory environment for primary agriculture and primary food processors in Australia is complex because of the three tiers of government. That said, there is currently a political push to simplify and nationalise the laws and regulations governing agribusinesses and rural industries.

The federal government's Department of Agriculture and Water Resources is responsible for administering the laws relating to primary agriculture and primary food processing. There are more than 24 individual pieces of legislation covering a wide range of issues.

The federal government then establishes authorities and other statutory and non-statutory bodies to operate under specific laws. The state and territory governments follow the same model of governance and management. Depending on the production or business type, these laws may require approvals, registrations, licences and permits in order to conduct agribusiness.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

There are a large number of associations and industry organisations in the agribusiness sector in Australia. The Australian Trade and Investment Committee, among others, makes publicly available industry directories. The AG Institute Australia also maintains a national member directory and a national consultants register. Some of Australia's agribusiness associations include:

- Agribusiness Australia;
- Australian Dairy Farmers Federation;
- Australian Egg Corporation;
- Australian Forest Growers;
- Australian Institute of Food Science and Technology;
- Australian Institute of Horticulture;
- Australian Meat Industry Council;
- Australian Water Association;
- Australian Women in Agriculture;
- Cattle Council of Australia;
- GrainGrowers;
- National Farmers' Federation; and
- WoolProducers Australia.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

There is no single specific piece of legislation addressing agricultural property transactions in Australia. The acquisition and disposal of rural land holdings follows the same conveyancing procedures as the buying and selling of houses, commercial buildings, shopping centres and other real estate assets. This includes general conveyancing laws regarding vendor disclosure and purchaser due diligence, and also includes land title transfer laws and regulations. What is specific to agricultural property transactions is the complexity or unusual nature of the subject matter of the transaction.

Whether the asset being offered for sale is a small rural holding or a large-scale agricultural enterprise, obligations placed on the seller regarding disclosure and prudent behaviour on the part of the buyer regarding due diligence, can result in a complex terms sheet for a commercial deal and a complicated set of transaction documents for lawyers to prepare and negotiate.

Converting a commercial terms sheet into a legally enforceable, robust and clearly drafted transaction document is not always easy, especially with the increasing number of matters that have an impact on the conveyance of rural land.

Matters to consider regarding agricultural property transactions include:

- due diligence and disclosure obligations;
- land tenure, access and easements;
- dividing fences;
- water rights, including water access licences, dam licences and bore licences;
- stock and crops;
- plant and machinery including depreciation;

- third-party rights, including agistment agreements and share-farming;
- forward supply contracts;
- management obligations during the transaction term;
- warranties regarding environmental issues, including disclosure of conservation agreements or notices regarding acid soils and contamination risks;
- work health and safety issues and employment law; and
- the certainty of commercial terms regarding the consideration to be paid by the purchaser to the vendor.

Farmland ownership

The real estate for a family-run rural enterprise is usually held either in the personal names of the farmers or graziers, or in a private 'proprietary limited' company or a private discretionary trust. Appropriate tax and accounting advice should be obtained to work out the best land-ownership structure for the business undertaking. It is then common for the farmer or grazier to set up an operating entity (again, a private proprietary limited company or a private discretionary trust) that will carry on the agribusiness from the real estate. This structure results in a property entity and an operating entity. There are tax, accounting and risk mitigation reasons for separating the two entities. These entities will usually have an agreement between them regarding the use of the land and the allocation of risk, responsibilities and profits. Succession planning is also an influencing factor in these structures.

For larger corporate investments in rural enterprises, the corporate entity in which the farmland will be held is, again, usually driven by tax and accounting considerations.

Land tenure

The usual land tenure concepts in Australia are freehold and leasehold.

Land title creation and ownership is managed by each state and territory under the applicable laws for that state or territory.

Larger rural properties often have a mix of leasehold and freehold land tenures across their land holdings.

Leasehold land holdings are usually Crown or government leasehold grants, as opposed to private leasehold agreements with private landowners. In Australia, the tenant-farming model from private landowners is uncommon. Farmland is usually purchased in freehold by the farmer or grazier or, where freehold is not available, leased from the Crown or government.

The Torrens title system of land title creation and registration exists in all states and territories in Australia. Freehold and private leasehold land interests are created and managed under this system. Its main function is to create indefeasibility of title upon registration of the interest in land, under the relevant state or territory property laws.

Leasehold land interests in Crown or government-owned land are governed by the relevant state, territory or Crown land laws.

Freehold landownership of farming land or land for agribusinesses is common and well understood. It is the same as freehold landownership for houses and commercial buildings. The difference is the zoning laws applicable for that parcel of land. The zoning laws, either state or territory based, or based at the local council level, specify the permitted land use of that parcel of land and whether approvals are needed to change or modify that use or carry out development consistent with the permitted use.

Leasehold landownership of farming land or land for agribusinesses is also common and well understood. However, the types of leases are many and varied. For example, in some states there are:

- perpetual leases – these are granted in perpetuity of an annual rent with rights to convert to freehold at certain points in time;
- pastoral leases – a particular type of leasehold tenure that allow Crown land to be used for grazing stock;
- Crown roads and enclosure permits – the right to exclusively use tracks of land that were previously stock routes or Crown roads; and
- Western lands leases or leases with environmental restrictions – the primary purpose of these leases is to ensure appropriate land administration and land management, as the land is usually in a very fragile and sparsely populated area.

Interestingly, by world standards, the land under the NSW Western Lands Leases is regulated by one of the oldest pieces of resource

management legislation, having been created in 1901 and specifically requiring resource management of the land.

Native title

Native title in Australia must also be considered when reviewing agricultural property ownership and use.

Native title is the recognition of the rights and interests of and Torres Strait Islander people in matters of land and water in Australia.

Prior to 1992, Australian common law did not recognise native title in Australia. However, the *Mabo* case (*Mabo and Ors v Queensland (No. 2)*) resulted in the recognition of land rights from the time of European settlement. It is interesting to note that the High Court of Australia did not define what native title was: it said that such rights could exist where the indigenous people have maintained their traditional connection with the land and where no act has extinguished their rights over the land.

Native title allows indigenous Australians to continue to practise their traditional laws and customs; however, it can only exist in areas where it has not been extinguished previously. It is not possible for native title to take away anyone else's valid rights, so native title has been extinguished on privately owed land (including residential and commercial land), certain other landholdings and leases, and other government areas, such as schools and roads.

Native title can exist in areas such as vacant state land, forests, beaches, some types of pastoral leases, national parks and reserves.

In most cases where a successful native title application is made, the land that is the subject of the application will be shared by the holders of the native title and other occupiers. Native title will not necessarily have an impact on all primary producers and rural land holdings. The High Court's decision in the *Wik* case (*The Wik Peoples v State of Queensland and Ors*) held that native title is not necessarily extinguished by pastoral leases and can coexist with the rights of some leaseholders. Certain leases may be 'exclusive' leases and would therefore extinguish native title. If a lease is not exclusive, then the land may be claimed in a native title application. However, native title claimants cannot claim exclusive possession of the lease area. If native title rights and leaseholders' rights conflict, then the rights of the leaseholder prevail. In conveyancing, it is always prudent in due diligence to check the native title register of the National Native Title Tribunal to ascertain whether there are any claims in connection with the subject land.

Share-farming

For agricultural land uses, there are often share-farming agreements, agistment agreements, private or personal lease or occupancy arrangements, and licences to consider. Many share-farming or private lease agreements are oral and are deemed to be periodic tenancies. It is therefore preferable for such agreements to be in writing between the parties to give certainty as to the intended terms.

If a purchaser is made aware of a share-farming arrangement or agricultural tenancy that is not in writing, the purchaser should require the arrangement or tenancy to be put in writing, preferably before entering into the transaction document (with appropriate assignment clauses) or, in any case, before completion.

Agricultural tenancies can be used for:

- grazing;
- dairying;
- pig farming;
- poultry farming;
- viticulture;
- orcharding;
- beekeeping;
- horticulture;
- growing of vegetables or other crops of any kind;
- forestry; or
- any combination of these activities.

Agricultural tenancies can involve:

- a written lease or licence;
- a tenancy at will (a verbal or 'handshake' agreement);
- a share-farming agreement; or
- any other arrangement by which a person who is not the owner of the farm has the right to occupy or use it.

The basis of a share-farming agreement is that the owner will supply the land and assets, but probably not the machinery. The share-farmer provides the labour, expertise, fertiliser if necessary, the machinery and the marketing for the sale of the produce if necessary. The appeal in this type of agreement is that the owner of the land benefits from receiving income for no physical work. If the season or prices are bad, the share-farmer as well as the owner will suffer a reduction in income.

Generally, the term of a share-farming agreement is at least 12 months and often longer, but it is possible to have a shorter term agreement (eg, lucerne hay baling season).

Access rights, easements and other interests in land

A search of the land title (whether freehold or leasehold) will show other registered interests in the land, including easements, rights of way and restrictions on use.

Another issue to address when acting for either a vendor or a purchaser is what access is available to the property and whether it is a legal access or access that is personal and can be terminated and to what point. Sometimes, what vendors who have owned property for a very long period of time, perhaps for generations, believe to be a legal access to a property is in fact access across a stock route or through a neighbour's land parcel, and found not to be legal access at all.

The lack of legal access can cause problems and it is not unusual to discover that the farming lands are physically landlocked once such access is removed. That is often because the legal access – usually from an inconveniently placed public road on the 'other side' of the property – has not been used for a long time so has been fenced closed or used for other purposes. It is extremely important that legal practitioners ascertain that the access to the property is a legal access by way of a formed or public road.

Checking the currency of any registered easements or rights of way or a carriageway is also important as many are often found to be redundant and can be removed from title.

The actual area of the property being purchased should also be clarified and this may require a formal survey to be undertaken. This is important when the purchase price is being negotiated (or at least calculated in the first instance) on a dollars-per-acre or dollars-per-hectare basis for certain arable land or at different rates for different land uses across large holdings.

5 Outline any rules related to use of farmland for non-agricultural uses.

The states and territories and local councils have planning laws that regulated the permitted use of land. Land is classified and zoned to allow a particular use without requiring development consent and to also allow other uses, such as non-agricultural uses, provided development consent is first obtained. For example, land that is zoned for rural use may also permit bed-and-breakfast accommodation and tourism for farm-stay businesses, provided development consent is obtained first.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

Loans made to an agribusiness or rural landholder are usually secured by way of a mortgage over the real estate and a general security agreement or charge over the corporate entity owning the real estate or the agribusiness operations. Other securities such as corporate or personal guarantees and other collateral securities may also be required depending on the level of the debt and the total leverage against the equity or value of the assets. Farm and agribusiness loans are usually credit-assessed as any other type of commercial loan. However, due to the seasonal nature of income from farming enterprises, the repayment terms are often tailored to suit the particular rural enterprise.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Usually, the terms of the relevant loan agreement or finance contract will identify what actions of the borrower constitute a default and will specify the rights of the creditor upon such default.

Farm debt mediation schemes have been in place in Australia for nearly 20 years. There are mandatory legislative schemes in NSW, Victoria and Queensland and voluntary schemes in South Australia and Western Australia. Farm debt mediation is a method of alternative dispute resolution that is intended to facilitate discussions between

banks and their farming customers so that the lender and borrower can better negotiate their financial position. Any enforcement action taken by a creditor against a farmer that fails to comply with the relevant farm debt mediation legislation is void. There is currently discussion at the national level between the National Farmers' Federation, the Rural Financial Counselling Service) and the Australian Bankers' Association, to consider whether a consistent national scheme should be implemented.

The Financial Ombudsman Service Australia (FOS) is another mechanism available to small business owners and borrowers for accessible financial dispute resolution to resolve complaints with financial services providers (that are members of FOS).

However, there are time limits and monetary limits that apply to all claims lodged with the FOS. Currently the FOS ombudsmen accepts claims up to A\$500,000 (a single dispute can also contain more than one claim). However, the monetary limit on awards the ombudsmen can make per claim, made on or after 1 January 2015, is A\$309,000 (this excludes compensation for costs and interest payments) and A\$3,000 (per claim) for consequential financial loss or damage.

In response to the Ramsay Review, the 2017 Federal Budget introduced measures that will significantly impact upon the existing dispute resolution schemes in Australia. From 1 November 2018 all financial disputes (including superannuation disputes) will be dealt with by a single external dispute resolution body known as the Australian Financial Complaints Authority (AFCA). The new authority will consolidate the FOS, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal into a single industry ombudsman scheme to reduce gaps, confusion and duplication in the three schemes. Under the draft Rules of the AFCA the new authority will have a monetary limit of A\$1 million (excluding superannuation disputes that do not have a monetary limit) and jurisdiction to receive small business credit facility complaints for facilities that do not exceed A\$5 million.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

Rezoning

The state and territory governments and local councils can rezone farming land and therefore change the permissible use of such land. This rezoning does not extinguish or invalidate any immediately prior valid use (which usually survive under existing use rights). In most instances, this is a value-add proposition for the farmer as land that is zoned for rural uses is usually considered to be lower in value than, for example, light industrial zoned land or residential zoned land. Rezoning controls are under the relevant state and territory-planning laws.

Compulsory acquisition and resumption

Each level of government in Australia (federal, state or territory and local government) has the power to compulsorily acquire land from private landowners. This includes farmland. Compulsory acquisition is also known as 'resumption'.

This usually occurs in order to build new or expand existing roadways or public transport routes, and to build railway corridors, airports and other transport infrastructure. It can also occur to protect the community – for example, through resuming land that is heavily contaminated – or to preserve parks and open spaces, or create electricity corridors for power-lines.

If farmland, or any part of it, is resumed, there is compensation payable based on a valuation formula.

Resumption is an absolute right of the government.

Mining, minerals and petroleum rights

Mineral and petroleum rights in Australia are generally reserved in favour of the Crown. This is the case despite a landholding being freehold in nature. That is, the freehold owner of the land does not own any minerals or resources under the surface of the land. The rights to minerals in the ground arise from the laws in each state and territory and the original Crown grants of the landholding. These laws set out the processes and rights for the Crown to grant to private entities the right to explore for the resource (exploration permits, licences or leases), the right to carry out works to determine the likely existence of minerals or resources and then, ultimately, the payment of royalties and compensation to the landowners and occupiers of the surface land if the right to mine is granted.

There are significant tracts of farmland that are subject to exploration rights. This does not mean there are minerals or resources under the farmland, but if there are, it may be that the farmland has been acquired for mining purposes.

This can be highly controversial and is similar to compulsory acquisition or resumption.

Native vegetation and clearing

The state and territory governments developed and endorsed Australia's Native Vegetation Framework in 2012. Under this framework, there are five goals to guide government, the community and the private sector in vegetation management around Australia. These are:

- to increase the extent and connectivity of native vegetation;
- improve the condition and function of native vegetation;
- maximise benefits of ecosystem service markets;
- value and manage native vegetation; and
- advance the engagement of indigenous peoples in the management of native vegetation.

The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) is the government's primary legislation controlling environmental protection and biodiversity conservation matters. This Act does not directly regulate native vegetation or greenhouse gas abatement (which is done at the state or territory level), but does cover vegetation clearing resulting from agricultural production, where such clearing is the result of an intensification of land use and is likely to have a significant impact on protection or conservation matters.

In such instances, licences or permits to carry out clearing of native vegetation will be required and fines will be levied against those persons carrying out illegal clearance.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

The Foreign Acquisitions and Takeovers Act 1975 (Cth) (amended by the Foreign Acquisitions and Takeovers Legislation Amendment Act 2015) provides that proposed investments in agricultural land generally require approval where the cumulative value of a foreign person's agricultural land holdings exceeds the threshold. The laws introduced in 2015 provide for a new monetary threshold for agribusinesses of A\$7 million and agricultural land of A\$15 million.

There are application fees applicable (up to A\$101,500).

Foreign government investors require approval regardless of the value. However, there are some exceptions applying to investors from Australia's trade agreement partners (Chile, New Zealand, Singapore, Thailand and the United States).

Despite the threshold values, the Australian Taxation Office's Register of Foreign Ownership must be notified of all acquisitions of interests in Australian agricultural land by foreign persons. The decision of whether to grant an approval (which is technically a 'decision not to object' rather than an actual approval) is based on a number of factors, including whether the acquisition would be contrary to the national interest.

Furthermore, the Register of Foreign Ownership of Agricultural Land Amendment (Water) Act 2016, amends the Register of Foreign Ownership of Agricultural Land Act 2015, to establish a Register of Foreign Ownership of Water Entitlements (Water Register) to be administered by the Commissioner of Taxation; and provides for the collection of information and publication of statistics about foreign holdings of registrable water entitlements and long-term contractual water rights. This allows for increased transparency on the levels of foreign ownership in water entitlements.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

Government-provided support programmes available to agricultural producers, processors and agribusinesses include:

- rural financial counselling service;
- drought-related concessional loans and farm finance concessional loans;

- farm household allowance, farm management deposits, taxation measures and exemptions;
- drought communities programmes;
- farm risk programmes;
- pest and weed management control advice; and
- social support.

The state and territory governments have additional programmes to assist farmers during drought and hardship. The Australian Taxation Office also provides a supporting advice hotline. These support programmes are well advertised and are accessed directly via the programme coordinators and hotline numbers with suitably trained persons placed in rural areas to assist.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Once approved by the Australian Foreign Investment Review Board, foreign owners of Australian agribusinesses are generally treated the same as local or domestic investors and are generally entitled to access the same support programmes within the industry.

The Australian Trade and Investment Commission, which was created by the federal government, is the entity charged with providing coordinated government assistance to attract foreign investment into Australia. Investment into Australian agribusinesses is high on the agenda. Services are provided to international investors free of charge and are confidential.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The objective of the Agriculture Ministers' Forum (AGMIN), which represents various agencies within the Commonwealth and state and territorial governments, is to develop and promote sustainable, innovative and profitable agricultural industries. AGMIN also produces codes of practice and industry standards that cover items such as poultry processing, game meat for human consumption, welfare of animals, beef cattle feedlots, and many others.

While each state and territory has animal welfare and processing standards and guidelines, there is a current push to create a nationally consistent set of standards and guidelines. The states and territories have the primary responsibility for animal welfare and the federal government is responsible for international trade agreements to ensure exporters maintain international export standards.

The guidelines related to these matters are:

- the Australian Animal Welfare Standards and Guides (Model Codes of Practice);
- the Australian Standards for the Export of Livestock; and
- the regulations relating to live animal export trade.

The Department of Agriculture and Water Resources works closely with the Department of Industry, Innovation and Science, which has a focus on food processing and manufacturing.

Legislation governing the meat and livestock industries in Australia includes:

- the Australian Meat and Livestock Industry Act 1997 (Cth);
- Export Control Amendment (Quotas) Act 2015; and
- the Dairy Produce Act 1986 (Cth).

There is no distinction made between meat for domestic consumption and meat for export. However, there is a very small number of authorised halal and kosher abattoirs with special permission to conduct religious-based processing.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

There are a number of important documents that form the integral parts of the joint food regulation system. Food safety in Australia is governed by the Food Standards Australia New Zealand Act 1991 and is regulated at the national level. There is a binational arrangement between

Australia's federal government, states and territories and New Zealand. This intergovernmental agreement and treaty establishes a food regulation system and sets standards under the Australia New Zealand Food Standards Code. Chapter 3 of this Code deals with food safety. There are five standards relevant to food safety:

- interpretation and application;
- food safety programmes;
- food safety practices;
- food premises and equipment; and
- food safety programmes regarding service to vulnerable persons.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

Each state and territory has a food safety agency that works to ensure food is safely produced, manufactured and sold at each step in the supply chain. There are state and territory government laws and regulations that administer and enforce food legislation and all aspects of the Australia New Zealand Food Standards Code.

Regular audits and inspections are made at properties. Depending on the severity of the breach or non-compliance, enforcement can vary from:

- a warning letter;
- improvement notice;
- penalty notice;
- product seizure;
- registration suspension;
- prosecution; or
- registration cancellation.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

Genetically modified (GM) foods are regulated under the Australia New Zealand Food Standards Code. There are two provisions: mandatory pre-market approval, including a food safety assessment, and mandatory labelling requirements on the product. There is a list of approved GM foods. In Australia, the Office of the Gene Technology Regulator oversees the release of GM organisms to the market under the Gene Technology Act 2000 (Cth).

There are five organic approved certifying organisations in Australia that are recognised by the Department of Agriculture and Water Resources. These are:

- Aus-Qual;
- Australian Certified Organic;
- Bio-Dynamic Research Institute;
- National Security Association of Australia Certified Organic; and
- Organic Food Chain.

There is also a National Standard for Organic and Bio-Dynamic Produce, issued under the Australia New Zealand Food Standards Code.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

Food labelling laws are very strict in Australia, although labelling is not about safety but rather about consumer's choice. The Australia New Zealand Food Standards Code sets the standards for what information must be contained on food labels including matters such as:

- use-by or best-before dates;
- country of origin;
- health claims;
- ingredient list and percentage labelling;
- food additives; and
- nutrition information.

GM foods that contain novel DNA must be labelled with the words 'genetically modified'.

Penalties for breach of food labelling laws include fines, closure of the business and, in extreme cases, jail sentences for fraud.

The relevant legislation regarding the different requirements of food labelling is part of the Australian Consumer Law under the Competition and Consumer Act 2010 (Cth).

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

Each state or territory government has plans and processes in place for coordinating responses to pest or disease outbreaks. The system, however, is a nationally agreed system coordinated by the federal government with authorities including Plant Health Australia, Animal Health Australia, Wildlife Health Australia and the CSIRO's Australian Animal Health Laboratory.

The Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock are managed by Animal Health Australia. These standards cover the transport of food animals by road and rail.

Australia is free of many of the world's most aggressive animal diseases, such as avian influenza H5N1 and foot-and-mouth disease. Australia's biosecurity laws are very strict and biosecurity practices (such as disinfecting, boundary fences, management of stray animals and clean machinery) are promoted. There is a list of pests and diseases that must be reported and processes to manage national pest and disease outbreaks. The Department of Agriculture and Water Resources manages these.

18 What are the restrictions on the movement of animals within your country?

There are interstate quarantine requirements when crossing state or territory borders in Australia. Each state or territory has its own quarantine laws. Regarding food animals, it is the biosecurity laws that are relevant.

In addition, the Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock will apply to the cross-border movement of food animals within Australia. This protects the welfare of the animal with regard to travelling time, time without water, temperature and transport conditions, and the general safety and well-being of the animals.

19 Describe any restrictions on import of food animals.

The Department of Agriculture and Water Resources regulates the import of food animals into Australia. Quarantine and biosecurity are very serious matters in Australia. Not all live animals may be imported into the country, as the disease or pest risk is very high. This includes animals that are pets. The basic rule is 'no live food animal imports are allowed into Australia'.

20 What are the regulations related to livestock slaughtering?

The Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption is the relevant standard approved by the federal government. There is also a model Code of Practice for the Welfare of Animals Livestock at Slaughtering Establishments.

There are state and territory laws regarding the prevention of cruelty to animals that also apply. Planning and environmental laws also apply to the operation of the abattoir itself.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The Department of Agriculture and Water Resources manages the laws regarding biosecurity concerns in Australia, including under the Biosecurity Act 2015 (Cth). These laws relate to pests, diseases and weeds in animals, aquatic animals, plants, bees, birds and locusts.

Australia has a very rigorous and effective declaration process when goods are imported into Australia. There are obligations to report biosecurity concerns and specially trained investigators will review all biosecurity concerns. There will not be a prosecution if the breach was unintentional. If the breach is intentional, fines and penalties, and possibly jail, will likely follow for the convicted offender.

Biosecurity is also an issue within Australia itself and not just applicable to imports. Weed seeds, diseases and pests can be unintentionally transported between farming operations or agribusinesses, thereby increasing the risk of a pest or disease spreading. There is, therefore, an educational push, driven by all levels of government, to make biosecurity the responsibility of all persons within the agriculture industry.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

The real estate for a family-run rural enterprise is usually held either in the personal names of the farmers or graziers, in a private proprietary limited company or in a private discretionary trust. Appropriate tax and accounting advice should be obtained to work out the best land-ownership structure for the business undertaking. It is common for the farmer or grazier to set up an operating entity (again, being a private proprietary limited company or a private discretionary trust) that will carry on the agribusiness from the real estate. This structure results in a 'property entity' and an 'operating entity'. There are tax, accounting and risk mitigation reasons for separating the two entities. These entities will usually have an agreement between them regarding the use of the land and the allocation of risk, responsibilities and profits. Succession planning is also an influencing factor in these structures.

For larger corporate investments in rural enterprises, the structure of the corporate entity in which the farmland will be held is again usually driven by tax and accounting considerations. Capital raisings may also influence structure by the use of collective investment vehicles such as managed investment schemes or other arrangements where funds are pooled and co-invested.

There are no set rules regarding the structure for agricultural operations. The structures utilised follow well-known structures that can include (a combination of) the following:

- companies, mostly private proprietary limited;
- unit trusts and family discretionary trusts;
- management investment schemes, both registered and unregistered;
- partnerships;
- unincorporated joint ventures; and
- contractual relationships.

Owing to the distances between some farming operations and the actual or perceived importance and benefits of collective bargaining powers, cooperatives have been very important within the agricultural sector in Australia for many decades. Cooperatives are democratically run business structures governed by specific state or territory legislation, and continue to play an important role for a range of commodities including dairy, rice, cotton, sugar and grains.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

See question 9.

There are also strict rules and thresholds regarding foreign persons and foreign governments acquiring interests in Australian businesses other than farming operations. The federal government reviews all foreign investment proposals above the specific thresholds to ensure such proposals are not contrary to Australia's national interest.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The Fair Work Act 2009 (Cth) commenced on 1 July 2009 and sets out Australia's national workplace relations system. This Act governs national employment standards, awards, enterprise agreements and unfair dismissal laws. It is overseen by the Fair Work Ombudsman, the workplace relations tribunal, an independent body with powers in connection with:

- minimum wages and employment conditions;
- enterprise bargaining;
- industrial action and dispute resolution; and
- terminations and dismissals.

Unions and employer associations also exist within the agriculture sector in Australia. These organisations provide support and advice to employers and employees regarding rights in the workplace.

New employment awards have been developed to cover employers of particular industries within the agriculture sector in Australia. The Pastoral Award 2010 covers employment within livestock and broadacre (large-scale) cropping farms. The Horticulture Award 2010 covers

the horticulture industry. There are other awards regarding nurseries, cotton gins, wool storage and testing, wine and sugar. These awards cover overtime rates, penalty rates, leave entitlements and other workplace obligations and rights.

25 How is farmworker immigration regulated in your jurisdiction?

Workers from overseas play an important part in Australia's rural industries, filling labour shortages during peak times such as harvest, picking, shearing, seeding and spraying. Skilled workers, working holidaymaker programmes, regional sponsored migration schemes and other visa types are available. The Department of Home Affairs processes visa applications.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

State and territory work health and safety laws govern the rights and safety of workers and employees for agricultural operations. The Australian Work Health and Safety Strategy 2012-2022 (updated version republished in April 2018) identifies Australia's agriculture industry as a priority industry for review, assessment and action. Safe Work Australia, an entity that operates under the federal government's governance and accountability frameworks, is focusing on reducing injury fatalities within Australia's rural industry sector – often caused by equipment misuse and chemical misuse.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

Export

Approximately 60 per cent of Australia's agricultural products are exported. The Department of Agriculture and Water Resources manages the following export legislation, which includes the:

- Export Control Act 1982 (Cth);
- Australian Meat and Live-stock Industry Act 1997 (Cth);
- Export Control Amendments (Quotas) Act 2015;
- Wine Australia Act 2013 (Cth);
- Dairy Produce Act 1986 (Cth);
- Export Charges (Collection) Act 2015 (Cth) and associated export charges legislation, export inspection legislation;
- Horticulture Marketing and Research and Development Services Act 2002 (Cth) (as amended by Horticulture Marketing and Research and Development Services (Amendment) Act 2002); and
- various other acts of parliament regarding the exportation of meat.

Under the Legislation Act 2003 (Cth), these pieces of export legislation will cease on 1 April 2020, so the federal government is looking to reform the current export legislation to make it simpler for exporters and farmers to understand the laws and apply the regulations and rules.

The laws prescribe the requirements for exporters to be:

- export-registered and therefore be open for inspection of facilities;
- to have fit and proper persons managing the processes;
- compliant with standards;
- compliant with the importing country's requirements; and
- rigid documentation processes.

There are specific rules for live export, dairy, eggs and egg products, fish and fish products, organic and bio-dynamic goods, plants and plant products, wood packaging and meat.

Import

The Department of Agriculture and Water Resources works in close alignment with shipping and cargo importing industries to ensure harmful pests and diseases are not brought into Australia. As an island continent, Australia has benefited from strict import and quarantine laws. There are biosecurity requirements placed on importers, including special rules regarding cargo items that are classified as high risk of carrying pests.

Importers require approved documentation, approved packing material, possible treatments whether offshore or onshore before

being cleared, and then clearance and inspection of the goods at a biosecurity or quarantine inspection point. Goods arriving from high-risk countries or those that will be unpacked in rural areas go through higher inspection thresholds.

28 May tariffs, quotas or similar measures be put in place?

Under World Trade Organization rules, Australia has commitments on tariffs, export subsidies, quotas and domestic support for agricultural products.

The Department of Agriculture and Water Resources manages agricultural quotas for Europe and the UK for high-quality beef, sheepmeat and goatmeat and dairy products, the United States for beef and dairy, and Japan for bovine offal, pork, poultry, preserved meats, honey, apple juice and orange juice.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Australia is a member of 10 free-trade agreements (FTAs), with:

- China;
- New Zealand;
- Singapore;
- the United States;
- Thailand;
- Chile;
- Malaysia;
- South Korea;
- Japan; and
- the Association of Southeast Asian Nations (ASEAN), as a group:
 - Brunei;
 - Myanmar;
 - Malaysia;
 - Philippines;
 - Singapore;
 - Vietnam;
 - Thailand;
 - Laos;
 - Cambodia;
 - Indonesia; and
 - New Zealand.

There are another 10 FTAs, and other similar economic cooperation agreements, currently being negotiated.

These agreements are legally binding and oblige the parties to liberalise access to each other's markets for agricultural products, goods and services generally, and also for foreign investment. There is an acknowledgement that FTAs may not be entirely consistent in their degree of liberalisation, and to that end the Australian government seeks to actively review, monitor and implement global best practice. Specifically regarding the FTAs between New Zealand (such as the Australia-New Zealand Closer Economic Relations Trade Agreement) and ASEAN as a group, to which New Zealand is also a party, the purposes of these FTAs do differ so the parties to those FTAs continue to monitor their implementation.

WIPO is the World Intellectual Property Organisation. Australia is an active member. The UN is the agency responsible for WIPO and its administration and policy development. Australia's FTAs usually seek to include obligations and commitments regarding intellectual property following international best practice and to keep up to date with global developments in the protection and enforcement of intellectual property rights.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Plant breeders' rights are legally enforceable intellectual property rights over new plant varieties that are registered by breeders under the Plant Breeders' Rights Act 1994 (Cth). This legislation applies across Australia. The owner of a variety of plant that is protected by plant breeders' rights is afforded a level of commercial control over that plant variety, including certain rights (which may be exclusive) that may be licensed or assigned to other persons for use.

Plant breeders' rights are very common for fruits (apples, citrus and berries) and grains, and are particularly common for ornamental or unique items (including flowers, grass and nursery items). In Australia, the ornamental sector currently accounts for 50 per cent of all new applications for plant breeders' rights.

The objective of plant breeders' rights in Australia is to support and promote the development of new varieties of plants. The ability to export these varieties is also a main focus. However, plant breeders' rights only apply to propagating materials so, where a grower of a particular plant is not aware that the particular plant is a protected variety and does not propagate material for sale, the holder of the plant breeders' right for that plant will not necessarily receive protection.

Accordingly, it is important for plant breeders' rights to have a growers' agreement in place to ensure that a person growing the protected variety does not sell that variety without consent.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The federal government and state and territory governments have supporting research and development authorities (such as the Grains Research and Development Corporation) charged with providing guidelines and assistance to farmers regarding crop varieties and plant technologies best suited to their situation.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

The main forms of relevant intellectual property in Australia are plant breeders' rights, patents, trademarks and copyrights.

Patents

Under the Patents Act 1990 (Cth), patents for inventions can be granted for a period of 20 years conferring an exclusive right to benefit from the invention during that time. The invention must be novel, inventive and useful. Patents are applied for on a per-country basis, but there are certain international treaties that assist with international patent applications.

Patents in the agricultural sector can be used to protect inventions such as:

- methods of genetic modification of crops;
- technologies used in abattoirs and meat processing plants;
- the development of new vaccines for livestock (eg, to prevent outbreaks of foot-and-mouth disease, the Hendra virus, and bovine and Ovine Johne's diseases);
- water irrigation technology; and
- new processes for the conversion of biological materials into sustainable fluids.

There are other types of patents, including innovation patents: these exist for only eight years and have a lower inventive threshold than full patents, which is an innovative step rather than an inventive step. An innovation patent can be used to protect processes that use plants or animals, but cannot protect plants or animals themselves. For example, such a patent could include seeds from plants, derivatives from plants, plant materials used in industrial processes and plant varieties, genes or chromosomes.

GM crops involve the alteration of genetic material of an organism. They are the products of human intervention through the insertion of foreign material to change the genetic makeup of the original crop. This means GM crops are engineered and are, therefore, controversial because of ethical concerns about manipulation of genetic material.

Trademarks

The Trade Marks Act 1995 (Cth) protects trademarks in Australia including names, logos, packaging types, shapes, sounds, scents and colours. Trademark registration will protect brand identity.

Copyright

The Copyright Act 1968 (Cth) protects copyright in Australia, but the protection arises automatically without the need to register the copyright interest. Copyright protects the expression of ideas in a particular material format, but does not protect the idea itself.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

Each state and territory has a department or departments charged with regulating the environmental impact of agricultural land uses under the laws of that state or territory. These agencies include the following.

New South Wales

- Department of Primary Industries;
- Department of Planning and Environment; and
- Department of Industry.

Victoria

- Department of Environment, Land, Water and Planning.

Queensland

- Department of Natural Resources, Mines and Energy;
- Department of Agriculture and Fisheries; and
- Department of Environment and Science.

South Australia

- Department of Environment, Water and Natural Resources; and
- Department of Primary Industries and Regions.

Western Australia

- Department of Water and Environmental Regulation;
- Department of Primary Industries and Regional Development; and
- Department of Planning, Lands and Heritage.

Tasmania

- Department of Primary Industries, Parks, Water and Environment.

Australian Capital Territory

- The Environmental Protection Authority; and
- the Environment, Planning and Sustainable Development Directorate.

Northern Territory

Department of Environment and Natural Resources.

Each state or territory government department may then create an agency or authority charged with the regulatory authority to manage, approve and control land uses, environment risks, pests and diseases, biosecurity, and generally seek to improve economic and social outcomes for rural industries and agribusinesses.

In addition, the federal government departments – the Department of Agriculture and Water Resources; Department of Environment and

Energy; and Department of Infrastructure, Regional Development and Cities – manage Crown (ie, government-owned) land and also prescribe laws for the management of environmental impacts arising out of agricultural enterprises.

The Constitution of Australia says that Commonwealth laws are to be followed if the laws of a state ever conflict with the laws of the Commonwealth. The Australian federal judiciary may also step in with powers to review decisions by state judiciaries.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Australia has a long history of water regulation. Water rights were connected to land rights and were transferred with landownership. However, over the past 20 to 30 years, water laws have been modernised to reflect the importance of water usage's impact on the environment. This includes water availability to maintain healthy agricultural land uses and soil nutrient quality.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Liquid waste can be produced, including as a by-product, by all sectors of society. It includes sewage and wastewater from food, and agricultural processing and manufacturing. Liquid waste may contain organic substances and nutrients that are valuable in the agricultural processing chain, but it may also be hazardous because of chemicals or pathogens within the liquid waste.

Usually, liquid waste disposal requires approval from the relevant state or territory environmental protection authority. Licences may be required and limits on volume may be imposed. Significant fines may be charged for failure to comply with the regulations. There are liquid waste treatment facilities in Australia and this cost is usually borne by the manufacturer or producer, which in turn, increases the cost of the goods to the end consumer.

Other waste from primary agriculture may include:

- oil, tyres and rubber (from farm equipment and machinery);
- chemicals (from dips and drenches, fertilisers and sprays);
- veterinary chemicals, scrap metal and burn damage; and
- other hazardous waste (paint, sealants, adhesives).

The management of such waste – in particular, the generation, handling, storage, treatment and disposal of such waste – has in recent times focused on sustainable processing and development, including the adoption of cleaner production principles where possible. Each state or territory government has a service supporting and encouraging good farm management practices for cleaner and safer land use practices. Regarding the land size of Australia and the huge distances between properties and rural communities, education for on-farm management practices regarding waste minimisation, waste storage and ultimately waste removal and disposal, is increasingly important as it may not be cost-effective to transport waste to the nearest facility, which could be hundreds of kilometres away.



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There are significant penalties for illegally dumping waste on private or public land or into water without a licence, permit or approval from the relevant authority. Australian agricultural production relies heavily on water supplies if the environment is harmed, the flow-on effect and impact on the waterways can be devastating.

Brazil

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The definition of agribusiness in Brazil encompasses several sectors of our economy related to the production of food in an integrated way: farmers, industry and services. In summary, the food supply chain can be described in the following way:

- suppliers of agriculture and livestock inputs – fertilisers, technology, equipment and genetics;
- farmers;
- food processors and manufactures – grain, dairy and livestock;
- traders – exporters;
- domestic market distributors;
- retailers; and
- consumers.

Added to these links of the supply chain, there are also credit and financing lines, public policies for the development and maintenance of the business, as well as the commodities' market. These are closely related and involved in all of the links of the food supply chain.

According to the Brazilian Institute for Geography and Statistics – IBGE – a federal government department under the Strategic Planning and Development Ministry, in 2017, agribusiness represented 5.7 per cent of total Brazilian gross domestic product – GDP, having played an important role in the GDP with accumulated growth of 14.5 per cent, while industry and services had negative growth in the same period (source: www.ibge.gov.br).

According to analysis by the IBGE, such good performance of agribusiness reflects an increase in grain productivity from the use of technology and an increase in forest or timber plantation. The main crops are cotton, rice, sugar cane, orange juice, cassava, corn, soy and grapes, with pork and dairy featuring in the livestock sector.

As a complementary and introductory note, 30 per cent of Brazilian territory (850 million hectares) is agricultural land and pasture. From the remaining area of the territory, more than 65 per cent are protected areas or native vegetation, and 4 per cent comprise the urban areas. The availability of plantable land added to favourable climate conditions put Brazil in a good position as a global food supplier.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The Brazilian agribusiness regulatory environment is complex and bureaucratic. The tax system, environmental, and real estate and labour legislation applicable to agribusiness are the obstacles to faster and sustainable growth of this important sector of the Brazilian economy.

Brazil is a civil law country. In this case, the Federal Constitution provides for constitutional principles and guidelines, while the relation between private parties is regulated by civil and commercial laws, at the federal level, as well as the labour law. Tax and environmental laws are ruled at the federal, state and local level (in relation to local interest and peculiarities and some other matter provided for in the law). The state government can implement sanitary rules and agriculture development policies. These must always be in line and in compliance with federal laws.

Even though the federal Constitution provides a chapter on agrarian policy, it is mainly concerned with proper use of the land by title holder. Federal Law No. 8.171/1991 provides for the Agriculture Policy, which conforms with the concept of state-control, fair and sustainable use of the land, envisaging the right of access of small farmers and families to rural land, agriculture and livestock.

Currently, with the rise of technology and the development of huge agribusinesses, the Brazilian regulatory environment for primary agriculture and primary food processors lacks specific legislation that governs the entire agriculture and food chain of supply in an integrated and systemic way. A legal environment facilitating access to credit lines and capital market products to the international market on a global and harmonised contractual basis could help the development of agribusiness in Brazil.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Non-governmental organisations and non-profit organisations in agribusiness in Brazil are usually divided up depending on the political agenda of their members. We can highlight the following purposes:

- (i) sustainable small agribusinesses and family-run farms;
- (ii) environmental organisations with emphasis in forest conservation, sustainable agriculture, protection of native vegetation, fauna and protection of Brazilian biodiversity; and
- (iii) trade associations or organisations representing one of the links of the agriculture supply chain (ie, machinery, input, producers, food processing) or the interests of agribusiness by region, or even in relation to specific goods (ie, livestock, soybean producers).

The work of such organisations is mainly related to their respective political agendas, intervening with legislative, executive and judiciary bodies when applicable and rendering internal services to their members.

Under item (i) above we can name the Agroecology and Family Farmers Association, an organisation in existence since 1983, which help small farmers to produce more and in a sustainable way. There are more environmental organisations – item (ii) above, with the presence of international (Greenpeace, the Nature Conservancy, WWF) and domestic ones (IPÊ, SOS Mata Atlântica).

Trade associations play an important role in the development of agribusinesses in Brazil, whether in relation to the legislative agenda and revision of laws, or making available to their members commercial best practices, technologies, technical assistance and discussion of market practices. We highlight the Brazilian Association of Agribusiness, the Association of Agricultural Input, the Soybean Association and the Livestock Association.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Pursuant to Brazilian law, the ownership of a given property may be transferred by the execution of a public purchase and sale deed duly registered with the relevant real estate registry office. Such registry

grants full ownership to the holder of the title, who is legally protected from any trespassing or violation of its ownership rights. Especially for rural properties, it is also important to analyse the real estate chain of domain in order to verify the regularity of its detachment from the public to the private domain.

The title of the property shall provide all significant data on the land, such as:

- the transfer of land from former owners to current ones;
- liens and encumbrances;
- registered lease agreements;
- easement or condemnation; and
- constructions and improvements made to the property.

According to the copy of titles made available to our analysis, regarding to the ownership of the properties we are able to attest that Bela Fonte is the current owner of these properties and there are no encumbrances and liens registered on its records.

Regarding to the chain of domain of properties, although requested, we have not been provided with a copy of the certificate issued by the relevant real estate registry office since its transfer from public domain to private. In view of this we are not able to attest to the regularity of its detachment from the public to the private domain.

5 Outline any rules related to use of farmland for non-agricultural uses.

Farmland is defined by its destination only.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

The rural property and relevant crop or animals can be used to secure the credit, by means of mortgage, chattel mortgage or pledge of crop, animals, equipment and machinery. The Civil Code and related legislation provides for the conditions and rules for such guarantees. Farmland is also secured by the tax and labour obligations of the land owner.

Other types of security not linked to the farmland are also available.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Foreclosure procedures are provided for in the Brazilian Civil Procedure Code or Civil Code. Mortgage foreclosure procedure requires a proper civil judicial procedure and an judicial auction, as the case may be. Chattel mortgage and pledge of crops or assets may not depend on that, being allowed a prearranged foreclosure procedure and out-of-court foreclosure procedure.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

See question 4. Besides the registration procedures, all rural properties in Brazil are subject to enrolment with Land Department of the Ministry of Agrarian Development (INCRA) through the issuance of the property identification card (CCIR). According to Federal Law No. 4,947/66, amended by Federal Law No. 10,267/01, land owners may not split titles, lease, mortgage, sell or promise to sell their rural properties without presenting the relevant property's CCIR.

Rural properties are subject to the geodesic survey procedure, in order to confirm lands total area, boundaries and description. In view of that, since 20 November 2013, the real estate registry offices are not allowed to register any act involving rural property larger than 250 hectares that result in split, land division or merger of areas; transfer of property; and creation or amendment to the description of the property as a result of a judicial or administrative proceeding, until the georeference of the real estate property is concluded, approved and certified by INCRA.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Law No. 5,709/71 created restrictions for the acquisition of rural properties by foreigners. Brazilian companies controlled by foreigners were given the status of foreign companies for the purposes of the Law (article 1, paragraph 1). These restrictions are mainly related to the size of the property owned by foreigners. For the total area of a given

municipality, the approval of the Brazilian authorities is also required. Relevant authorities would have to control the acquisitions and ownership of land held by foreigners and foreign-owned companies.

Decree No. 74,965/74 – regulated the proceeding of authorisation for foreigners to purchase rural properties in Brazil, providing that acquisitions of land by foreign and foreign-owned companies would be subject to the approval of the 'relevant authority'.

The federal Constitution of 1988 provided for the concept of a Brazilian company to be duly incorporated under Brazilian laws, recorded with the relevant authorities and domiciled in Brazil. Therefore, legally speaking, the Constitution provided for the principle of equality (equal obligations and equal rights) to be applicable to the Brazilian company, regardless of the nationality of the shareholders or the equity. This constitutional provision banished the interpretation that Brazilian companies controlled by foreigners could be subject to the same restrictions as foreign companies. On the contrary, former article 171 of the Constitution provided that national companies *could* have additional tax incentives, lower interest rates applicable to loans, etc. In view of the enactment of the Federal Constitution of 1988, paragraph 1 of article 1 of Law No. 5,709/71 was considered to be revoked, since it is against the new Constitution.

Law No. 8.629/93 provides guidelines for agrarian reform in Brazil, and complements the 1971 Law by extending the restrictions applicable for the purchase of land by foreigners to the leasing of rural properties.

Opinion No. AGU/LA-04/94, first AGU Opinion, understood that under the 1988 Constitution, a company incorporated under the laws of Brazil with foreign equity is a Brazilian company and no restrictions should apply whatsoever, confirming that the federal Constitution of 1988 has revoked the concept of Brazilian company with foreign equity being considered foreign company. Therefore such companies are legally entitled to purchase rural property without any restrictions.

Constitutional Amendment No. 6/95 revoked article 171 of the Federal Constitution of 1988. Thus, no favourable conditions could be granted to Brazilian companies with domestic equity, all Brazilian companies shall be treated the same, no restrictions and benefits shall apply. This constitutional amendment reaffirmed the isonomic treatment to Brazilian companies with foreign equity.

As to Opinion LA-01/10, recent Opinion issued by the General Attorney's Office provides that the 1971 Law is still in full force, including the provisions that extended the restrictions applied to foreigners to Brazilian companies with a majority of foreign equity.

The laws have remained unchanged and no other law, decree or regulation was enacted, given grounds to the new Opinion of the General Attorney's Office. It is the understanding of Brazilian scholars that the recent Opinion is against the federal Constitution and its Amendment and in any event, acquisitions made under the interpretation of the Opinions 04/94 and 181/97 are considered to be made in good faith, and they shall be grandfathered if such interpretation prevails.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The Agricultural Policy provides that governmental entities shall govern agriculture and livestock business. Its main purpose is to create mechanisms for the government to plan, control, promote and legislate over agricultural matters, as a way to assure productivity and sufficient food supply for the current and future Brazilian population. Given the size of Brazil, such policy provides for guidelines for states to plan and promote agribusiness as a development tool. The majority of government programmes that provide support to producers, processors or agriculture-related businesses and organisations are for small family businesses. Programmes are coordinated by a Secretary connected to the Ministry of Agriculture (MAPA).

As part of the Agricultural Policy, in 1995 the Brazilian government launched the National Programme for the Development of the Family Agribusiness, which is a credit line with low interest rates for small family businesses. Also, the Biofuel National Programme promotes the manufacturing of oil, granting tax incentives and advantages for the sale of such biofuel. These programmes aim to add small farmers and agribusiness to the market by adding value to their production.

Interested parties must access a bank that acts as a financial agent of the Brazilian Development Bank (BNDES), which will then act as a lender of such credit to farmers.

In addition, BNDES has several other credit lines for investment and cash-flow, with low-cost interest rates and fees, for agricultural, livestock, forest, agriculture-related technology and businesses, as to foster the development of agribusinesses, available for small to big agribusinesses (the classification of a company's size is by its annual gross revenues). Loans depend on the approval of the relevant project and credit analysis by a BNDES financial agent, who will act as the lender of such credit. The applicant must be a company headquartered in Brazil.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

In principle, any company headquartered in Brazil is eligible to governmental agribusiness financing programmes, as the ones explained above.

The Brazilian government is interested in bringing foreign investment for agribusiness, and such efforts are reported on MAPA's website: 'Regarding the subject, MAPA acts strategically, articulating with both the public and private sectors aiming at catalysing the entry of foreign capital into the domestic agribusiness' (source: www.agricultura.gov.br).

One of the ways to incentivise foreign investment is to extend credit lines and agribusiness programmes to foreign investors. However, it is undeniable that there are still barriers applied to foreign ownership for investing in agribusiness, especially related to the use and acquisition of rural land and the foreclosure of real estate guarantees by foreign lenders.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

MAPA is the authority in charge of legislating, inspecting and controlling primary processing of food (including live animals) for domestic consumption and for export. The Department for the Control of the Origin of Meat (DIPOA) is the national agency in charge of controlling and registering primary processors of live animals. It has a decentralised structure and DIPOA is present in every state in Brazil.

Once the establishment is inspected by DIPOA agents and it is attested that the company is in compliance with domestic or international sanitary rules, a sanitary certificate is granted to such company, which will be eligible to sell meat on the domestic market and export it. In addition to the certificate and to assure the quality and the standards of the meat as required by domestic and foreign markets, certified companies' sales are only valid and can leave the primary processors' establishments after a proper inspection, which is performed by SIF, which is part of and supervised by DIPOA.

All food primary processors must comply with such provisions.

Currently, Brazil has agreements for the export of meat with more than 40 countries, including countries of the European Union, Europe, Latin America, Africa and Asia. MAPA is in charge of controlling such agreements that provides for sanitary obligations and other rulings to be observed by Brazilian companies to export meat to these countries.

In the case of export to a country with which Brazil has no agreement, MAPA will certify the compliance of a Brazilian exporter to the foreign country's regulatory and sanitary provisions, and a specific certificate can be issued authorising the sale of Brazilian meat.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Up to 2006, food safety regime was regulated by sparse legislation and regulations of different governmental agencies, mainly associated with the MAPA, Ministry of Health, the Ministry of Development and Ministry of the Environment, which generally provided best practice guidelines with the necessary sanitary, safety and environmental conditions for the production of food.

Law No. 11.346/2006 and the creation of the National Council for Food and Nutritional Safety (SISAN), represented by the Ministries, with the participation of the organised civil society, shall elaborate and approve programmes, governmental actions and policies, aimed at assuring the Brazilian population's health and sustainable food supplies.

Current National Food Safety Plan 2016-2019 – PLASAN provides for objectives and goals that range from access to health food, to the reduction of obesity, better control of the use of pesticides and support for family farming, among other long-term objectives.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

Safety control of all food supply chain is done by multilateral governmental agencies and bodies who have joint jurisdiction over the production, manufacturing or processing, warehousing and distribution of food. In addition, there is several consumer protection agencies related to the Ministry of Justice, in charge of the control of consumer-relation food regulation, including safety provisions, nutritional information, labelling and advertisement.

Violation of such laws exposes companies to criminal, civil and administrative liabilities, which can be severe, including safety, sanitary or consumer-law related.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

Brazilian biosafety legal framework comprises federal Law 11.105/2015, regulatory decree and infralegal ordinances that provide for the rules of safety, registration and control of activities related to genetically modified organisms (GMO) and its related organisms. One of the purposes of such law is to incentive the research and development of biotechnology, aiming the protection and health of live organisms and the environment by means of and biosafety regulation.

Biosafety National Consulting Council – CNBS – is directly related to the President of the Republic and its members are composed of several ministries. The National Committee of Biosafety – CTNBio is a multidisciplinary technical council composed of scholars and professors in different areas of expertise and by technical agents of different ministries under the coordination of the Ministry of Science and Technology, whose purpose is to render technical assistance to the federal government in legislating and promoting biosafety and biotechnology programmes.

In accordance with applicable regulation, the agencies in charge of authorising and registering products and companies in their respective sectors also have jurisdiction to register and authorise the use of GMO and related organisms. Therefore, companies that use GMO in agriculture, agricultural input or for the production of food or meat come under the surveillance of MAPA or the Ministry of Health.

Some non-governmental certifying agencies play an important role in attesting non-GMO or organic food.

In any case, violation of such laws, including safety, sanitary or consumer-law related, exposes companies to criminal, civil and administrative liabilities, which can be severe.

Law 10.831/2003, Decree 6.323/2007 and relevant ordinances provide for the guidelines for the sustainable and organic agriculture and livestock business, establishing the parameters for the Brazilian System of Organic Conformity Evaluation. MAPA has jurisdiction to inspect and control the organic production of food, which is certified by accredited certification agencies.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

There are two sets of regulation that provides for food labelling: consumers' protection rules and sanitary rules.

The Consumer Protection Code provides that labelling shall have clear, precise, objective information in Portuguese about the characteristics of the product, its quality, quantity, ingredients, formula, validity, origin, providing for any safety information about potential health risks or potential adverse injuries associated with the ingestion of the product. The manufacturer and distributor must be identified and the label shall state consumer service contact information. The Public Attorney's Office, consumer protection agencies and specific

governmental agencies control compliance with consumer protection information. Consumers can also claim any for losses and damages resulting from the violation of such rules.

Health Agency (ANVISA) provides for the regulation of processed food labelling, which shall bring, at least, the following information about the product: nutritional facts, energetic value, content of nutrients, size of the portion, weight, ingredients, formula, manufacturing date, validity, origin, providing for any safety information about potential health risks or potential adverse injuries associated with the ingestion of the product. There are some mandatory warnings, including related to allergies or to the characteristics of the product.

The Ministry of Agriculture (MAPA) provides for the regulation for in nature or semi-processed food labelling (ie, meat, rice, beans, milk, fruit juice). The requirements are not as restrictive as for processed food labelling. However, given the requirements of consumer protection rules, most of the products encompass the information listed above, besides those applicable only to products in nature (ie, safety inspection stamp (SIF)).

Violation of such safety, sanitary or consumer-law related laws exposes companies to criminal, civil and administrative liabilities, which can be severe.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

There are several sanitary regulations that provide for sanitary prevention and prophylactic programmes, including the control of the cattle-raising and transport, as well as the vaccine programme. Producers that do not comply with such obligations and do not prove that livestock is in line with animal health and sanitary regulations are not permitted to sell to slaughterhouses or animal food processors.

The World Organization for Animal Health (OIE) has recently recognised that Brazilian livestock is free from food and mouth disease (with or without vaccination), one of the diseases listed in the OIE. OIE is the international body in charge of monitoring animal health and minimising the spread of important animal diseases that affect productivity. Through this organisation, an International Animal Health Code has been developed that lists various disease statuses within every country and the time frame and conditions for a country or zone to be considered disease-free under each category. Besides providing better animal health status domestically, compliance with OIE norms enables a certification of compliance with developed country standards, opening a whole raft of new export possibilities (www.fao.org) (see question 12).

18 What are the restrictions on the movement of animals within your country?

Transportation of animals within the country requires the issuance of a bill of transportation (GTA), which provides information on the number of animals, their origin and destination, as well as proof of compliance with the sanitary and safety obligations. This bill of transportation has a primary safety and sanitary purpose, controlling the movement of animals within the country.

The control is done by MAPA, but the states and local authorities are empowered to act on the control and inspection of the such transportation, by means of sanitary documentation on animals and relevant GTA.

Besides, there are other guidelines for the transportation of animals, to ensure animal health conditions and animal welfare standards. MAPA is discussing an ordinance to transform such guidelines and standards into a proper ordinance.

19 Describe any restrictions on import of food animals.

Import of food animals is inspected and controlled by Ministry of Agriculture to assure safety and sanitary standards, prevent the entry of diseases or other pest infestations, or any other human or animal health risks associated with such import.

For the import of animals for food certification sanitary regulations must be equivalent between the countries; such certificate is granted by MAPA after the analysis of relevant documentation. In any case, all imported food shall be previously inspected by MAPA agents before being authorised for sale on the Brazilian market.

In addition, MAPA's Agriculture Defence Secretary provides for an import alert system in which companies that had products exported to Brazil that did not comply with safety or sanitary provisions upon local inspection, may have their imports closed off until the sanitary violations are resolved.

20 What are the regulations related to livestock slaughtering?

As mentioned above Ministry of Agriculture has implemented several safety and sanitary provisions that control since cattle raising, through cattle feedlot up to the delivery to slaughterhouse, and the sales therefrom. By means of the control of the animal health conditions and standards and bill of transportations, Ministry of Health, together with state relevant authorities control the entry of animals to slaughterhouse.

On top of that, there are other sanitary and environmental laws to livestock slaughtering that will be reviewed on a case-by-case basis, depending on the location and specific characteristics of the slaughterhouse.

21 Outline the regulatory regime relating pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The regulatory regime for the pest control and pesticides in relation to crops is outlined in Law 7.802/1989, which provides for the use of pesticides and fertilisers, as well as the conditions for the final disposal of the packaging of such products. This regulation is currently being reviewed by the Congress and there is a bill of law being reviewed by the Senate. The changes generally relate to introducing different pesticides, which are less harmful to the environment and to human health.

In addition, agriculture input companies, universities and governmental entities are conducting research to develop biological control of pests in plants. The Agriculture and Livestock Research Institute of MAPA has solid expertise in the biological control of pests. However, this is still not used (or available) for large-scale agribusinesses.

In connection with animal diseases and control, as mentioned, Brazil controls the movement of animals and animal products, which includes veterinary checks, proof of vaccination and routine inspection (see questions 12 and 17).

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Most agribusiness in Brazil is carried out by individuals, regardless of the size or volume of the crops, owing to specific tax benefits granted to individual rural producers. Also, some tax incentives or simplification of tax obligations apply to individual rural producers, whereas some special agribusiness credit lines are only available for individuals.

However, for the large-scale production of grain and meat, in particular for export purposes, a corporate structure is required. There are two main corporate structures: limited liability companies and corporations. For companies that operate on the stock market, the corporation structure is mandatory.

Limited liability companies are governed by the Civil Code. Ownership structure, management are all provided for in relevant articles of association recorded with the commercial trade of the state where the company is headquartered and of the states where the branches are located.

Corporations are ruled by specific law, and can be public or closely held. By-laws shall be recorded for commercial trade. Among the legal obligations, annual general shareholders' meetings are mandatory for the approval of the financial statements and balance sheets, as well as for the approval of acts by management. Corporations are managed by a board of directors and board of officers. All relevant financial and commercial information shall be published in the Official Gazette, stemming from the duty of transparency to shareholders.

Other forms of corporate structure have become common in agribusiness in recent years as the sector has developed, bringing a great number of domestic and international financial investors, funding huge agribusiness conglomerates composed of players from the entire food supply chain. A business can be structured as a simple group of companies or a complex investment fund and corporations, or through joint ventures and consortia.

Nevertheless, there are typical agricultural operations agreements that can be either associated with the structures mentioned above or stand alone. By means of such arrangements, the owner of the land and producer or farmer join forces and bear the risks of the business, pursuing economical results therefrom, some examples are: rural partnership; special partnership; surface rights; usufruct rights and integration agreement. Such agreements and more complex corporate structures have become more common since 2010, after the Federal Law Department has reviewed its previous opinion on the possibility of Brazilian companies with a majority of foreign capital owning rural properties or possessing rural land by means of lease arrangements. Foreign investors have continued to invest in agribusiness in Brazil by means of partnerships with local companies and farmers, with Brazilians possessing the land and the foreign investor participating in the agricultural or livestock operations.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

Besides the restrictions for the acquisition of rural land (including the border zone) by foreigners, development of agribusiness in Brazil is permitted for any interested party. However, except for buying commodities from trading companies, companies headquartered abroad would not have the ability to do business in Brazil without a legal entity duly incorporated under the laws of Brazil. This is because to obtain all the authorisations, permits, corporate and tax obligations for commercial acts to and from Brazilian territory, tax registration and relevant authorisations and permits are required.

Businesses on the border zone may depend on specific authorisation from the National Defence Council, because this area is of national security. However, such restrictions for the operation of business at the border zone may apply to domestic or local investors.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The Labour Code and regulations of the Ministry of Labour governs the employment relationship in Brazil. The provisions of the labour law shall prevail over any other written employment agreement if such agreement provides for inferior work conditions or for the waiver of any labour rights or benefits as provided for in the law. Labour unions and employers or trade unions negotiate annual collective bargain agreements that shall designate additional labour benefits or specific labour rules. Labour unions represent employees of a given region.

Rural workers are entitled to the same rights of any other class of workers, being assured certain rights specifically related to the conditions of the agribusiness (ie, distance to the urban centres).

Article 7 of the Brazilian Federal Constitution lists all the benefits assured to employees, including salary, vacation, Christmas and vacation bonuses, overtime, transportation and weekly paid rest. A standard work shift is of 44 hours a week.

Social security and social contributions for rural workers have specific provisions and can be calculated and collected over employers gross revenues instead of via the payroll. Retirement and pension provisions may also differ.

Given the fact that agricultural activities are seasonal, it is common that workers are hired for season, for a determined period of time or for harvesting or planting season, for instance. Depending on the activities or the type of work, specific labour provisions may apply (ie, sugar cane plantation workers or agricultural machinery operators).

25 How is farmworker immigration regulated in your jurisdiction?

The Ministry of Justice controls the immigration flow and Ministry of International Relation grants relevant visas, through its embassies. Immigration law authorises the issuance of working visa for a maximum term of two years (extended for additional two years). In this regard, an employer must apply for a visa and the working authorisation is linked to that specific employment agreement. To grant a working visa, Brazilian labour law determines that a maximum of one-third of an employer's manpower can be made up of foreigners.

After expiration of the working visa term (as well as the extension term), a company or employee may apply for a permanent visa.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

The Labour Code provides in its article 200 that the Ministry of Labour shall set the rules related to the work environment, health and safety relating to workers. In this sense, Ordinance 86/2005 of the Ministry of Health approved Regulatory Provision 31 (NR 31) with a comprehensive and complex set of norms related to obligations in work environment conditions, as well as health and safety guidelines applicable to farmworkers.

NR 31 provides for:

- an occupational health programme, including the obligation to have workers' periodical examination and lab tests;
- control and training of workers for the handling and use of pesticides and agricultural inputs;
- proper management and handling of waste and residue generated by the agricultural activities;
- ergonomics work condition plan;
- training for the use of machinery and tools;
- safety transportation procedures;
- proper personal protective equipment to be delivered by employer to employee, according to the occupational health programme and risk analysis; and
- proper resting and accommodation facilities.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

Brazil has consolidated its position as a big food producer and exporter, as result of a combination factors, such as availability of plantable land, climate; investment in technology and quality of the crops and livestock. Currently, Brazil exports to more than 180 countries, among them Mercosur and European Union countries, China and the United States.

However, 'agribusiness represents approximately 40% of Brazil total export and 7% of the global market. The government goal is to increase this participation to 10%.' (www.agricultura.gov.br)

In order to achieve such participation in the global market, federal government studies several actions envisaging non-tariff negotiations and access to different markets, increasing the number of agricultural products exported.

As clarified above, there are several sanitary rules applicable to the export and import of agricultural products (animal and non-animal).

The import of goods and agricultural products is subject to import taxes and contributions, levied the moment the product clears customs.

All imports and export are subject to customs clearance procedures before the Federal Revenue Services, and import or export procedures before Brazilian Central Bank.

28 May tariffs, quotas or similar measures be put in place?

There is no embargo or restriction in place applicable to Brazilian exports in general. Applicable quotas are added to some specific sanitary, technical conditions or tariff.

Currently the following quotas are in place for the export of agricultural products:

- Hilton quota – specific restrictive sanitary conditions may apply for the export of beef;
- chicken quota – specific restrictive sanitary conditions may apply for the export of poultry;
- milk quota – specific restrictive sanitary conditions may apply for the export of milk or dairy products; and
- sugar quota – specific restrictive conditions may apply for the export of milk or dairy products.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Brazil has entered into 33 bilateral tax treaties for avoiding double taxation. In addition, there is a treaty executed by Brazil and Mercosur for the import and export of agricultural products.

In addition, Brazil is signatory to the International Convention for the Protection of Plants, for the protection and prevention of pests and plant diseases; the Fitosanitary Programs Commission that approves and legislation over International Fitosanitary Technical Rules, as well as the General Agreement on Tariffs and Trade.

Mercosur and the European Union are negotiating a commercial treat, in which Mercosur countries would benefit from the export of agricultural commodities and European Union countries would benefit from the export in the industrial sector. According to the Brazilian Ministry of International Affairs, the expectation is that the treaty will still be executed in 2018 (www12.senado.leg.br/noticias/materias/2018/05/17/mercosul-e-uniao-europeia-podem-firmar-acordo-ainda-este-ano-afirma-diplomata).

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Plant variety intellectual property is regulated by Brazilian Law No. 9.456/97. Plant breeders may obtain a plant variety certificate to protect intellectual property rights related to species of superior plants if the requirements below are fulfilled:

- it is distinct from other plant varieties based upon morphological, physiological, biochemical or molecular inherited characteristic (its descriptor);
- it is capable of being produced in commercial scale maintaining minimum variability regarding its descriptors (homogeneity);
- it is stable in the sense that its homogeneity is maintained throughout successive generations;
- it is usable in activities related to the cultivation of plant genus or species aiming at, among purposes, the human or animal feeding, the production of fuel, oils, dyes, fibres and other supplies for industrial, medicinal, forest and ornamental purposes; and
- it is new in the sense that it has not been commercialised in Brazil for more than 12 months in relation to the application date for the plant variety protection and has not been commercialised outside Brazil (with the plant breeder's authorisation) for more than six years for species of trees and vine, and more than four years for other species. Thus the novelty requirement for plant variety protection is not the same as for the Brazilian patent system.

31 How are farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

Plant breeders may hire farmers as service providers for the cultivation only. Plant breeders may license their plant variety IP – in which case the farmers may grow and commercialise the products accordingly to the licence provisions.

In the context of family farming (which must fulfill some legal requirements) farmers may reproduce, multiply, distribute and commercialise seeds and other materials.

Small farmers may propagate seeds for donation or trade exclusively with other small farmers in the context of financing projects for the support of small farmers carried out by public bodies or non-governmental bodies authorised by the Public Power.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Plant varieties are not protected under the Brazilian patent system. However, transgenic microorganisms (as those used in agribusiness) may be protected in such way if novelty, inventive step and industrial application requirements are fulfilled.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The concurrent jurisdiction for the edition of laws (article 24 of the Brazilian Federal Constitution) implies that the federal government shall establish general rules, while the states, federal district and the municipalities shall detail the federal laws and adapt the general rules to regional characteristics. It is important to stress that the possibility of supplementing the federal laws does not entitle the states or the municipalities to disregard the federal laws or edit laws that conflict with those of the federal government. Therefore, for example, if a federal law sets certain restrictions on a determined activity, state law cannot waive such restrictions. It may, on the other hand, create more restrictive rules, as long as they are not in conflict with the federal law.

If the matter addressed in state law has not yet been established in federal law, the state will have full jurisdiction for the issuance of the law. However, once a federal law on the matter is edited, the state law will lose its applicability in all that conflicts with the federal law.

With regard to the protection of the environment, the jurisdiction of the federal government, the states, the Federal District and the municipalities is considered to be common, which means that all are entitled to undertake measures for protection of the environment and that the action of one does not exclude the jurisdiction of the other.

With regard to the Brazilian environmental liability system, paragraph 3 of the above-mentioned article 225 determines that activities considered as harmful to the environment will subject the individual or the legal entity to criminal and administrative sanctions, notwithstanding the obligation to repair the damage caused.

Considering the above, one can conclude that the Brazilian environmental liability system is administered through administrative liability, civil liability and criminal liability, provided that these are independent and can be applied cumulatively.

Under Brazilian law, agriculture and rural enterprises are classified as activities potentially harmful to the environment, subject to environmental licensing. Complementary Law No. 140/2011 fulfils the constitutional requirement and regulates the joint legal jurisdiction of the federal, state, federal district and municipalities to protect the environment, determining the jurisdiction of each one of them to grant environmental licences.

Based on the applicable legislation, environmental agencies are competent to grant environmental licences to agribusinesses, as follows.

The Federal Environmental Authority is competent to license enterprises:

- located on the border zone;
- located on the territorial sea and areas that comprise the sea border zone; indigenous territories or federal conservation areas as defined by Law;
- located, developed in, or whose environmental impact extends to, two or more states; and
- whose direct impacts surpass the territorial limits of the country.

State environmental agencies are competent to:

- license all agribusinesses subject to environmental licences, except those whose jurisdiction is determined by law to be of the Federal Environmental Authority or local environmental authority;
- license business located or developed on state conservation sites;
- license business located or developed on forests and other environmental protected areas; and
- authorise the suppression of native vegetation or related to the state environmental licences.

Municipalities are competent to:

- license businesses that cause local environmental impacts, as defined by the State Environmental Department;
- license business located or developed on Local conservation area; and
- authorise the suppression of native vegetation of local conservation areas, or related to the local environmental licences.

The main guidelines for the implementation of environmental licensing are provided in Federal Law No. 6,938/81. Complementary Law No. 140/2011, which discusses the municipal, state and federal jurisdiction for licensing, taking as a basis the location of the project, as well as CONAMA Resolutions No. 001/86 No. 237/97.

Environmental licences are usually composed of a preliminary licence, in which the environmental feasibility of the project and identification of all environmental impacts to be caused by such business is analysed, and relevant actions to mitigate, compensate or neutralise such impacts. After that, the environmental authority approves the project (together with other relevant authorities) for the installation of the project and operational test (installation licence); after the conclusion of all the steps and tests provided for in the installation licence, relevant authority inspect the area and grants the relevant environmental operation licence.

Environmental licences are usually issued with a number of technical requirements that must be complied with in order to assure the maintenance of their validity. Non-compliance with the mentioned

technical requirements may lead to the suspension of the licence and imposition of administrative penalties, as well as obligation to recover and compensate environmental damages.

State legislation can provide for other environmental licensing ruling, which can be more restrictive than the federal law, but never more permissive. In some cases, environmental law provides for the possibility for a company to regularise its business and obtain a corrective environmental licence.

In accordance with the Federal Law, agricultural and rural enterprises with an operational area equal to or larger than 1,000 hectares are, as part of the preliminary licensing procedure, required to prepare an environmental impact study and environmental impact report (EIA/RIMA). EIA/RIMA aims to identify environmental impacts and provides several procedures for mitigating, compensating or neutralising such impacts during the installation phase and throughout the development of the business.

Another important point is that an environmental licence is not analysed by title, but it is granted to a rural enterprise comprising several titles of contiguous areas or a cluster of areas not contiguous, but integrated among them.

Suppression of vegetation, water permits for irrigation purposes or for any other purpose related to the business, shall be part of the environmental licensing procedure.

Depending on the size of the business and relevant impacts, a company must pay an environmental compensation fee, equivalent to a minimum of 0.5 per cent of the total investment in the project, to be used by the state environmental authorities in the maintenance of state conservation areas or to fund other social-environmental state projects.

The obligation to preserve part of the natural cover of rural properties was first established in 1934 and has been significantly changed over the years. Currently, the matter is addressed at federal level by Federal Law No. 12,651/2012 (the Brazilian Forestry Code). Based on the applicable legislation, the legal reserve area of rural properties located in the majority of the Brazilian territory is equivalent to 20 per cent of the area of a given property; in the Amazon forest it is equivalent to 80 per cent of the property. Further to the preservation of such native vegetation, the legal reserve area shall also be informed in the rural environmental registry.

Environmental law provides that some specific areas shall be protected, aiming at preserving natural resources, ecological chains and biodiversity, as well as protecting native flora and fauna (areas adjacent to rivers or natural or artificial reservoirs). As a rule, referred environmental protected areas shall not be used for any purpose except for specific uses considered of low impact and according to a special authorisation granted by the competent environmental agency.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

As mentioned above, states have jurisdiction to regulate and legislate over the parameters and standards for the control of water and air pollution. For primary agriculture and livestock, federal and state laws provide for such parameters in special in relation to the emissions resulting from great monocultures or cattle, pork or poultry raising and feedlot. Usually an environmental operation licence will state the conditions for mitigating, compensating or eliminating water or air pollution resulting from such business.

Violation of the provisions related to the control of water and air pollution exposes companies to administrative penalties, civil actions and criminal lawsuits.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Federal law provides for specific ruling for the disposal of pesticides wastes and packaging as well as animal health packaging and wastes. The supplier of such supplies and input is liable for the collection of such wastes in a take-back system. In addition, operation licences will provide for the conditions for the final disposal and treatment of effluents and wastes generated by such businesses, which may include the disposal of such material into a suitable landfill, incineration, water treatment public sewerage system or any other disposal format duly approved by the environmental authorities.

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Canada

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

In Canada, there are two primary jurisdictions with authority over agriculture and food supply: the federal government and the provincial governments. The federal government has jurisdiction over banks, trade and commerce, and bankruptcy and insolvency. The federal government has authority over all trade issues, both provincial and international. The provinces have jurisdiction over property, including lands within the province.

Primary agriculture is generally regulated at the provincial level. Restrictions on the ownership and use of agricultural land varies across the provinces. Each province also has environmental laws that govern agricultural land use. Where primary agriculture meets fish-bearing streams and rivers, there is a role for federal fisheries regulators.

Farmers of crops will have to be aware of pest management rules, worker health and safety rules, migrant worker regulations, food certification standards (such as organic), as well as local municipal zoning and land use restrictions.

Farmers of live animals will be subject to many of the same considerations applicable to crop farmers. The most significant differences arise in relation to the five supply managed industries in Canada and their commodities:

- milk (dairy);
- chicken;
- table eggs;
- hatching eggs; and
- turkey.

These five commodities are regulated under national marketing schemes that set strict quota requirements for their production. Farmers must adhere to these quotas before they can produce these products. The amount of the quota that can be used by the farmers each growing cycle is set at both the national and provincial levels. Processors of these supply managed commodities must also comply with the supply management regimes.

Once the crops or animals have been grown and processed, there is a bigger role for the federal regulators. The Canadian Food Inspection Agency (CFIA) has a role with all products intended for sale outside a province. Packaging of products is regulated nationally and includes requirements for language, contents and certification, among others. Packaging in Canada requires labelling in both French and English, with weights and measurements using the metric system.

Many major retailers purchase food products under national or regional contracts. Regional contracts tend to be set for the western region (British Columbia, Alberta, Saskatchewan, Manitoba), the central region (Ontario, Quebec) and the eastern region (Atlantic provinces).

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The federal government has control over imports and production planning at the national level, pursuant to section 91 of the Constitution Act 1867. The provinces have jurisdiction over production and pricing within their respective provinces under section 92 of the Constitution Act 1867.

Canada's regulatory framework aims to ensure the humane treatment of animals, the safety of food products and the elimination of contamination. It also works to ensure the protection of the consumer through food safety and labelling standards.

Most provinces have land use planning legislation that establishes what the land may be used for and what infrastructure may be built upon the land. The landowner may face significant restrictions on their use of the land.

Producers of supply-managed products may not market their products for intraprovincial-interprovincial or export trade without first acquiring the production quota. Such quotas are restricted and can be expensive to obtain. Producers receive a regulated price established by provincial marketing boards for their products. Food processors must pay the producers the regulated price for their products. The national quota volumes are set by the:

- Canadian Dairy Commission;
- Canadian Hatching Egg Producers;
- Chicken Farmers of Canada;
- Egg Farmers of Canada; or
- Turkey Farmers of Canada.

Provincial marketing boards then allocate their assigned quotas among producers within their respective province. Each provincial marketing board has its own set of rules that must be followed by producers and processors.

Many field and greenhouse crops are also subject to provincial boards and commissions, which may set levies and standards for the production of specific crops. These vary between provinces.

Primary food processors must comply with health and safety laws in the province and, if they intend to sell their products outside the province, must comply with federal health and safety laws administered by the CFIA.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Farm Credit Canada, a federal Crown corporation, provides and guarantees loans to producers, agri-food operators and agribusiness. The Agricultural Credit Corporation, a not-for-profit corporation, provides low-cost loans to farmers across Canada. There are numerous organisations that are involved in agribusiness providing support, information and programmes for the sector. Finding the appropriate organisation among the myriad available can be challenging for farmers. AgPal is a web-based discovery tool to help Canadian farmers and agribusinesses find agriculture-related programmes and services administered by partners and organisations. The Ministry of Agriculture for each province also provides resources for identifying and accessing such organisations.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

There are numerous provincial and federal statutes and regulations applicable to agricultural property transactions dependent on the jurisdiction in which the property is located.

Ownership of farmland is usually undertaken by an agreement of purchase and sale. While there are many similarities to agreements relating to the acquisition of non-farmland, special consideration must be given to numerous statutes, specific searches undertaken and inquiries made prior to the closing of a transaction to address farmland specific issues.

These issues include, but are not limited to:

- accurate property description;
- zoning, easements;
- rights of way;
- environmental issues;
- drainage;
- fences; and
- conservation authorities.

Farmland may be owned or leased. Farmland and the business of farm operations may be undertaken using various methods such as sole proprietorships, partnerships, corporations and joint ventures (JVs) all of which should be carefully considered in relation to the business organisation methods most suited to the particular situation.

5 Outline any rules related to use of farmland for non-agricultural uses.

Land use planning is under provincial jurisdiction. Land use planning is coordinated between the province and its municipalities. In general, the province is responsible for identifying provincial policy interests and objectives. Municipalities then consider provincial objectives when undertaking planning decisions and developing official plans or development plans.

A central theme among provincial planning policies is the need to preserve and protect agricultural land by limiting its use to agriculture. A strong emphasis is placed upon stopping non-agricultural encroachment onto these lands.

In British Columbia and Quebec there are agricultural land reserves, which restrict the use of lands to agricultural purposes within the reserves. In most provinces there is legislation to protect farmers from nuisance complaints arising from the normal use of farmland.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In Canada, the federal government has jurisdiction over banks, trade and commerce, and bankruptcy and insolvency. The provinces have jurisdiction over property. Farm lending is governed by the federal Bank Act, provincial legislation concerning personal property security and provincial mortgage acts.

Section 247 of the Bank Act contains provisions on what property banks may secure when lending to a farming operation. It allows for banks to secure crops, seeds, livestock, implements and equipment.

Particularly with farm lending, familiarity with provincial personal property security acts is essential, given the significant use of personal property as security in farm financing. For example, the treatment of quotas as property varies from province to province. Once the lending agreement has been executed, it is the lender's responsibility to register the charge against the land and the security against personal property with the appropriate provincial administrative bodies.

In addition to Farm Credit Canada and the Agricultural Credit Corporation, several provinces have also established provincial Crown corporations that may extend loans to farmers. Alberta, Manitoba and Saskatchewan have established provincial Crown corporations that provide agriculture-related loans.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Bankruptcy and insolvency fall under the jurisdiction of the federal government. In general, the same procedures apply to agricultural and non-agricultural insolvency and bankruptcy proceedings, with some exceptions.

Pursuant to the Farm Debt Mediation Act, a farmer may apply to the Farm Debt Mediation Service when he or she is no longer able to make payment on time, or the value of the farm property would not be enough to cover his or her debts, if sold. Mediation services and an appeal process are offered to the debtor and creditors.

Certain provinces have also implemented protections for farmers and their property during insolvency and bankruptcy proceedings such as the Family Farm Protection Act (Manitoba), the Farm Financial Stability Act (Alberta) and the Saskatchewan Farm Security Act.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

Farmland in Canada can be subject to significant public control. Most provinces have land use planning legislation that establishes what use the land may be put towards and what infrastructure may be built upon the land. Depending on how the land is classified or zoned, the landowner may face significant restrictions on their use of the land.

Separation requirements between farm structures and other buildings generally exist. In Ontario, the Minimum Separation Formulae establishes minimum distances between livestock barns, manure storage and other buildings.

Land use planning also encompasses the preservation of natural heritage, which may impact upon the use of land that was intended by the owner. Most provinces have environmental protection legislation. Landowners may face restrictions regarding the use of their land when their intended use has an impact upon wetlands, waterways, floodplains, shorelines and other lands subject to conservation efforts. Certain provinces also allow for the creation of conservation easements on private lands that survive the sale of the property.

In general, approval is required from the appropriate provincial body before engaging in works that will alter the flow of water on a landowner's property. Most provinces have legislation aimed at protecting drinking water and water systems. Furthermore, landowners are prohibited from dispelling substances into water that may impair the water quality. Depending on how much water is to be used and for what purposes, licences may be required. Exceptions apply if the water is for livestock.

Drainage is also a key component of water management in rural areas. Most provinces allow landowners to petition the municipality for the creation of a public drain. Certain provinces also provide loans to landowners who wish to install tile in order to assist with the proper drainage of their land.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Provinces have jurisdiction over farmland. Alberta, Saskatchewan, Manitoba and Quebec have imposed significant restrictions on foreign ownership of farmland. Alberta, Saskatchewan and Manitoba limit the amount of farmland that non-residents and non-Canadian owned entities may acquire. The restrictions in these three provinces range from 10 acres (Saskatchewan) to 40 acres (Manitoba) of farmland that may be owned by non-residents and non-Canadian controlled entities.

In Quebec, only residents of Quebec and Québécois-controlled entities may acquire more than 10 acres of farmland pursuant to the Act Respecting the Acquisition of Farm Land by Non-Residents.

Prince Edward Island does not restrict who may own farmland. However, the Land Protection Act limits individuals to acquiring up to 1,000 acres of farmland and corporations to 3,000 acres of farmland.

Ontario and British Columbia do not have any ownership restrictions on farmland.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

There are numerous agriculture-related programmes, services and supports available to help Canadian farmers and agribusinesses through various partners and organisations. As mentioned in question 3, the online tool AgPal (www.agpal.ca) may be used to assist in navigating the myriad programmes. Further programme information is available through the agriculture ministry for each province and territory.

The federal government, through the Ministry of Agriculture and Agri-Food Canada (Agri-Food Canada) maintains a suite of programmes in order to support:

- innovation;
- sustainable farming;

- business development;
- risk management;
- trade; and
- market development.

Growing Forward 2 is a five-year framework (2013–2018) in which federal, provincial and territorial governments provide support to Canadian producers and processors.

Under Growing Forward 2, the federal government manages three broad programmes with C\$1 billion aimed at promoting growth in the agriculture sector: AgriInnovation, AgriCompetitiveness and AgriMarketing.

AgriInnovation

This scheme provides funding targeted to research and development activities and enabling the industry to adopt and commercialise the research. Applications can be made online through the Agri-Food Canada's website or by mail.

AgriCompetitiveness

This makes directed investments to assist the sector in adapting to opportunities and issues and enhancing business in the face of market trends. The programme promotes business development, provides forums for development of joint action between industry and government, and allows industry stakeholders to provide input into the regulatory regime.

AgriMarketing

This provides support to the industry's efforts to expand markets and seize opportunities. Promotional activities and the development of market strategies are supported by this programme.

The federal government also provides a suite of Business Risk Management programmes – AgriInvest, AgriStability, AgriInsurance, and AgriRecovery – to assist farmers to manage risk arising from market loss and natural disasters.

AgriInvest is a self-managed producer-government savings account that enables producers to save money. It provides support for investments to mitigate risks or improve market income. A participant can deposit up to 100 per cent of allowable net sales, with the first 1 per cent matched by governments. Deposits can be made at a participating financial institution.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Apart from the aforementioned programmes aimed to support farming and agribusiness development, Agri-Food Canada makes no specific provisions for foreign incentives.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The federal government is responsible for regulating the processing of live animals where they are destined for interprovincial or export trade. Provinces regulate the processing of live animals destined for intraprovincial trade. Canada's regulatory framework aims to ensure the humane treatment of animals, the safety of food products, and the elimination of contamination. It also works to ensure the protection of the consumer through food safety and labelling standards.

Key legislation for processors of live animals under federal jurisdiction include the:

- Health of Animals Act;
- Meat Inspection Act;
- Consumer Packaging and Labelling Act;
- Food and Drugs Act; and
- Safe Food for Canadians Act.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Canada has a robust food safety regime. Introduced in 2012, the Safe Food for Canadians Act will consolidate the authorities of the Fish Inspection Act, the Canada Agricultural Products Act, the Meat Inspection Act, and the food provisions of the Consumer Packaging and Labelling Act.

The following federal legislation also relates to food safety:

- the Agriculture and Agri-Food Administrative Monetary Penalties Act;
- the Canada Agricultural Products Act;
- the Consumer Packaging and Labelling Act (regarding the provisions concerning food);
- the Feeds Act;
- the Food and Drugs Act (regarding the provisions concerning food);
- the Health of Animals Act;
- the Meat Inspection Act; and
- the Plant Protection Act.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

CFIA inspectors may investigate any alleged contraventions of the legislation listed in question 13. Penalties may include imprisonment or fines. The Agriculture and Agri-Food Penalties Act also establishes penalties for the violations of the following pieces of legislation:

- the Canada Agricultural Products Act;
- the Farm Debt Mediation Act;
- the Feeds Act;
- the Fertilizers Act;
- the Health of Animals Act;
- the Meat Inspection Act;
- the Pest Control Products Act;
- the Plant Protection Act; and
- the Seeds Act.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

The CFIA has set out its regulatory guidance for making claims about food in its General Principles for Labelling and Advertising. Claims must be accurate and cannot mislead the consumer. All claims must be made in accordance with the Food and Drugs Act (section 5.1) and the Consumer Packaging and Labelling Act (section 7). CFIA may conduct investigations into claims. The onus is on the person making the claims to substantiate them.

Canada has voluntary standards regarding labelling foods that do or do not contain genetically modified material.

The Organic Products Regulation establishes the certification requirements for organic products within Canada. Producers must apply to a certifying board approved by CFIA in order to have their products labelled as 'organic'. There are 18 CFIA-approved certifying bodies in Canada and there are many more CFIA-approved certifying bodies located in different countries. All imported products into Canada must meet the standards under the Organic Products Regulation in order to claim the product is 'organic'.

Canada has equivalency agreements concerning organic labelling with the European Union. The standards for organic certification can be found within the CFIA's General Principles.

Other differential products

Canada also regulates the use of the following claims:

- natural, nature;
- flavour descriptors;
- kosher;
- halal;
- homemade, artisan made; and
- claims regarding the method of production for certain categories of food such as meat, poultry and eggs.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

In general, federal legislation covers food that is marketed for inter-provincial trade, processed in federally licensed facilities or imported. The provinces legislate on labelling requirements for food destined for intraprovincial trade. However, requirements contained in the Food and Drug Act and Consumer Packaging and Labelling Act do apply to intraprovincial trade.

Food labelling in Canada is governed by the following acts and their regulations along with other food category-specific requirements:

- the Food and Drug Act;
- the Consumer Packaging and Labelling Regulation;
- the Canada Agricultural Products Act; and
- the Meat Inspection Act.

All labelling must be in French and English. Generally, the following minimum information must be displayed on a product's packaging:

- common name of the product;
- country of origin;
- date of expiry;
- storage requirements;
- list of ingredients and allergens;
- sweeteners;
- net quantity of the product;
- nutritional information, in accordance with the Food and Drug Regulations;
- additives;
- food grade, if applicable;
- identity of the business and its location; and
- any added vitamins, mineral nutrients and amino acids.

Specific labelling requirements exist for certain categories of food such as fresh fruit and vegetables, dairy products, eggs, grain and baked goods, honey and meat.

Enforcement

Enforcement of these labelling requirements is undertaken by CFIA. Penalties vary depending on the nature, severity and frequency of the offence. They may include monetary penalties or imprisonment or both.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

Legislation concerning the health and well-being of animals is regulated by the Health of Animals Act. Most provinces have similar legislation in place. The operability of either the federal or provincial legislation depends on the nature of the producer's operation. Legislation addressing the health of animals generally encompasses the following topics:

- control of disease and toxic substances;
- eradication of disease;
- importation and exportation of livestock;
- transportation of animals;
- animal identification;
- housing of livestock; and
- feed for livestock.

Disease

Producers and processors are obligated to report contagious diseases that are suspected or confirmed among any of the animals within their care. Once reported, the appropriate governmental agency will then become involved in the testing, monitoring and eradication of the disease. Typically, this role is undertaken by CFIA, which has the power to order the farmer to undertake preventative and protective measures, up to and including the destruction of all animals within the premises. Farmers may be eligible for compensation.

Failure to report diseases is an offence. It may also bar the producer from claiming compensation if their herd, flock, litter or sounder is ordered to be destroyed.

Certain provincial marketing boards, such as the Chicken Farmers of Ontario, also have policies in place regarding how disease is to be handled by the producer. Failure to adhere to these policies could result in the marketing board refusing to increase, revoking or reducing a farmer's quota.

Prevention of animal cruelty

Most provinces have animal protection legislation in place in order to prevent cruelty and neglect of farm animals. Penalties vary depending on the nature of the violation. The Canadian Criminal Code applies to wilful acts of cruelty or neglect of animals. Penalties vary under the Criminal Code depending on the nature of the conviction.

Transport

At the federal level, requirements concerning the transport of animals are contained within the Health of Animals Act and its associated regulations. Federal law applies where the animals are destined for interprovincial or export trade. All provinces have similar legislation in place. In general, transportation requirements touch upon the following aspects of transportation:

- prohibitions against the transportation of sick, unfit and pregnant animals;
- loading and unloading of animals;
- prohibitions against overcrowding;
- mandated segregation of certain animals depending on weight, age and species;
- container specifications;
- use of protective facilities;
- ventilation of transportation units;
- feeding and watering of animals during transit;
- reporting of injured animals during transport;
- records keeping;
- special provisions for transporting animals via sea carrier; and
- permits and licensing.

18 What are the restrictions on the movement of animals within your country?

The federal government has jurisdiction over the movement of animals across provincial borders. At the federal level, the transport of animals is regulated via the Health of Animals Act and its associated regulations. Provinces have similar legislation in place for the movement of animals within provincial borders. In general, animals must not be transported when they are sick, injured or otherwise unfit to be transported.

19 Describe any restrictions on import of food animals.

The Health of Animals Act and its associated regulations govern the importation of live animals into Canada. Import requirements and restrictions depend on the animal's country of origin and the presence of contagious disease within this country.

20 What are the regulations related to livestock slaughtering?

All meat that is sold in Canada must be processed in a licensed facility. It is an offence to sell meat that has not been appropriately labelled and inspected. Meat that is imported into Canada must have been processed in a facility that meets Canada's standards for meat processing. Meat that is to be exported out of Canada must also be prepared in accordance with Canada's regulations and in a licensed federal processing facility.

Processing facilities in Canada must be licensed either by the federal or provincial government. In Canada, animals that are being marketed intraprovincially may be slaughtered in a provincially regulated facility. Each province has its own legislative framework and inspection system for provincially regulated abattoirs.

Animals that are destined for interprovincial or export trade must be processed in a federally inspected facility. The Meat Inspection Act, Safe Food for Canadians Act and CFIA Act govern the processing of meat products within federally regulated facilities.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The regulation of pesticides is shared among the federal government and provinces. The federal government is responsible for approving pesticides for use within Canada.

The goal with pest control is to manage the threats that pests pose to health, safety and food production while ensuring environmentally sustainable methods of pest control are promoted, where possible.

Applicable federal legislation includes the Pest Control Products Act and the Pesticide Residue Compensation Act.

The main federal agency involved in pest control is the Pest Management Centre (PMC). PMC works alongside Health Canada and its Pest Management Regulatory Agency to regulate the use of pesticides for commercial purposes.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Sole proprietorship

A sole proprietorship is the most basic form of business organisation. There are few legal formalities and low setup costs. Simply put, a sole proprietorship exists whenever a person carries on business for his or her own benefit without any other person's involvement besides employees. All benefits and risks of the business fall directly onto the sole proprietor.

Partnership

Partnerships refers to a relationship where two (or more) people carry on a business with a view to make a profit. While this common view to make a profit is all that is required to identify an organisation as a partnership, it is still highly recommended that parties enter into a written partnership agreement outlining the basic responsibilities and structure of the partnership.

Some benefits to structuring a farm business as a partnership are income splitting and tax reduction for spouses, the possibilities for intergenerational business transfers as a child eases into the family farming business and the parent eases out, the ease of dissolving a partnership and the ability to reduce the costs associated with the acquisition of capital assets between unrelated parties.

Corporations

A corporation is a 'separate legal entity' with the power to do anything that a person can do such as buy and sell assets, hold a mortgage, enter into contracts and carry on a business. The potential benefits of incorporating must be weighed against the potential disadvantages.

Three main areas require thought before deciding to incorporate: share structure, shareholder agreements and personal or corporate ownership of assets. Share structure will determine control of the business.

Joint venture (JV)

A JV is more informal and flexible than partnerships or corporations. It can be a helpful initial step for testing out how individuals work together or how a child will do managing a family business before a more formal arrangement, such as a partnership or corporation, is set up.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

In Canada, provinces are responsible for the legislation of farmland ownership. Under the Investment Canada Act, a significant foreign investment in farmland, or an agricultural operation or business (including farming operations), would be subject to federal review if it were deemed to be injurious to Canada's national interests.

Private lending is under the jurisdiction of provinces. Some provinces, such as Ontario, require the lender to hold the appropriate licences to carry on in the business of private lending on the security of real property.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The rights of workers or employees working in agriculture may be regulated federally or provincially, depending on the sector. Agricultural workers employed in the grain, feed and seed milling industry are included in the small percentage of Canadian employees working in federally regulated sectors. The labour rights and responsibilities of federally regulated industries and their employees are defined by the Canada Labour Code, which sets labour standards for employment

conditions, such as minimum wage, statutory leaves, payment of wages and notice of termination.

The majority of agricultural operations, and the rights of such employees, are regulated by the provinces.

Each province has enacted legislation that provides employment standards governing matters such as hours of work, minimum wage, leaves and notice on termination. These statutes are the:

- Employment Standards Act in British Columbia, New Brunswick, Ontario and Prince Edward Island;
- Employment Standards Code in Alberta and Manitoba;
- Labour Standards Code in Nova Scotia;
- Labour Standards Act in Newfoundland and Labrador and Quebec; and
- Saskatchewan Employment Act.

As each province has its own legislation, careful attention must be paid to the standards of each province when employing workers to appreciate the application and exceptions applicable to different categories of employees who may be employed in farming and agribusiness ventures.

For example, in Ontario, the Employment Standards Act addresses farm employees, harvesters, near farmers and landscape gardeners and application of provisions of the Act for each category of employee. A farm employee is a person employed on a farm whose work is directly related to primary production of agricultural products, which includes planting or feeding and caring for livestock. A farm employee is entitled to regular wage payments and wage statements and also has a right to leaves of absence, such as pregnancy leave or family medical leave, and is entitled to termination notice and pay, as well as severance pay.

In British Columbia, the Employment Standards Act is enacted to ensure that employees in the province receive at least basic standards of compensation and conditions of employment. The legislation defines a farmworker as a person employed in farming, ranching, orchard or agricultural operations. It does not include a person employed in the processing of products. The majority of the protections offered by the legislation apply to farmworkers, with some exceptions.

In some other provinces, such as Saskatchewan, much of the labour standards legislation does not apply to primary farming operations.

In addition to these statutes, the common law (civil law in Quebec) applies to contracts of employment.

25 How is farmworker immigration regulated in your jurisdiction?

Farmworkers are able to immigrate to Canada through the Self-Employed Persons Program. Eligible farmers must have two one-year periods of experience managing a farm, with the intention and ability to purchase and manage a farm upon arrival in Canada. To apply as a farmer, an applicant must provide documentary evidence of experience managing a farm and the ability to purchase a farm in Canada. Each applicant is assessed using a predetermined selection criteria, which includes experience, education, age, language abilities and adaptability.

Temporary foreign workers can work in Canadian agriculture through the Seasonal Agricultural Worker Program. Workers must be from Mexico or certain Caribbean countries, and must work in on-farm primary agriculture while in Canada. Workers come to Canada on eight-month contracts and are able to return to Canada annually. Farm workers can also come to Canada through the agricultural stream of the Temporary Foreign Worker programme. Workers are able to work in Canada for up to 24 months.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Occupational health and safety legislation in Canada outlines the general rights and responsibilities of the employer and the worker. Each of the provinces and the federal government has its own occupational health and safety legislation. Careful attention must be paid to the standards of each province when employing workers to appreciate the application and exceptions applicable to different categories of employees who may be employed in farming and agribusiness ventures. Part II of the Canada Labour Code addresses occupational health and safety of federally regulated employees.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

The federal government has jurisdiction over the import and export of agricultural products.

All imported and exported products in Canada must have an HS code under the Harmonized Commodity Description and Coding System (HS).

Imported agricultural products are subject to tariff rate quotas. Import requirements for food products, plants and animals are established by the Canadian Border Services Agency and CFIA. Certain agricultural products are controlled products for import into Canada. Therefore, a permit to import these agricultural products into Canada is required under the Exports and Imports Permit Act and the Import Control List. Certain provinces also have regulations in place concerning the import of goods into their province.

Plants, commercial food products, animals, animal products and by-products, feed and tobacco all have special import requirements.

Exporters need to be familiar with the requirements for import of the products to their final destination. Export certificates are required for most agricultural products.

There are certain restrictions on the export of agricultural products, including that animals must not be removed from Canada if they have been exposed to, or are infected with, a contagious disease. Prior to exporting live animals, customs officers must be informed and a certificate of a veterinary inspection must have been received by Canada's Border Service Agency. Animals may not leave Canada until these requirements are met.

Certain products for export, such as meat products, must be inspected before export. All meat products for export must adhere to the regulations for processing meat in Canada. Non-edible animal products require a permit from the CFIA in order to be exported out of Canada. Exporters must generally also keep records concerning the origin of the products they wish to export, any payment for these products, the use of the products within Canada and the exportation of the good.

28 May tariffs, quotas or similar measures be put in place?

Canada has a system of tariff rate quotas. The federal government is responsible for imports and exports.

Domestic legislation that governs the use of tariffs is the Custom Tariffs Act. Agricultural products are subject to tariff rate quotas. Some examples of agricultural products for which tariffs and quotas may apply, include dairy, wheat, barley and poultry. The import of items into Canada is overseen by Canada's Border Services Agency and its officers.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Canada is a member of the World Trade Organization (WTO) and is a signatory to the WTO Agreement on Agriculture. The North American Free Trade Agreement (Nafta) is one of Canada's most influential trade agreements. In addition to Nafta, other notable free trade agreements (FTAs) that have an impact on agricultural imports and exports include the:

- Canada-Korea FTA;
- Canada-Honduras FTA;
- Canada-Panama FTA;
- Canada-Jordan FTA;
- Canada-Colombia FTA;
- Canada-Peru FTA;
- Canada-European Free Trade Association FTA;
- Canada-Costa Rica FTA;
- Canada-Chile FTA;
- Canada-Israel FTA; and
- Canada-Ukraine FTA.

Canada has concluded negotiations for the Canada-European Union: Comprehensive Economic and Trade Agreement.

An Act to Implement the Comprehensive Economic and Trade Agreement Between Canada and the European Union and its Member States and to Provide for Certain Other Measures (Bill C-30), received Royal Assent on 16 May 2017. The provisions of the Act are currently not in force, except for sections 133-137.

Canada also signed the Trans-Pacific Partnership (TPP) on 4 February 2016. But TPP has not yet been ratified and is not in force.

Canada is currently in negotiations for the following FTAs:

- Canada-Caribbean Community Trade Agreement;
- Canada-Dominican Republic FTA;
- Canada-Guatemala, Nicaragua and El Salvador FTA;
- Canada-India FTA;
- Canada-Japan Economic Partnership Agreement;
- Canada-Morocco FTA; and
- Canada-Singapore FTA.

Canada is also conducting exploratory discussions with China regarding a possible Canada-China FTA.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

The rights of plant breeders are protected in Canada principally under the federal Plant Breeders' Rights Act (PBRA). The PBRA was amended in 2015 to bring Canada into compliance with the most recent Act of the International Union for the Protection of New Varieties of Plants (UPOV), which was enacted in 1991 and is commonly known as UPOV 91. Other jurisdictions that have adopted UPOV 91 include the United States, the European Union, Japan and Australia.

All species of plants are eligible for protection in Canada, other than algae, fungi and bacteria. Thus, mushrooms are not eligible for protection. However, all of Canada's grain and oilseed species, along with fruits, vegetables, potatoes, ornamental plants and others, are eligible.

The PBRA sets out specific criteria that must be met for a variety to receive plant breeders' rights protection. The breeder must demonstrate that the variety is:

- new – the variety must not have been sold in Canada prior to filing the application under the PBRA, but may have been sold outside Canada for up to four or six years, depending on the plant type;
- distinct – the variety must be clearly distinguishable from all other varieties that are commonly known to exist when the application is filed;
- stable – the essential characteristics of the variety must remain stable through repeated reproduction, so that subsequent generations of the variety remain true to its description; and
- uniform – variations in plants of the variety must be predictable, capable of being described by the breeder, and commercially acceptable.

A registration under the PBRA provides the registrant with the exclusive rights to:

- produce and reproduce propagating material of the variety;
- condition propagating material of the variety for the purposes of propagating the variety;
- sell propagating material of the variety;
- export or import propagating material of the variety;
- make repeated use of seed of the variety as part of commercial production of another variety;
- use part of the variety as propagating material in the production of ornamental plants or cut flowers;
- stock propagating material of the variety for the purpose of doing any of the foregoing; and
- license others, conditionally or unconditionally, to do any of the foregoing.

The exclusive rights do not apply to harvested materials of registered varieties (including harvested seeds) unless:

- the harvested material is obtained through the unauthorised use of propagating material; and
- the rights holder did not previously have a reasonable opportunity to exercise his or her rights against the propagating material or, if he or she did have such an opportunity, did not fail to do so.

This means that, unless a plant breeder specifically controls (by contract prior to the sale of registered seed) the uses to which a farmer may put materials or seeds harvested from a registered variety, the plant breeder will be unable to enforce exclusive rights against the farmer to

prevent him or her from, for example, selling the seeds that represent the harvest of the first crop that the farmer grows from the seeds of the registered variety.

Plant breeders' rights do not prevent activities done privately for non-commercial purposes, for experimental purposes or for the purpose of breeding other plant varieties.

With respect to the last of those limitations, the use of a variety for breeding other varieties, the breeder holding the registration relies, in part, on the passage of time: by the time another breeder gets free use of its own protected variety (which must be sufficiently distinct from the first breeder's registered variety owner), the registrant should already have improvements in its development pipeline. Thus, the variety owner hopes to stay ahead of competitors by being the first to market with better varieties that are derived from the protected variety.

Under the PBRA, a registration will endure for 25 years (for trees and vines) or 20 years (for other plant types), provided that an annual fee is paid to maintain the registration.

In addition, breeders can potentially protect their intellectual property in plant varieties in Canada through patents. While the plant variety itself is not patentable under Canadian law, it is possible to obtain a patent for the use of a plant variety, or for a plant cell or gene forming part of the variety.

A breeder could further control commercial sale of a variety through use of a trademark. This could enable a breeder to create a protection that would outlast plant breeders' rights and patent registrations, which would be most valuable in the contexts of perennial plant types (such as trees and fruits) that have long commercial lifespans. The variety name itself cannot be trademarked, so a person must be careful to select a variety name that differs from the name the breeder would wish to trademark.

Finally, plant breeders can control their varieties through contract. With respect to annual crops, seed companies often use agreements with farmers, referred to as 'closed-loop contracts' to prevent farmers from saving seed and growing additional crops in subsequent years. In essence, closed-loop contracts require the farmer to account for all seed purchased and crop grown, and to deliver the entire crop to a specified delivery point. Generally, no saving of seed is permitted under the contracts.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The PBRA provides for compulsory licensing of varieties. A registrant can be ordered to provide licences to third parties to carry out any of the activities that a plant breeders' right registration gives to the registrant exclusive rights to carry out, such as to produce and sell propagating material of the variety. Such orders could be made, if necessary, to ensure that the variety is made available to the public at reasonable prices, with wide distribution and maintenance of quality, while also providing for reasonable remuneration to the registrant.

Compulsory licensing can be expected to occur only if a registrant is unwilling to permit reasonably wide distribution of a registered variety at reasonable prices or royalties.

Under the PBRA, farmers have access to crop varieties through what is commonly referred to as the 'farmer's privilege'. Essentially, the farmer's privilege allows farmers who have purchased propagating material of a registered variety to harvest from the first generation grown, condition that propagating material and grow a second generation, and store for that purpose. However, the farmer's privilege does not permit the sale of second-generation harvested material without payment to the registrant, so plant breeders have the right to demand a royalty on the sale of such harvested material.

There are restrictions on the availability of the farmer's privilege. The privilege applies only to harvested material from crops grown by a farmer on his or her holdings, and any subsequent crop grown under the privilege must be grown on the farmer's own holdings. The privilege cannot be acquired from nor transferred to another person through gift or sale.

The farmer's privilege can be restricted through contract. Plant breeders can and do require farmers to enter into contracts when buying initially propagating material, such as seed. In some instances, seed companies will sell only under contractual provisions that prohibit a farmer from saving seed, or, in the case of closed-loop contracts, require the farmer to sell all of the harvested material back to the seed

company. This is most common where the varieties are used to make specialised products, such as oilseeds designed for specific purposes.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

In addition to plant breeders' rights (see question 31) agribusiness-related intellectual property can be protected in Canada by other forms of intellectual property protection, notably patents, which can be used to protect agribusiness-derived innovation, and trademarks, which can be used to protect an agribusiness' brand.

Patent

A Canadian patent provides a 20-year exclusive right, from the date of filing the patent application, to the production, use or sale of a newly developed technology or invention. As in other jurisdictions, to be eligible for patent protection an invention must not have been previously disclosed anywhere in the world, it must be functional and operative, and must show inventive ingenuity.

The invention can take a variety of forms including:

- a product (eg, a genetically modified plant cell);
- a composition (eg, a fertiliser composition);
- a machine (eg, farming equipment);
- a process (eg, a process for producing a transgenic plant); or
- an improvement on any of the preceding forms.

Although similar to most patent systems in the world, there are certain features of the Canadian patent regime that should be considered when engaging the Canadian patent system.

Grace period

Two of the requirements for obtaining a patent is that the invention must be novel and must not have been previously publicly disclosed anywhere in the world. Public disclosures that can constitute a patent bar include:

- written or electronic publications;
- public oral disclosures;
- public demonstrations;
- public use;
- offers for sale; and
- actual sales.

Canada, however, operates a 'relative novelty' requirement that provides a 12-month grace period within which to file a patent application after an applicant-derived public disclosure. The grace period allows a patent application to be filed without the applicant-derived disclosure being considered a novelty-destroying bar against the patent application. The grace period only protects against public disclosures made by the patent applicant or through the patent applicant and does not protect against independent disclosures made by third parties prior to the filing date.

Protection for plants and self-replicating crops

A distinction is made in Canada between lower life forms (unicellular), which constitute patentable subject matter, and higher life forms (multicellular), which are not patentable in Canada.

Lower life forms include, but are not limited to:

- microscopic algae;
- unicellular fungi, including moulds and yeasts;
- bacteria;
- protozoa;
- viruses;
- transformed cell lines;
- hybridomas; and
- embryonic, pluripotent and multipotent stem cells.

Higher life forms include:

- animals;
- plants;
- mushrooms;
- fertilised eggs;
- totipotent stem cells; and
- plant parts – such as a cutting, callus, rhizome, tuber, fruit or seed.

Update and trends

Cannabis legalisation

The road to legalisation

The Liberal Party's commitment to legalise recreational use of Cannabis in Canada resulted in Bill C-45 or the Cannabis Act (the Act) being passed by the House of Commons in November 2017, being voted in by the Canadian Senate on 19 June 2018, and receiving Royal Assent on 21 June 2018.

As at 17 October 2018, Canada will become the first G7 and G20 nation where both medical and adult-use recreational cannabis are legal. It will be the second nation after Uruguay where the drug is formally legalised.

The Cannabis Regulations and the Industrial Hemp Regulations, published on 11 July 2018, establish rules and standards applicable to production, distribution, sale, importation and exportation of cannabis by federal licence and permit holders.

Health Canada is responsible for overseeing the legalisation.

What legalisation means

Canadians will be able to legally purchase and consume cannabis for purely recreational purposes. Far from establishing a free reign, however, the Act creates a stringent regulatory framework, along with strict packaging standards to ensure full disclosure and discouragement. The broad objectives are: keeping cannabis away from youth; bringing the black market under check; and minimising harm.

Taking cannabis across Canada's international borders will remain illegal.

Interplay between federal and provincial governments

While the federal government makes production, purchase and consumption legal, the provincial governments will oversee distribution, sale and law enforcement. Flexibility has been accorded to provinces in lowering possession limits, increasing minimum consumption age, restricting public use, limiting personal cultivation, etc, irrespective of federal specifications. Municipalities may pass by-laws to regulate the use and impact of legalised cannabis in their local jurisdiction.

Future considerations

- Maintaining occupational health and safety across all industries;
- regulating impaired driving;
- addressing the potential of legalised cannabis as an agricultural commodity;
- ensuring environmental safety;
- legalising cannabis edibles within 12 months of the Act coming into force (as committed to by the federal government), bringing forth a new set of logistical challenges as well as opportunities to create value-added products; and
- addressing potential impact on the real estate industry.

Food safety

What's in the 2021 version of Canada's food label?

On 14 December 2016, Health Canada introduced comprehensive amendments to food labelling requirements under the Food and Drug Regulations, to facilitate an easier understanding of food labels and more awareness for consumers. The deadline for compliance is 14 December 2021. The new rules mandate an overhauled Nutrition Facts Table and list of ingredients for prepackaged foods, and include regulation of serving sizes, which must now align with reference amounts prescribed by Health Canada; revised percentage of daily values, with emphasis on sugars and food colour; and a modernised list of ingredients or core nutrients. The style and formatting of food labels have also been changed. At this point, a transition plan is required by the industry to prepare for the 2021 deadline.

Safe Food for Canadians Regulations: what you need to know

The recently announced Safe Food for Canadians Regulations (SFCR) will replace 14 existing regulations with one set of rules, mainly for introducing licensing, preventive control and traceability measures. The aim is to ensure greater food safety, avoid safety hazards and risks to food animal welfare, implement quick and efficient response to food safety issues, and make Canadians feel more confident in what they buy and eat. The changes will include:

- mandatory licensing for specified businesses;
- implementing preventive controls for certain businesses;
- necessitating written preventive plans for businesses, with certain exceptions;
- new traceability norms for businesses to track movement of their food through supply chains, along with minimum record-keeping norms; and
- stricter penalties for errant businesses, including licence suspension, seizure of food products, fines and possible imprisonment.

The SFCR will come into force on 15 January 2019, and some of the rules will be implemented over a 12–30 month period depending on the type of food, activity and business size.

Environmental issues

There are pending changes impacting fish habitat. In 2012, the federal government amended the Fisheries Act to relax some of the restrictions on altering any waterways that might contain fish habitat. These amendments, which were welcomed at the time by the agricultural sector, will soon be reversed. Bill C-68 is anticipated to be passed by the Senate of Canada, in late 2018. The Bill C-68 amendments will restore the prohibition against the harmful alteration, disruption or destruction of fish habitat.

Although animals and plants and their parts are ineligible for patent protection, modified gene sequences, animal cells, plant cells and uses of novel plants and animals, are considered patent-eligible subject matter in Canada. The patent protection directed to the modified genes and modified cells that make up a plant has been extended to protecting the plants regenerated from the patented cells by the Supreme Court of Canada. Thus, the patent protection afforded to modified genes and modified cells in Canada may, in certain circumstances, offer relatively comprehensive patent protection for self-replicating crops.

Protection for computer-related inventions

Similar to other jurisdictions, mere scientific principle or abstract theorem – which includes mathematical formulae, natural phenomena and laws of nature – are not considered subject matter that are protectable by patent in Canada. Thus, a computer program, per se, cannot be patented in Canada. Agribusiness-related software innovations, however, may be protected by patent in the form of a computer-related invention (eg, a computer-related method or device that requires the use of a computer).

While there is no bright-line test, the Canadian Intellectual Property Office has developed examination guidelines that clarify the requirements for determining the patent-eligibility of a software-related invention. Following the release of these guidelines, issuance of patents directed to computer-related inventions has become relatively routine.

Co-ownership

Patents may be jointly owned by multiple parties, which can have a significant impact on the ability of an owner to exercise their patent rights. In Canada, in the absence of contractual agreement, co-owners of a patent cannot dilute the other owners' interests in the patent. Consequently, licensing patent rights of a co-owned patent will require the consent of all of the co-owners to be valid.

Trademark

Trademark protection in Canada is available under common law as well as by statute. Common law protection does not require registration of a trademark. However, protection is limited to the geographic area in which reputation and goodwill in the trademark can be established in association with the goods and services at issue. In contrast, registration of a trademark broadens the geographic scope of the owner's right to the entire country and provides prima facie evidence of the validity of the trademark and the registrant's exclusive right to use the registered mark. Thus, registration offers several advantages in providing protection for enforcement of a trademark.

Prohibited marks – plant variety denominations

Certain marks are prohibited from registration under the Canadian Trademarks Act. Most pertinent to agribusiness may be the prohibition of plant variety denominations. The use of a variety denomination granted under the PBRA cannot be restricted by any other designation,

such as a trademark, even after the rights for the variety have expired. Therefore, no denomination approved for plant breeders' rights nor any mark so nearly resembling that denomination as to be likely to be mistaken for it can be trademarked in Canada.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

Environmental laws are enacted in Canada by the federal, provincial and territorial governments. Municipal governments, under authority delegated by provincial legislatures, also legislate locally in specific environmental areas, as well as indirectly regulating environmental impact through land use controls. Each province has enacted laws of general application to protect the environment and the primary regulator of the environmental impact of agricultural production is found at the provincial level. As a result, the regulatory agencies that have the primary role in managing the environmental impact of agricultural production across Canada are the:

- British Columbia Ministry of the Environment;
- Alberta Environment and Sustainable Resource Development;
- Saskatchewan Ministry of Environment;
- Manitoba Department of Conservation and Water Stewardship;
- Ontario Ministry of the Environment, Conservation and Parks;
- Quebec Ministry of Sustainable Development, Environment and the Fight Against Climate Change;
- New Brunswick Department of Environment and Local Government;
- Nova Scotia Department of Environment;
- Prince Edward Island Department of Environment, Labour and Justice; and
- Newfoundland and Labrador Department of Environment and Conservation.

In addition, each province also maintains a department or ministry with responsibilities for the agricultural sector. The corresponding agricultural regulators across Canada are the:

- British Columbia Ministry of Agriculture;
- Alberta Ministry of Agriculture and Forestry;
- Saskatchewan Ministry of Agriculture;
- Manitoba Ministry of Agriculture, Food and Rural Initiatives;
- Ontario Ministry of Agriculture, Food and Rural Affairs;
- Quebec Ministry of Agriculture, Fisheries and Food;
- New Brunswick Department of Agriculture, Aquaculture and Fisheries;
- Nova Scotia Department of Agriculture;
- Prince Edward Island Department of Agriculture and Fisheries; and
- Newfoundland and Labrador Department of Fisheries, Forestry and Agrifoods.

The provincial environmental and agricultural regulators cooperate in various ways and to different degrees in order to manage the unique environmental issues in primary agriculture. For example, each district office of the Ministry of the Environment, Conservation and Parks in rural Ontario employs one or more agricultural environmental officers, whose job it is to work closely with the local office of the Ministry of Agriculture, Food and Rural Affairs on environmental issues related to primary agriculture.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Canadian environmental laws prohibit, at every level, activities that may contaminate the water and air. At the federal level, the Fisheries Act prohibits the deposit of harmful substances in water frequented by fish. This prohibition may be used as a regulatory tool in the agricultural sector.

At the provincial level, most environmental laws include broad prohibitions against discharges into water and air that may impair the quality of the water or air or cause an adverse effect. Officers and directors are commonly required by law to take reasonable steps to ensure compliance with environmental laws and regulations. Penalties for noncompliance with environmental laws are similar across Canada, although they range in size. Maximum penalties may be as high as C\$10 million for corporate polluters and five years' imprisonment for individuals. Penalties actually imposed by the courts tend to be considerably lower, except for blatant or deliberate acts, and imprisonment is uncommon.

Provincial environmental laws also contain administrative order powers that can be used by environmental regulators to compel actions to deal with water or air pollution in any sector, including primary agriculture. In most cases, an environmental order may be appealed to an independent administrative tribunal.

Most provincial environmental laws, and the Fisheries Act, contain regulatory licensing authority over certain discharges to the water and air, which can be applicable to primary agriculture activities. An authorisation under the Fisheries Act may be required for a discharge to water that may have a harmful effect on fish. A discharge to surface water or to air in Ontario may be allowed under the terms and conditions of an approval, although there are long-standing exemptions for anything used in agriculture.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Regulation of waste management generally falls under provincial jurisdiction. The term 'waste' is defined quite broadly and activities involving the collection, transportation, processing or disposal of waste may only be undertaken with a permit, licence or approval issued by the environmental regulator, although agricultural waste is commonly exempted from the permitting regimes.



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Liquid waste management from agricultural operations is regulated by a combination of provincial environmental and agricultural regulators across Canada. Provincial approaches vary widely, but all try to balance the competing regulatory objectives of supplying nutrients to soil at appropriate rates, timing and methods, while at the same time minimising the risk of pollution through loss of nutrients through runoff into surface water, leaching into groundwater and emissions into the air.

Some provinces regulate nutrient management entirely through the ministry with responsibility for agriculture (eg, Saskatchewan and Alberta), while others also regulate through the ministry responsible for environmental protection (eg, Ontario, Quebec and British Columbia). In Ontario, nutrient management is regulated under the Nutrient Management Act 2002, which is administered jointly by the Ministry of Agriculture, Food and Rural Affairs and the Ontario Ministry of the Environment, Conservation and Parks but enforced by the latter.

The Act regulates the management of all materials that are applied to the land by the agricultural industry, municipalities and other generators of materials containing nutrients. Farmers may be required to prepare (and seek approval under some circumstances) for a nutrient management strategy, which deals with the generation and storage of nutrients, as well as to prepare a nutrient management plan, which deals with the application of nutrients to the land.

The requirement to prepare nutrient management plans is reasonably common across Canada, although the scope of the requirement varies widely. For example:

- a nutrient management plan is only mandatory in Alberta if the operator exceeds prescribed limits for soil nitrogen or salinity;
- in Saskatchewan and Ontario, the equivalents of a nutrient management strategy and a nutrient management plan are only required for intensive livestock operations;
- in Manitoba, a nutrient management plan is only required for storage facilities on environmentally sensitive lands, golf courses or where regulated nitrogen or phosphorus limits cannot be met; and
- in Quebec, an annual agro-environmental fertilisation plan, signed by an agrologist, is required for any spreading.

Provincial nutrient management legislation also typically contains a broad range of prescriptive requirements for land application (eg, setbacks, minimum depth to groundwater, rates, methods and restricted periods) and other activities.

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China

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Buren

Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The Chinese agriculture and food supply chain can be divided into the following categories:

- Wholesale markets: products are supplied by farms, production bases or farmers' organisations to wholesales markets, resellers and finally to end users.
- Processors: agricultural and food products will be distributed by farmers to processing enterprises through first-tier wholesalers. After processing, the products will be distributed via various distribution and supply channels, such as traditional retailers or online shops, to end consumers.
- Supermarkets and retailers: these are the main connection between farmers and end users. This mode is becoming popular with the concept of 'online to offline'.
- Leading e-commerce platforms: some leading platforms (logistics companies or online stores such as SFbest and Fruitday) act as direct intermediaries between the agricultural producers and the end consumers.
- Importers and exporters.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The quality, processing, place of origin and packages of primary agriculture products are regulated by the Law on Agricultural Product Quality Safety and the Administrative Measures on the Quality Safety Monitoring for Agricultural Products.

In addition, the provisions of the Food Safety Law (Order of the President of the People's Republic of China No. 21) will cover the marketing of edible agricultural products, the formulation of relevant quality safety standards and the release of the relevant safety information for edible agricultural products as well as agricultural inputs.

Further, the processors that produce primary agriculture and food products are requested to follow applicable national quality and industry standards, such as the Quality Standard for Agricultural Products, the Standard and Rules for Storage and Maintenance of Fresh Agricultural Products, and the Technical and Control Standard of Pollution Free Agricultural Products.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

The main non-governmental organisations and non-profit organisations in the agribusiness sector in China are:

- agricultural associations: associations, whether national or regional, that are formally registered to promote agricultural sectors; and
- commercial associations: associations of business persons for the promotion of commercial interests, such as the China Association of Agricultural Leading Enterprises.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Ownership and usage right over agricultural land

In China, agricultural land is either owned by the state or by a rural collective. Since ownership is not transferable, private parties (individuals or enterprises) can obtain usage rights but not ownership of farmland (the term 'management right of rural contracted land' is used in Chinese law). Only a usage right to agricultural land is transferable. The usage right to agricultural land can be transferred, leased, sub-leased, swapped or contributed to an entity, such as a farmers' cooperative, as a share subject to certain conditions (see question 8).

Laws and regulations applicable to the acquisition of usage rights to agricultural land include:

- the Constitution;
- the General Rules of the Civil Law;
- the Land Administration Law;
- the Agricultural Law;
- the Implementing Rules for the Land Administration Law;
- the Property Rights Law;
- the Law on the Land Contract in Rural Areas;
- the Measures for the Administration of the Certificates of the Right to Contracted Management of Rural Land;
- the Measures for the Administration of Allotment of Rural Land under Lease and Management Right; and
- the Interim Regulations on Real Estate Registration.

On 30 October 2016, the General Office of the CPC Central Committee and the General Office of the State Council issued Opinions on Improving the Measures for the Division of the Ownership, Contracting Right and Management Right in Rural Land, which separates the management right from the contracted management right of the farmland owned by the farmers, and allows farmers to retain the contract right over their allotted land and only transfer the management right if they choose to lease the land to others.

Land conservation

The key legislation governing land conservation activities in China is the Water and Soil Conservation Law. This law provides for control measures that shall be taken whenever a production or construction project, or any other activity, causes water or soil loss. For instance, where the rehabilitation of barren hills, waste valleys, barren hillocks or desolated beaches, or the rural land in areas suffering from serious water and soil loss is contracted out, the relevant contracts shall include the responsibilities for preventing and controlling water and soil loss.

Drainage

So far there are no specific provisions in the state-level legislation on the ownership or usage right of waterworks in rural areas. Local governments may enact rules based on the principle of 'those who invest shall have the ownership and receive the benefits' set forth in the policy document titled Guiding Opinions on Deepening the Reform of the Management System of Small-scale Water Conservancy Projects

jointly released by the Ministry of Water Resources and the Ministry of Finance in 2013 and the Guiding Opinions on Deepening the Reform of Water Conservancy of Farmlands issued by the Ministry of Water Conservancy in 2018.

Easements

Under Chinese law, if the landowner holds or assumes the easement, the holder of the usage right to such land may continue to hold or assume the established easement. On the other hand, the landowner may not establish any easement without the consent of the existing usage rightholder.

An easement may not be solely transferred. It shall be transferred concurrently, with the usage right unless otherwise stipulated by the contract. Moreover, an easement may not be solely mortgaged. It shall be transferred at the time when the mortgage of land use right is realised.

5 Outline any rules related to use of farmland for non-agricultural uses.

According to Chinese law, farmland shall be kept or used for agricultural purposes and there are stringent restrictions on non-agricultural uses. Moreover, the government set a 'red line' that arable land that should form no less than 124 million hectares (by 2020), as anything lower than this may place China's food security at risk. Where the occupation of land for construction purposes involves the conversion of agricultural land, strict examination and approval procedures will apply.

For roads, pipelines and other large infrastructure projects approved by the people's governments of the provinces, autonomous regions and municipalities directly under the central government, the granting of land for construction must be approved by the State Council when conversion of agricultural land is involved.

When agricultural land is converted into land for construction purposes, as part of the implementation of overall land utilisation plans, and is within the quota of land used for construction purposes as specified in the comprehensive plans for cities, towns and villages, it shall be approved batch by batch, in accordance with the annual land utilisation plan, by the authorities that approved the original overall land utilisation plans. The specific land use for projects within the range of land approved for conversion must be approved by city or county people's governments.

Land utilised for construction purposes, other than the above-mentioned situations, shall be approved by the people's governments of the provinces, autonomous regions and municipalities directly under the central government whenever conversion of agricultural land into land for construction is involved.

Special protection over arable land is implemented. The central government implements a system of compensation for the use of cultivated land. Where arable land is used for non-agricultural construction, the entities occupying the arable land are obligated to reclaim the same amount and same quality of land as that which they intend to occupy according to the principle of 'reclaim the same as is used'. Where the conditions for reclamation are not met, or the arable land as reclaimed does not meet requirements, land reclamation fees shall be paid that shall be used for new land reclamation.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

A usage right to state-owned agricultural land can be mortgaged if the following conditions are satisfied:

- the land users are companies, enterprises or other economic organisations and individuals;
- a certificate for the use of the state-owned land has been obtained; and
- a contract to assign the right to use the land is signed and the land user pays the assignment fee to the local municipal or county government or uses the profit resulting from a mortgage to pay the assignment fee.

Owing to legal restrictions, in principle, a usage right over collectively owned agricultural land cannot be mortgaged, unless it relates to collectively owned wasteland for agricultural purposes. With the aim of deepening financial reform and stepping up financial support for

farmers, in 2015 China launched a pilot programme allowing farmers to use their land and property as collateral for loans. However, it is still facing many obstacles, in particular, legal restrictions. So far there are only specific administrative rules for the said pilot programme, namely the Interim Measures for the Pilot Programme for Mortgages of Management Right of Rural Contracted Land (the Interim Measures).

There is no specific legislation for farm lending in the current Chinese legal system.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Under the Interim Measures, in the case of default by farmers, the creditor may dispose of the collaterals by, inter alia, loan restructuring, sequential settlement, transfer by agreement and listing on the trading platform for retransfer; and the proceeds from the disposal of the collaterals shall be used to repay the creditor first.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

Agricultural land is owned either by the state or rural collectives and a farmer may only transfer the usage right (see question 4). The circulation of usage rights is subject to the principles set forth in the Law on the Land Contract in Rural Areas and Measures for the Administration of Allotment of Rural Land under Lease and Management Right, which include that:

- no change shall be made in the nature of the land ownership or the purpose of agricultural use of the land;
- the term may not exceed the remaining period of the term of the usage right;
- the transferee shall have the capability for agricultural operation;
- under equal conditions, members of the same rural collective shall enjoy priority; and
- the lawful rights and interests of the interested parties and the rural collective shall not be impaired.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Agricultural land is owned either by the state or by a rural collective. Foreign or foreign-invested parties are eligible to acquire usage rights but not ownership (see question 4).

Rural collectively owned agricultural land can only be transferred by farmers to foreign-invested enterprises undertaking agricultural production, processing or research and development (R&D). The applicable legislation includes the Law on the Land Contract in Rural Areas and Measures for the Administration of Allotment of Rural Land under Lease and Management Right (see question 8).

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The government has put many different agricultural supportive programmes in place in different agricultural sectors. The main general support programmes are listed as follows.

Agricultural industrialisation project subsidies

The central government, jointly with the provincial governments, provides financial support to industrialisation projects by means of a project subsidy or a loan interest refund. The subsidy is mainly granted to specific projects, such as the improvement of production centres, infrastructure construction, procurement of facilities and import of new varieties or advanced techniques.

'Leading enterprises' may apply for the subsidy. This type of enterprise is graded into three levels: national, provincial and city. The level of status will decide the level of government authority from which an enterprise can get support and affects the size and preferential conditions of bank loans.

Agricultural Science and Technology Achievement Industrialisation Fund

The Agricultural Science and Technology Fund was established by the Ministry of Science and Technology (MOST) in 2001. It supports the commercialisation of technologies that can be applied in agriculture, with a focus on R&D and promotion of new agricultural technology to the public.

The applicant shall be an incorporated enterprise or an R&D institution that is set up in mainland China. With respect to the incorporated enterprise, the enterprise can either be domestic invested enterprises or enterprises with a majority holding by domestic investors. The enterprise must have existed for at least one year and its registered capital should be larger than the subsidised funds. The project needs to be recommended by the provincial subdivisions of the MOST or the Ministry of Finance in order to apply the fund.

Specific research-oriented subsidy programmes

There are subsidy programmes relating to scientific research on new varieties, genetic modification and breeding techniques of plants. Both the institutions and the enterprises can apply for these programmes. In practice, institutions are more likely to succeed.

Agricultural Machinery Subsidy

The Agricultural Machinery Subsidy is designed for encouraging and supporting farmers to use advanced agricultural machines, accelerating the process of agricultural mechanisation and improving the capability of production. Farmers buy the subsidised machinery at full prices and settle with the government directly.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Foreign investment in agricultural sectors in China is, in general, encouraged. It is stated in the Guiding Opinions of the Ministry of Commerce on Attracting Foreign Investment in China in 2013 released by the Ministry of Commerce (MOFCOM) that foreign capital to invest into modern agriculture shall be further encouraged in China. According to the Catalogue for the Guidance of Foreign Investment in Industries maintained by MOFCOM and the NDRC in June 2017 (the Catalogue), which came into effect on 28 July 2017, foreign direct investment is encouraged in most sectors of the agricultural industry (ie, production of green and organic vegetables, sugar-yielding crops, flowers and plants, traditional Chinese medicine herbs, breeding of aquatic offspring and aquatic products).

To follow the above-mentioned central government policies, foreign investment in agricultural business is often incentivised by the local governments in China and most incentives include: tax cuts, mainly to lower the corporate income tax rate; the reduction or exemption of the land-use fee and administrative fee; and other preferential policies concerning housing or children's education for foreign investors.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The applicable legislation includes:

- the Food Safety Law;
- the Law on Quality and Safety of Agricultural Products;
- the Law on Animal Epidemic Prevention;
- the Management Regulations on Slaughtering Live Pigs;
- the Interim Management Regulations on Quality of Meat and Meat Products; and
- the Measures on the Administration of Animal Quarantine.

Local regulations on slaughtering livestock and poultry also apply (eg, regulations enacted by the Shanghai local government in this respect that govern the livestock slaughtering within Shanghai).

The meat for export is also governed by the following legislation:

- the Law on Import and Export Commodity Inspection;
- the Law on the Entry and Exit Animal and Plant Quarantine;

- the Regulations for the Implementation of the Law on the Entry and Exit Animal and Plant Quarantine;
- the Regulations on Imports and Exports Place of Origin;
- the Administrative Provisions on the Filing of Export Food Manufacturers; and
- the Measures for the Supervision and Administration of the Inspection and Quarantine of Imported and Exported Meat Products.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The fundamental legislation on food safety in China is the Food Safety Law (FSL) and its implementing regulations. The FSL governs the following activities within China:

- food production and processing, food sales and catering services;
- production of and trading in food additives;
- production of and trading in food-related products, including food packaging materials, containers, detergents, disinfectants, and tools and equipment that are used in the production of and trading in food;
- use of food additives and food-related products by food producers or traders;
- storage and transport of food; and
- management of the safety of food, food additives and food-related products.

The FSL also applies the formulation of relevant quality safety standards and the release of the relevant safety information for edible agricultural products, as well as agricultural inputs, to the marketing of edible agricultural products.

The safety of edible agricultural products is governed by the Law on Quality and Safety of Agricultural Products.

Food safety is administered by the following four ministry-level authorities:

- the State Administration for Market Regulation (SAMR): domestic food production, distribution, consumption and enforcement, etc; import and export supervision of food products, etc;
- the Ministry of Agriculture and Rural Affairs (MoA): domestic primary agriculture production, slaughter and genetically modified organism (GMO) oversight, etc; and
- the National Health Commission: food safety risk assessment and surveillance, food safety standard development and unification, and outbreak response, etc.

The authorities listed above promulgate the specific regulations in their respective governing fields in the form of administrative regulations, including the following:

- Administrative Measures for Food Production Licensing;
- Administrative Measures for Food Operation Licensing;
- Administrative Measures for the Registration and Recording of Health Food;
- Administrative Measures for the Registration of Food for Special Medical Purposes;
- Administrative Measures for the Registration of Formulas of Infant Formula Milk Powder;
- Administrative Measures for Food Recall;
- Administrative Measures for Import and Export of Food;
- Relevant Applicable Standards for Inspection on Imported Food and Food Additives;
- the Rules on Administrative Licensing of Imported Food without National Food Safety Standards;
- Administrative Measures for Registration of Overseas Manufacturers of Imported Food;
- Administration Regulations on Label Inspection and Supervision of Import and Export Pre-packaged Food;
- Provisions for Administration of the Registration of Foreign Exporters and Agents of Food Products and Consignee of Imported Food Products to China;
- Administrative Provisions on Recording of Import and Marketing of Imported Food;
- Administrative Provisions for the Record-filing of Export Food Manufacturers;
- Rules of Bad Records Administration on Imported Food;

- Administrative Measures for New Varieties of Food Additives;
- Measures for the Supervision and Administration of the Safety of Food Offered through Online Catering Services; and
- Measures of Investigation of Illegal Conducts Concerning the Safety of Food Sold Online.

Another important instrument in the food safety regime is the national food safety standard system. Currently there are more than 600 effective national food safety standards including:

- general standards (eg, contaminants and microbial);
- product standards (eg, dairy products and beverage);
- additive specification (eg, colourant and sweetener);
- food-related products (eg, plastic and metals);
- good practice (eg, hazard analysis and critical control points); and
- testing methods (eg, the physical-chemical method).

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

Food producers or traders violating the law or regulations on food safety will be subject to civil liabilities, or administrative or criminal penalties.

A consumer who has been harmed by food that does not conform to food safety standards may seek compensatory damages from a responsible producer or trader as well as punitive damages of up to 10 times the original sale price.

The measures of administrative enforcement include:

- confiscation of the illegal proceeds, food and food additives illegally produced or traded in, and the tools, equipment, raw materials and other articles used in the illegal production or trading;
- revoking relevant licences;
- ordering a suspension of production or trading;
- an administrative fine; and
- cancelling qualifications to engage in food inspection.

Under the criminal law, any food producer or trader that does not comply with food safety standards and any person adding poisonous substances to food is subject to criminal sanctions, including fines, confiscation of property, criminal detention and imprisonment. The death penalty is a potential punishment for very serious food safety incidents.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

Certification of organic foods

The Certification and Accreditation Administration of China (CNCA), a subordinate body to SAMR, is responsible for issuing the official organic label (via certifiers). It also controls and supervises the accreditation process of all certification bodies and grants licences to individual organic inspectors employed by certifiers. The Administrative Measures for Organic Product Certification (AMOPC) cover a wide range of aspects that encompass the competences of the certification bodies as well as the responsibilities of the competent authorities on monitoring the functioning of the certification activities.

The AMOPC set forth the responsibilities of certification institutes and procedures that they must undergo towards the CNCA. Among other responsibilities, a certifier is required to ensure the integrity, objectiveness and truthfulness of the certification process, and make a complete record for archive retention to ensure that the certification process and results are traceable. The records of all activities shall be kept for five years. Further, certification institutes shall implement an effective follow-up inspection of the certified products and their production and processing methods to ensure that the certification conclusions can continue to meet the certification requirements.

In certain cases of non-compliance or fraudulent practice by the producer, the certifier shall suspend or revoke the certificate and publicise the penalty. The certifier can be fined or even disqualified if it fails to do so.

Safety certificate of GMO foods

Thus far, the law on GMOs places emphasis on improving the GM organism cultivation and safety evaluation systems. The purpose of safety evaluation of GMOs is to detect the dangers or potential risks caused by GMOs to humans, animals, plants and microorganisms and

the environment. A safety certificate will be issued to a new GMO that has passed the safety evaluation conducted by the Agriculture GMO Safety Committee of the MoA. Under the GMO Regulations, a safety certificate is mandatorily required to conduct the examination, registration, evaluation or approval of certain GMOs including: transgenic planting seeds, livestock and poultry breeds and aquatic fry, pesticides, veterinary drugs, fertilisers, additives and others produced using GMOs or containing GMO ingredients.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

The FSL sets out the general requirements of labelling, mandatory particulars for labels of pre-packaged foods, non-pre-packaged foods and food additives, and special rules for health food, infant formula foods and imported foods, etc. Food and food additives that do not conform to the contents stated on their labels and instructions shall not be sold in the market.

The relevant national standards including General Rules for the Labelling of Pre-packaged Foods (GB7718-2011), General Rules for Nutrition Labelling of Pre-packaged Foods (GB28050-2011) and General Rules for the Labelling of Food Additives (GB 29924-2013) provide further detailed guidance in their respective aspects.

If the packaged food or food additive is produced or traded without labels or their labels do not conform to the law, the local branches of the SAMR will confiscate the illegal proceeds, food and food additives that were illegally produced or traded in, and may also confiscate the tools, equipment, raw materials and other articles used in such illegal production or trading. If the value of the food or food additives in such illegal production or trading is less than 10,000 yuan, a fine not less than 5,000 yuan, but not more than 50,000 yuan, will be imposed. If the value of the food or food additives in such illegal production or trading is 10,000 yuan or more, a fine not less than five times but not more than 10 times the value of the food shall be imposed. In case of a serious offence, the production or trading will be suspended until the relevant licence is revoked.

If the labels have a defect that does not affect the foods' safety or does not mislead consumers, the local branches of the SAMR will order the producer or trader to make corrections. In the case of the refusal to do so, a fine of not more than 2,000 yuan will be imposed.

If the production enterprise of infant formula foods fails to report the labels to the competent local branch of the SAMR for filing as required by law, the local branch of the SAMR will issue a correction order and warning. In the case of a refusal to make corrections, a fine not less than 5,000 yuan, but not more than 50,000 yuan, shall be imposed. In case of a serious offence, the production or trading shall be suspended until the relevant licence is revoked.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The principal legislation dealing with the health of food animals is as follows:

- the Law on Animal Epidemic Prevention;
- the Animal Husbandry Law;
- the Administrative Measures for Animal Quarantine; and
- the Law on the Entry and Exit Animals and Plants Quarantine.

18 What are the restrictions on the movement of animals within your country?

The movement (transportation) of animals is subject to the following legal requirements.

Quarantine certificate

Before transporting animals, the owner shall submit an application to the local animal health supervision institution for quarantine. For the animals and animal products to be transported by rail, highway, waterway or air, the consignor shall provide the quarantine certificates; otherwise the carriers shall not accept them for transport.

Equipment requirement

The vehicles for carrying animals, as well as the beddings, package and containers, shall satisfy the requirements for animal epidemic

prevention laid down by the administrative department for veterinary medicine under the State Council.

Staff requirement

People who are infected with a zoonosis shall not directly transport susceptible animals.

Prohibited circumstances

It is prohibited to transport animals that:

- are in enclosed epidemic areas and related to the outbreak of animal epidemics;
- are in an epidemic area and susceptible to infection;
- have not undergone the quarantine as required by law or fail to pass the quarantine;
- have already contracted epidemics or are suspected of having contracted epidemics;
- are deceased (due to illness or uncertain reasons); and
- do not conform to the regulations of the administrative department for veterinary medicine under the State Council governing animal epidemic prevention.

So far China has not enacted any law or regulations dealing with the welfare of animals in transport.

19 Describe any restrictions on import of food animals.

Importing food animals into China is subject to documentation requirements, including those relating to quality, quarantine, origin and import control, which can vary between products and product categories, overseas production facilities registration systems and filing management systems.

Importing agricultural and food products into China requires a quarantine inspection permit to cover the contract amount. The importer must supply documentation regarding the origin and volume of the shipments. The SAMR requires advanced electronic notification of all scheduled meat and poultry shipments. A pre-notification of the information, including health certificate details, shall be electronically transmitted from the food authority of the exporting country to the SAMR, which will forward it to the local China Inspection and Quarantine office at the port of entry. In addition, the MOFCOM administers the automatic registration form (ARF), which is a separate import permit system for poultry importers. The system of ARF allocates a specific volume amount to eligible importers. For aquatic products (live and processed), a certificate of origin is required.

Overseas facilities for meat production (slaughter and processing) and the production of seafood products that are exported to China are required to register with the CNCA.

The filing management system applies to consignees of imported food products to China, as well as exporters and agents of food products for the purpose of traceability of each consignment.

Importing food animals may be restricted because of emergency measures adopted by the central government. In the event that a serious animal epidemic occurs abroad and is liable to spread into China, the State Council shall adopt emergency preventive measures and may, when necessary, issue orders to prohibit means of transport from animal epidemic areas from entering the country or to blockade the relevant ports.

20 What are the regulations related to livestock slaughtering?

In China, livestock slaughtering is deemed to be part of the primary processing of live animals. With regard to governing regulations, see question 12.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

Plant protection products and a majority of biocidal products are regulated by the Regulation on Pesticide Administration, which covers the registration, production, distribution and use of pesticides, and is administered by the MoA.

The Institute for the Control of Agrochemicals (ICAMA), under the MoA, regulates pesticides manufactured and marketed in China. Pursuant to the revised Regulation on Pesticide Administration 2017, the Review and Registration Committee will be established by MoA to

review and register the pesticide before being marketed and exported to China.

There are also other regulations concerning pesticides, including:

- the Implementation Measures of the Regulation on Pesticide Administration;
- the Management Measures for the Production of Pesticides;
- the Provisions on the Administration of the Restricted Use of Pesticides; and
- the Measures for the Administration of Pesticide Labels and Manuals.

To ensure food safety, promote producer compliance with good agricultural practices, and eliminate unnecessary pesticide use to protect the ecological environment, the MoA and NHFPC have jointly released a new standard on maximum residue limits: the National Food Safety Standard – Maximum Residue Limits for Pesticides in Food (GB 2763-2013).

Plant quarantine

The key legislation regulating plant quarantine includes:

- the Regulation on Plant Quarantine;
- the Rules of Implementation of Regulation on Plant Quarantine;
- the Law on the Entry and Exit Animals and Plants Quarantine; and
- the Rules of Implementation of the Law on the Entry and Exit Animals and Plants Quarantine.

The MoA, State Forestry Administration and the SAMR are responsible for agricultural plant quarantine, forest plant quarantine and import and export plant quarantine respectively. The surveillance, pest outbreaks and invasive species management is undertaken by the National Agro-Tech Extension and Service Centre, a public institution directly under the MoA.

Animal quarantine

Animal quarantine is mainly governed by the following legislation:

- the Law on Animal Epidemic Prevention;
- the Animal Husbandry Law;
- the Quarantine Law on the Entry and Exit Animals and Plants Quarantine;
- the Rules of Implementation of the Law on the Entry and Exit Animals and Plants Quarantine;
- the Measures on the Administration of Animal Quarantine;
- the Measures on the Quarantine and Administration of Hereditary Substance of Inward Animals; and
- the Administrative Regulations on Breeding Livestock and Poultry.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

As agricultural land is either owned by the state or by a rural community, agricultural proprietorships do not exist in China. The basic form of agricultural operation is the rural household contractual operation. A rural family can undertake land contracts with the rural community it belongs to in order to obtain rights to use certain agricultural land. Within the validity of the land contract, the family can organise agricultural production and operations based on its own decisions. Any profit made from the farming activities belongs to the family.

China promotes farmers' cooperatives in rural areas as a new model of agricultural operations. A farmers' cooperative shall be set up in accordance with the Farmers' Cooperatives Law of China. At least 80 per cent of a farmers' cooperative members should be farmers. Other entities who conduct businesses directly in relation to the agricultural activities of the cooperative and are able to serve and contribute to the cooperative can also become a member. Foreign-invested enterprises may join a farmers' cooperative providing that they adhere to the conditions set out in the Cooperatives Law and the articles of association of the cooperative.

State-owned or private agricultural companies (normally in the forms of a limited liability company or a stock company) incorporated under Company Law play important roles in the modernisation of China's agriculture sector. Foreign-invested enterprises set up under Company Law and laws of foreign-invested enterprises may enter

into agriculture sectors, subject to foreign investment restrictions on specific sectors (see question 23).

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

Under the Catalogue, which is divided into encouraged, restricted and prohibited categories, foreign investment in agricultural sectors is, in general, encouraged. However, because of the strategic importance of agriculture in China, several subsections are restricted from foreign investment and cooperation with Chinese parties are mandatorily required by law. Incorporation of such foreign-invested agricultural enterprises needs to be approved by the MOFCOM or its local counterparts.

As of 1 October 2016, according to the new amendments to the laws regarding foreign investment enterprises issued on 3 September 2016, foreign investment in sectors where access approval measures do not apply no longer need to be approved by the MOFCOM. In June 2018, MOFCOM and NDRC jointly published 'the Negative List on the Access of Foreign Investments' (the 2018 Negative List), which spells out sectors where foreign investment access approval measures are applicable. Foreign investment into agriculture sectors not included in the 2018 Negative List will only need to file at the MOFCOM for record-filing but not for approval.

In some sectors (eg, the seed sector), enterprises, regardless of whether they are foreign-invested or domestic, need to obtain specific permits or qualifications from the industry regulator, that is, MoA.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The rights of workers or employees are generally governed by the Labour Law and the Labour Contract Law. There are no specific rules for workers or employees in agricultural operations.

The general rights and interests of self-employed farmers engaged in agricultural operations are regulated in section 9 of the Agricultural Law (Order of the President No. 74, revised in 2012) of China, aiming to prevent farmers from incurring illegal or unreasonable tax and fines, or raising and collecting of funds.

25 How is farmworker immigration regulated in your jurisdiction?

Immigration of foreign farmworkers into China follows general regulations on immigration.

For permanent stays and work, the Administrative Regulations on Entry and Exit of Aliens applies.

For temporary work or dispatch, the Circular for Foreigners Entering China for the Accomplishment of Short-term Work Assignments applies.

The immigration of Chinese farmworkers within China does not have limitations. However, as China applies different social insurance and medical insurance systems to rural residents and city residents, those farmworkers who move to the city seeking non-agricultural work must comply with insurance policies that are mainly regulated by the Social Insurance Law.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

There is no specific law focusing on farmworkers' health and safety.

If a farmworker has an employment relationship with a legal entity, his or her health and safety is covered by the Labour Law and the Work Safety Law. The employer is obliged to provide a safe working environment, proper working equipment and training. The employer is also requested to purchase insurance for the worker for occupational diseases and labour-related injuries.

If the farmworker is not employed but merely provides labour services to a service receiver, the worker's health and safety are covered by the Tort Law of China. In the event that the injury or damage is caused by the worker during the labour services, such liability will be borne by the labour service receiver and the worker in light of their respective degree of fault.

A self-employed farmworker is responsible for his or her own health and safety.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

The local Entry-Exit Inspection and Quarantine Bureaus (EEIQs) under the SAMR implement animal and plant (and related products) import and export quarantine in accordance with the Law on the Entry and Exit of Animals and Plants Quarantine and affiliated regulations and implementation rules. The SAMR also issues specific inspection and quarantine measures for certain categories of animal or plant products, such as propagation materials, seeds, planting materials, fruits and grain, entering into China. Quarantine applications shall be filed by domestic importers at local EEIQs to obtain permits before animals, plants or related products can enter into China.

28 May tariffs, quotas or similar measures be put in place?

After joining the World Trade Organization (WTO) in December 2001, China introduced a tariff quota system for the import of agricultural products; the annual quota is subject to an 'in-quota tax rate'. The import of agricultural products beyond the quota quantities will be treated as per the relevant provisions of the Regulation on Import and Export Duties. The agricultural goods subject to import tariff quotas include wheat, corn and rice (including powder and grains of all three), bean oil, colza oil, palm oil, sugar, cotton, wool and wool tops.

The MOFCOM and the NDRC decide, adjust and announce annual import quotas upon applications by companies. Companies that enjoy tariff quotas are granted a certificate of import tariff quotas of agricultural products. Each quota is valid from 1 January until 31 December of the same year.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The WTO's Agriculture Agreement applies to China.

China has also confirmed its compliance with the international phytosanitary standards developed by the International Plant Protection Convention through the promulgation of AQSIQ Decree No. 41, Provisions for the Administration of Risk Analysis on Entry Plant and Plant Products.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

China ratified the International Convention for the Protection of New Varieties of Plants (UPOV Convention) 1978 on 23 April 1999. Domestic laws and regulations for new plant variety right (PVR) protection include the Seed Law 2015, Regulations on the Protection of New Plant Varieties 2014 and the accompanying Implementation Rules.

The New Plant Variety Protection Office (PVP Office) under the MoA is in charge of agricultural PVR protection. Agricultural PVR protection applications must be filed with the PVP office. Decisions will be based on the review of written documents.

A breeder's right to apply for PVR protection and the PVR itself are both transferable. Agricultural PVRs are protected for 15 years and fruit tree PVRs are protected for 20 years. A PVR holder enjoys exclusive rights within the duration of the PVR protection and without the consent of the PVR holder, a party cannot:

- produce or sell, for commercial purpose, the propagation materials of the protected varieties; or
- repeatedly use the propagation material of the protected varieties to produce propagating materials of other varieties for commercial purpose.

Without prejudice to other rights of the PVR holder, using a protected variety for breeding or other scientific purposes does not require consent or licence of the PVR holder.

Under the following circumstances, the licence of the PVR holder is not required and no licence fee needs to be paid: using a protected variety for breeding or other scientific research activities; and farmers' personal use of the propagation materials of a protected variety.

In case of plant variety right infringement, a PVR holder can apply for administrative protection at the provincial Agriculture Department. Administrative protection measures include orders to

cease infringement, confiscation of unlawful earnings and propagation materials, and imposing administrative fines. A PVR holder can also lodge a claim at a civil court. Unlike administrative measures in court proceedings, a PVR holder may claim for damages (including loss of revenue).

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The laws and regulations for PVR protection provide privilege to farmers. Farmers who use the propagation materials of a protected variety to breed or plant for self use do not need a licence from the PVR holder.

With the purpose of verifying the value for cultivation and use, distinctness, uniformity and stability of a new plant variety, for main crops before being commercialised, a new variety shall be tested following the variety recognition procedure. Main crops refer to rice, wheat, corn, cotton and soybeans.

For non-main crops, a new variety shall be filed for record in accordance with the variety registration formality initially introduced by the Seed Law 2015, before seeds of the crop can be put on the market.

Specific permit procedures are put in place by the MoA and AQSIQ for production, processing and trade of (seeds of) GM crops.

In addition, the National Agro-Tech Extension and Service Centre promotes the application of advanced agriculture technologies in rural areas.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

The laws on intellectual property right protection, including patent law and trademark law and the accompanying regulations, may provide legal protection for other agriculture-related intellectual property. Know-how or planting technologies that are not patentable are normally protected by parties as trade secrets.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

According to the Environment Protection Law of China, the governments at or above the county level are entitled to take measures to prevent and control pollution of the agricultural ecological environment by waste water and gas and solid waste materials.

According to article 66 of the Agricultural Law, the Ministry of Environmental Protection and the MoA are the competent authorities to investigate and to solve pollution in the agricultural ecological environment.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Air pollution from primary agriculture is mainly governed by the Environment Protection Law (Order of the President of the People's Republic of China No. 9). Agricultural producers and operators are obliged to:

- use fertilisers and pesticides properly;
- safely and efficiently collect, store, clean, remove and dispose of sewage, livestock and poultry faeces and bodies; and
- reduce the emission of air pollutants or malodorous gases.

Burning of stalks, fallen leaves or other substances in the open air that causes smoke pollution is prohibited.

Those who illegally discharge pollutants will be requested to make corrections and are subject to fines according to such factors as operating costs of pollution prevention and control facilities, direct losses arising from violations or illegal gains.

Water pollution in agriculture areas is covered by the Law on the Prevention and Control of Water Pollution (Order of the President [2008] No. 87). The Law focuses on the following issues:

- the transportation and storage of pesticides and disposal of expired or ineffective pesticides;
- the proper application of fertilisers and pesticides;
- harmless treatment of faeces from domestic animals and poultry and waste water at the farms of domestic animals and poultries and breeding quarters;
- the protection of water in the aquaculture field by determining the breeding density, and casting bait and using medication rationally; and
- the discharge of industrial waste water or urban sewage into the farmland irrigation channels.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

According to the Environment Protection Law, solid wastes and sewage that fail to meet agricultural standards and environmental protection standards cannot be disposed on farmland. The law encourages scientific application of pesticides, fertilisers and other agricultural inputs and irrigation to prevent the pollution of heavy metal and other hazardous substances.

China is promoting soil protection. A series of laws and regulations regarding soil pollution control is in the process of becoming legislation, and is expected to be published for public review during 2017-2020 (Circular of the State Council on Issuing the Action Plan for Soil Pollution Control, Guo Fa [2016] No. 31).

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All acts that pollute the environment, damage ecology and harm public social interests are subject to fines according to detailed factors, such as operating costs of pollution prevention and control facilities, direct losses arising from violations or illegal gains.

India

Krishan G Singhanian, S N Verma, Akshay Dixit and Sarjana Pandey

Singhanian & Co

Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

India is a large country with extensive areas of land that, combined with favourable climate conditions, are conducive to agriculture and the production of a variety of crops. Agriculture plays an important role in India and is the backbone of the economy. Almost 50 per cent of the total labour force is engaged in agriculture and it contributes approximately 16 per cent of India's GDP. Agriculture has great potential and India is making constant efforts to improve the industry by extending adequate support to product strategy, public investment in infrastructure, research and development of crops, livestock, fisheries, with a view to enhance food production and its availability to the end consumers through proper food supply chains. The agriculture machinery and agriculture service sector have attracted Foreign Direct Investment (FDI) equity inflow of about US\$466.31 million and US\$2.02 billion, respectively, during April 2000 to December 2017. In its budget for 2018–19, the central government has planned several reformative measures to boost agricultural production and support farmers, such as increase in machinery, automobile, crop prices and improvement in livelihood, infrastructure, women's emancipation, besides improvement in soil fertility, organic farming, irrigation, genetically modified seeds and creation of unified national agriculture market, etc.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The regulatory environment for primary agriculture and primary food processors is quite congenial to the growth of agriculture in India. Agriculture, land and water are state subjects according to the Constitution of India, thus the major respective state governments frame laws relating to agriculture; however, certain related laws and incentive schemes are framed by the central government as well. The Ministry of Agriculture regulates the implementation of these laws. The Department of Agriculture and Cooperation under the Ministry of Agriculture takes care of development of the agriculture sector. It controls various corporate bodies for development of the allied agricultural sector, such as the National Dairy Development Board.

The Department of Agriculture and Cooperation under the Ministry of Agriculture has signed agreements with several countries, including the United States. Similarly, the Department of Agriculture Research and Education and the Department of Animal Husbandry, Dairying and Fisheries under the Ministry of Agriculture have also signed agreements with many countries. These agreements seek to provide better agricultural facilities in research and development, capacity building, post-harvest management, food processing, plant protection, animal husbandry, fisheries, etc. The agreements could help enhance bilateral trade as well.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Non-governmental organisations (NGOs) and non-profit organisations play an important role in the agribusiness sector in India. These organisations act as a shadow government in implementing and enforcing

government policies and thereby giving a boost to the agribusiness. Some of the main organisations are the Indian Society of Agribusiness Professionals, the Naandi Foundation, Action For Social Development, and the Centre for Advanced Research and Development.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The Constitution of India is federal in nature. It states that India shall be a union of states with a government at central level (ie, the central or union government) and a government at each state level (ie, the state governments). The Constitution defines the distribution of legislative powers between the central government and the state governments by laying down three primary lists:

- the Union List, where only central government can frame laws;
- the State List, where the state government can frame laws; and
- the Concurrent List, where both the central government and the state governments can frame laws.

'Agriculture', including protection against pests and prevention of plant diseases, falls under entry No. 14 of the State List. Similarly 'land', including rights over land, the relationship between the landlord and tenant, transfer and alienation of agricultural land and conversion of land from agricultural to non-agricultural use, fall under entry No. 18 of the State List. Respective state governments are, therefore, responsible for framing legislation on agriculture and land. Accordingly, each state in India has its own land laws, dealing with, among other things:

- ownership;
- tenancy;
- ceilings on holdings;
- consolidation of holdings; and
- improvements of land.

Operational holding of the land is divided into the following classes:

- marginal;
- small;
- small-medium;
- medium; and
- large.

Different states follow different procedures for purchase of agricultural land. In certain states only an agriculturist can purchase agricultural land, but other states will not have such restrictions. For instance, in the state of Maharashtra, farmland is largely governed by the Maharashtra Tenancy and Agricultural Lands Act 1948.

Almost all state legislation contains provisions for facilitating real estate transactions involving farm property as explained in question five. The law relating to easements is governed by the Indian Easements Act 1882.

5 Outline any rules related to use of farmland for non-agricultural uses.

Farmland can be used for non-agricultural purposes, such as development of industrial projects, real estate, etc, under certain specified

circumstances, based on the respective state legislation. Almost all state legislation provides for conversion of land use from agriculture to non-agriculture by obtaining the requisite permission with a 'NA Certificate'. To promote business development and ease in setting up businesses in India, the state governments have simplified the process of obtaining such permission. In the past, almost 20 different 'No Objection Certificates' had to be obtained from various government departments for conversion of farmland to non-agricultural land. This has been eased by most of the state governments by setting up a single window system for this purpose.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In India, banks and financial institutions play a significant role in lending to farmers. Typically, the lending is classified into three categories: short term, medium term and long term. The lending is generally secured by hypothecation of the standing crop or mortgage of the land itself. Public and private sector banks are actively involved in lending to farmers. The Reserve Bank of India (RBI), India's central bank, and the National Bank for Agriculture and Rural Development are the regulatory banks.

Occasionally, state governments announce special incentive programmes for promoting agriculture. The RBI issues directives to banks to facilitate farm lending at concessional rates, under priority sector lending, which includes agriculture, agriculture infrastructure and ancillary activities.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Although there are no direct provisions to this effect under the existing legislation, the central government, along with the respective state governments, take care of defaults by farmers in repayment of loans, when such a default arises on account of justifiable reasons, such as floods and drought.

There have been occasions when the respective governments have intervened between creditors and farmers and waived the interest payable by the farmers or the principle amount or both.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

Public control over farm property is limited in India. As per article 39 of the Constitution: the ownership and control of the material resources of the country should be so distributed as best to serve the common good; and the operation of the economic system should not result in a concentration of wealth. Various sectors at central level, such as urban, rural, industrial, transport, mining and agriculture, follow their own approaches. For example, since nearly 70 per cent of India's population is dependent on agriculture, the rural sector focuses on reforms on land acquisition and resettlement and rehabilitation, watershed management and modernisation of land records.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

There are restrictions on foreign ownership of farmland in India. A foreign citizen cannot acquire agricultural land, a farmhouse or plantation property in India without prior approval from the RBI. But a foreign citizen of Indian origin (an Indian citizen who is non-resident) can acquire such properties without the prior approval of the RBI by way of inheritance.

Any transaction relating to farmland involving foreign exchange is governed by the Foreign Exchange Management Act 1999.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

There are many governmental programmes in place to support agriculture. Successive governments have played a positive and active role in supporting agricultural production, processes and businesses. The following are examples of flagship government initiatives:

- the Prime Minister's Crop Insurance Scheme;
- the National Crop Insurance Programme;
- the Prime Minister's Agriculture Irrigation Programme;
- More crop per drop; and
- the Traditional Farming Improvement Programme.

Along with the above-mentioned initiatives, the central and state governments have been organising various educational programmes accessible by means of telephone, radio, television, etc.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

One hundred per cent foreign direct investment (FDI) in agriculture is allowed by the central government via an automatic route in the following activities related to agriculture, subject to certain conditions specified in the FDI Policy:

- floriculture, horticulture, apiculture and cultivation of vegetables and mushrooms;
- development and production of seeds and planting material;
- animal husbandry (including breeding of dogs), pisciculture and aquaculture; and
- certain specified services related to agro and allied sectors.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

India is predominantly a meat exporting country. There is demand for Indian meat in the world market because of its lean and predominantly organic nature. One of the most important pieces of governing legislation is the Meat Food Products Order 1973 passed by the central government in exercise of the powers conferred upon it under section 3 of the Essential Commodities Act 1955. The person who is involved in primary processing of live animals shall obtain a licence from the Ministry of Agriculture under the said order for sale of meat products. The person obtaining the licence from the authorities shall have to comply with the conditions set out in the order.

There is hardly any difference between the meat products meant for domestic consumption and those intended for export. The meat industry for domestic consumption is largely concerned with fresh meat, which is processed and sold on a daily basis, whereas the export-oriented meat industry is primarily concerned with frozen meat products.

The export units have to adhere to the guidelines issued by the Prevention of Cruelty Towards Animals Act 1960, the Animal Welfare Board and Bureau of Indian Standards for transportation of all animals.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The Food Safety and Standards Act 2006 deals with food safety in India. The Act, in force, gives statutory powers to the Food Safety and Standards Authority of India (FSSAI). The FSSAI is an agency under the Ministry of Health and Family Welfare which has its headquarters in New Delhi and eight regional offices in Delhi, Chandigarh, Lucknow, Guwahati, Mumbai, Kolkata, Cochin and Chennai.

Some of the key functions of the FSSAI include:

- framing of regulations to lay down food safety standards;
- laying down guidelines for accreditation of laboratories for food testing;
- providing scientific advice and technical support to the central government;
- contributing to the development of international technical standards in food;
- collecting and collating data regarding food consumption, contamination, emerging risks, etc; and
- disseminating information and promoting awareness about food safety in India.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

There are a number of pieces of legislation that cater to different aspects of food supply chain safety, the most important of these are the following.

The Food Safety and Standards Act 2006

This enactment lays down science-based standards for articles of food and regulates manufacturing, storage, distribution, sales and imports, to ensure availability of safe and wholesome food for human consumption and matters connected therewith.

The Act contains multiple provisions for penalties that concern:

- selling food that is not of the nature or substance or quality demanded;
- substandard food;
- misbranded food;
- food containing extraneous matter;
- unhygienic or unsanitary processing or manufacturing of food;
- possessing adulterant; and
- compensation in case of injury or death of the consumer after eating the food article, etc.

Any person contravening provisions of this Act is liable to imprisonment, a fine or both.

The Essential Commodities Act 1955

This Act enables the central government to regulate and control the production, supply, distribution, storage, transport, pricing and trade of certain essential commodities in the interest of the general public, ensuring easy availability of essential commodities and protection against exploitation by unscrupulous traders.

Any person contravening provisions of this Act is liable to imprisonment, a fine or both.

The Seeds Act 1966

This Act provides for regulating the quality of a variety of seeds for release in the market. Any person contravening provisions of this Act is liable to imprisonment, a fine or both.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

A prerequisite for farmers following organic cultivation methods is that they should use organically certified seeds in their farms.

Farmers should follow all the organic certification standards according to the National Programme for Organic Production (NPOP), in addition to the seed certification standards for the production of certified organic seeds. For the production of such seeds, farmers have to register their land with any of the accredited organic certification bodies in India and also the seed crop with the Department or Board of Seed Certification in their respective state. The NPOP is regulated by the Agricultural and Processed Food Products Export Development Authority (APEDA).

Organic food products that are manufactured must be marked with the India Organic certification mark issued by the APEDA. In a similar vein, agricultural products may only be exported as 'organic' if certified by an accredited agency.

In the exercise of powers conferred by sections 6, 8 and 25 of the Environment Protection Act 1986, the central government has laid down the Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms, Genetically Engineered Organisms or Cells 1989, which mainly regulates development, environmental release and commercial approval of genetically modified crops.

A set procedure has been laid for the release of such products in the marketplace, after which the Genetic Engineering Approval Committee, one of the statutory committees prescribed under the above rules, is the competent authority to approve or prohibit the release of such foods in the marketplace.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

The food labelling requirements are regulated by the Food Safety and Standards (packaging and labelling) Regulations 2011. Under these regulations, every packaged item of food has to be labelled with the following information:

- name of the food;
- list of ingredients;
- nutritional information;
- declaration of whether it is vegetarian or non-vegetarian;
- declaration regarding food additives;
- name and complete address of the manufacturer;
- net quantity;
- lot, code and batch number;
- date of manufacture or packing;
- 'best before' and 'use by' dates;
- country of origin for imported food; and
- instructions for use.

The penalty for misbranding of food is a fine of up to 300,000 Indian rupees and for misleading advertising up to 1 million Indian rupees.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

Legislative measures have been taken by many states for prevention and control of contagious animal diseases. The law provides for regulation of:

- the entry and movement of infected animals into different states;
- their registration and treatment;
- regulation of markets, fairs and exhibitions;
- cleaning and disinfection of vehicles used for the transport of diseased animals; and
- reporting the occurrence of scheduled diseases.

The Transport of Animals Rules 1978, made under the Prevention of Cruelty to Animals Act 1960, caters to such aspects. There is also a central act – the Livestock Importation Act 1898, amended in 2001 – under which the central government has the authority to regulate, restrict or prohibit the entry by sea, land or air into India of any livestock affected or that is liable to be affected by diseases, or the importation of fodder, dung, clothing, harness, etc, pertaining to such livestock. State governments have been empowered by the central government to frame rules under the act and set up quarantine stations for such purpose.

Most of the states have framed comprehensive laws for the prevention and control of certain important infectious diseases, including:

- the Madhya Pradesh Cattle Diseases Act 1934;
- the Tamil Nadu Rinderpest Act 1940;
- the Bengal Diseases of Animals Act 1944;
- the Assam Cattle Diseases Act 1948; and
- the Orissa Animal Contagious Diseases Act 1959.

The main objectives of these acts are to control the spread of notified infectious diseases and to curtail the infection by vaccination, treatment and destruction of infected livestock. The Prevention and Control of Infectious and Contagious Diseases in Animals Act 2009 aims to provide for:

- the prevention, control and eradication of infectious and contagious diseases affecting animals;
- the prevention of outbreaks or spread of such diseases from one state to another;
- to meet the international obligations of India for facilitating import and export of animals and animal products; and
- for matters connected therewith or any incident thereto.

18 What are the restrictions on the movement of animals within your country?

There are certain conditions regarding the transportation of animals that are dealt with under Rule 96 and Rule 98 of the Transport of Animal (Amendment) Rules 2001. Rule 96, lays down that before transportation of any animal, a valid certification has to be procured from any animal welfare organisation, duly authorised by the Animal

Welfare Board of India for the purpose of certifying that all the rules and orders pertaining to the said animals, as notified by the state and central government, have been duly complied with. Under Rule 98, animals should only be transported when they are healthy. Any unhealthy or unfit animals should be examined by a veterinary doctor to ensure that it is free from any infectious disease. Such diseased animals should be kept separately from other animals during treatment.

Under the said Rules there are different rules for transportation of different categories of animals.

19 Describe any restrictions on import of food animals.

The Livestock Importation Act 1898, amended in 2001, is the governing act for the import of animals into India. The central government has the authority to regulate, restrict or prohibit the entry by sea, land or air into India of any livestock affected or that is liable to be affected by diseases and disorders, and the importation of fodder, dung, clothing, harness, etc, pertaining to such livestock.

The Act has been amended to include meat and meat products including fresh, chilled and frozen meat, tissue, organs of poultry, pig, sheep, goat; egg and egg powder, milk and milk products; and bovine and ovine products, etc. The central government occasionally lists the animals covered under said Act in the *Gazette of India* (the central government's official gazette).

No livestock or livestock products may be imported into India without a valid sanitary import permit. All such products with a valid permit may be brought into India only through seaports or airports where Animal Quarantine and Certification Services (AQCS) stations are situated. These stations are located in the cities of Delhi, Mumbai, Kolkata and Chennai. When livestock products arrive at the check-point, they will be checked by the AQCS officer-in-charge or any other veterinary officer duly appointed and, if approved, will be allowed into the country.

20 What are the regulations related to livestock slaughtering?

India is the second-largest exporter of beef and the fifth-largest producer of beef in the world. Most of the meat comes from buffalo and not cows (the Constitution calls for the protection and preservation of cows). According to data from the Department of Animal Husbandry, Dairying and Fisheries, 24 out of 29 states have imposed restrictions and penalties of varying degrees on the slaughter of cows. The slaughtering of cows is banned in some states, including Andhra Pradesh, Telangana, Assam, Bihar, Uttar Pradesh and Maharashtra.

Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, were framed to regulate livestock slaughtering. Rule 3 puts a few restrictions on what conditions an animal can be slaughtered. Also, it states that animals should be slaughtered only in recognised or licensed houses.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The importation, manufacturing, sale and distribution of pesticides are regulated under the Insecticides Act 1968 (amended in 2000) and Insecticides Rules 1971. There is a provision for the registration of pesticides at central government level and licensing for manufacturing and sale of pesticides after registration. Registration is granted only after the efficacy of the pesticide and its safety in relation to human beings and animals can be assured. Samples are drawn for analysis on a regular basis to check quality thereof. As per the rules on insecticides, the labels and leaflets form an integral part of containers of every pesticide and are approved by the registration committee. These form identification marks for every pesticide.

Another regulation, the Destructive Insects and Pests Act 1914, provides for measures against entry of pests and diseases from other countries into India. Suitable provisions also exist in the Act for preventing the spread of pests and diseases from one state to another within the country. For implementing the provisions relating to the prevention of the entry of injurious pests and diseases, a chain of plant quarantine and fumigation stations has been established at all airports, seaports and land frontiers. The state governments have also passed suitable legislation for dealing with epidemics in plant diseases and pests.

Business organisation

22 How agricultural operations are typically organised in your jurisdiction?

In India, there are many circumstances where the individual farmers have smallholdings for carrying out agricultural activities.

A cooperative body is one of the forms of business organisation that farmers collectively take up to start their businesses (eg, the dairy cooperative, Amul). Agricultural operations are also conducted under partnerships, private companies and public organisations.

There are certain companies that are wholly owned by the central government under the central public sector enterprises (PSEs). The National Seeds Corporation is an example of a PSE that undertakes production of foundation and certified seeds.

Contract farming has also been prevalent in various parts of India for centuries. With the economic liberalisation policies of the central government, various multinational companies are also entering into contracts for marketing of horticultural produce and providing technologies and capital, thereby giving a boost to contract farming.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

See question 11.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

Legislation relating to protection of workers is the main pillar for any progressive country. The central government has passed various laws throughout the years in order to recognise and promote legitimate interests of agricultural workers in the light of World Trade Organization (WTO) rules, International Labour Organization (ILO) Convention on Equal Remuneration and Convention on Discrimination (Employment and Occupation) and ILO Conventions on Forced Labour among others.

The crucial legislative measures available to safeguard agriculture workers' rights are the following.

Plantations Labour Act 1951

This Act is for the welfare of labour and to control the conditions of worker in plantations. It provides the responsibilities of employer with regards to his or her labour and penalties in case of contravention of provisions of the Act. The state governments are empowered to make rules.

Minimum Wages Act 1948

This provides for fixation and enforcement of minimum wages in respect of scheduled employment and to prevent exploitation of workers.

Trade Unions Act 1926

This allows workers to form an organisation or group to seek to promote and protect their interests through the mode of collective bargaining.

Contract Labour (Regulation & Abolition) Act 1970

The Act was enacted to regulate employment of contract labour employed directly, with regard to the working conditions and certain other benefits to be provided to the workers.

The Employees' Provident Funds and Miscellaneous Provision Act 1952

This aims to provide financial security for the future of workers after their retirement and for their dependants in case of early death.

The Bonded Labour System (Abolition) Act 1976

The purpose of this Act is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

Other relevant enactments are the Kerala Agricultural Workers' Act 1974 and the Equal Remuneration Act 1976.

25 How is farmworker immigration regulated in your jurisdiction?

Farm worker immigration is a crucial issue that has been protected and covered under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. The purpose of this Act is to regulate the employment of interstate migrant workmen and to protect them, as well as providing for their conditions of service. It also provides for the licensing and registration of the establishment that employs the interstate migrant workers. In addition, provisions are given relating to wages, welfare and other facilities to be provided to interstate migrant workmen.

26 Outline the health and safety regulations relating to farm workers in your jurisdiction.

In India various laws have been enacted and amended by the central government with regard to the health and safety regulations relating to farm workers. The relevant provisions of two acts are given below.

The Dangerous Machines (Regulation) Act 1968

This applies to dangerous machines that are defined under the Act and extends its applicability to the agriculture sector. The Act contains a provision wherein it is stated that no person shall manufacture, or commence or carry business as a manufacturer or dealer of, any dangerous machine unless he or she holds a valid licence issued in this respect by the controller.

A manufacturer is also obligated to ensure that every part of a dangerous machine conforms to prescribed standards.

The Insecticides Act 1968

This contains control measures relating to hazards in the use of insecticides, which are also applicable to the agriculture sector. The Act stipulates provisions regarding the constitution of the Central Insecticides Board to advise the central government and state governments on the risk to human beings or animals affected by the use of insecticides and the safety measures necessary to prevent such risk.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

India is a signatory to the WTO's Agreement on Agriculture (AOA) and its commitments to AOA have resulted in reducing the applied tariff duties pertaining to the importation of agricultural goods and the removal of quantitative restrictions on the import and export of agricultural products.

In India, the export and import of agricultural products is regulated by the following laws:

- Foreign Trade (Development and Regulation) Act 1992;
- Foreign Trade (Regulation) Rules 1993;
- Foreign Trade (Exemption) Order 1993; and
- India's Export Import Policy, issued by Directorate General of Foreign Trade.

An import-export code (a unique 10-digit number) and a licence from the Directorate General for Foreign Trade must be obtained with regards to the import and export of goods such as seeds, plants, animals and insecticides.

Further, the FSSAI issues clearances for imported food articles, which includes agricultural products.

Provisions for the importation of animals or livestock in India are covered under the Live-stock Importation Act 1898 and the regulations framed there under. The Act has been amended by the Livestock Importation (Amendment) Act 2001 and attempts to prevent the ingress of any 'Exotic Livestock Diseases' through importation of live-stock and related products.

The Department of Animal Husbandry, Dairying and Fisheries regulates the functioning of animal quarantine and the Ministry of Agriculture regulates plant quarantine.

The Department of Animal Husbandry, Dairying and Fisheries routinely checks and monitors the importation of animal products into India. A sanitary import permit from this department must be obtained to import animal products into the country.

Similarly, phytosanitary certification must be obtained from the Directorate of Plant Protection, Quarantine and Storage for importing plant products into the country.

28 May tariffs, quotas or similar measures be put in place?

Rates of custom duty are outlined under Customs Tariff Act 1975. The first and second schedules of this Act provide for specific rates of import duty and export duty. The central government also occasionally issues exemption notifications of lower applied rates. India is a signatory to the AOA and the average tariff on agricultural commodities was 115 per cent before the AOA agreement. After the agreement the tariff was reduced to approximately 34 per cent in 2007 and the current applied duties were reduced to approximately 13 per cent in 2014-2015.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

In India, the WTO regime, free trade agreements (FTAs) and bilateral treaty investment agreements (such as preferential trade agreements and comprehensive economic partnership agreements (CEPAs)) work either to reduce or eliminate customs tariffs and non-tariff barriers on significant trade between India and its trading partners. India has negotiated a series of FTAs, largely with trading partners across Asia as well as outside Asia, as listed below.

FTAs

India has entered into bilateral FTAs with Sri Lanka in 1998, Thailand in 2004, Singapore in 2005, Bhutan in 2006, Nepal in 2009, Korea in 2010, Japan in 2011 and Malaysia in 2011.

There have also been two regional trade agreements involving India that are known as the South Asian Free Trade Area (2004) and the Association of Southeast Asian Nations-India (2010).

Preferential trade agreements

There are preferential trade agreements between India and Afghanistan, India and Chile, and India and Mercosur.

CEPAs

An agreement between India and South Korea was signed in 2009, and another between Japan and India in 2011.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Plant breeders' property rights are governed by the Protection of Plant Variety and Farmers Rights Act 2001. The rights granted under this Act to the breeder of a new variety of plant are exclusive rights over the propagating material and harvested material of the new variety for a stipulated term. For example:

- the term of protection in case of trees and vines is 18 years from the date of registration of the variety;
- for varieties notified under section 5 of the Seeds Act 1966, the term is 15 years from the date of the notification by the central government; and
- in the remaining cases it is 15 years from the date of registration of the variety.

The breeder becomes the exclusive marketer and can also license the variety to others.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

There are various research organisations, such as the Indian Council for Agriculture Research, MS Swaminathan Research Foundation and other governmental and NGOs that conduct research and continuously revise data relating to agriculture, including plant varieties and plant technologies, which farmers can easily access.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

The other intellectual property considerations that apply to agribusiness are patents, trademarks, geographical indications and design.

Environmental issues**33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.**

The Ministry of Environment and Ministry of Agriculture at central and state level, and the pollution control board of the respective states, are the primary regulatory agencies that play an important role in managing the environmental impact of agriculture. It is important to note that NGOs also have an equally important role in regulating the environmental impact on agriculture.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Water and air pollution is regulated in India by the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981, respectively, with the assistance from the authorities appointed by the central government or by a state government.

Various studies have revealed that the use of pesticides has had an impact on the production of farm products and the agricultural environment.

The governmental agencies involved in controlling pollution have implemented various schemes in order to educate the farmers on the subject with a view to increasing productivity and reducing pollution. Another relevant piece of legislation is the Environment Protection Act 1986 that lays down basic principles for protection of the environment.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

In agricultural activities, liquid waste is the result of water becoming contaminated through fertiliser and pesticide residue. Other agri-waste includes unused parts of plants and waste left over after harvesting primary crops. Such agri-waste can be utilised by way of generating bioenergy, biofertiliser, being converted into ethanol as a substitute to fossil fuel.

Some of the government programmes and schemes to encourage the utilisation of agri-waste include the Programme on Energy from Urban, Industrial and Agricultural Wastes/Residues, and the Capital Investment Subsidy Scheme of National Mission for Sustainable Agriculture programme.

The central government is encouraging the use of organic fertilisers or biofertilisers by undertaking different schemes and programmes such as the:

- National Mission for Sustainable Agriculture;
- Traditional Farming Improvement Programme;
- National Agricultural Development Programme;
- Mission for Integrated Development of Horticulture;
- National Mission on Oilseeds and Oil Palm;
- National Biogas and Manure Management Programme;
- Network Project on Organic Farming of the Indian Council for Agriculture Research; and
- National Programme on Organic Production of APEDA.

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The agriculture industry alone was responsible for 8.2 per cent of Malaysia's gross domestic product in 2017. The agriculture industry consists mainly of industrial commodities such as rubber, palm oil, cocoa and agro-food including rice, fruits, vegetables, fisheries and livestock. Large-scale commercial plantation owners dominate the landscape in respect of industrial commodities, while smallholders are concentrated mainly in the agro-food industry.

Under the Eleventh Malaysia Plan (the Plan) for 2016–2020, the government aims to transform the agro-food sector through, among other things, research and development (R&D) and modernisation initiatives, strengthening institutional support and extension services, implementing measures to increase food security and safety, increasing farmers' incomes and boosting productivity.

Despite the gradual growth rate in the export of food over the years, Malaysia is still a net importer of food and agricultural produce, with an increasing deficit in the food trade balance, primarily because of heavy demand for animal feed, sugars and honey, meat and meat products, and vegetables to meet the country's agro-food requirements. Malaysia produces approximately 72 per cent of the rice required by the population and imports the rest. Under the Plan, the government aims to increase the self-sufficiency level of the majority of agro-food commodities, including initiatives towards achieving full self-sufficiency in respect of rice.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The Ministry of Agriculture and Agro-based Industry (MOA) is responsible for agriculture in Malaysia. The MOA oversees various other bodies and departments such as the Department of Agriculture, the Department of Veterinary Services, the Department of Fisheries, the Department of Malaysian Quarantine and Inspection Services, and the Federal Agricultural Marketing Authority. Many of these departments are responsible for administering the relevant legislation affecting primary agriculture and primary food processors.

In addition, important commodities such as cocoa, palm oil, pepper, pineapple, tobacco and rubber are overseen by specific bodies (such as the Malaysian Cocoa Board and the Malaysian Palm Oil Board) which regulate, among other things, the import, export, processing, sale, distribution and storage of such commodities.

Depending on the scale and scope of the processing activities carried out, primary food processors may require a manufacturing licence under the Industrial Co-Ordination Act 1975 issued by the Malaysian Investment Development Authority. Certain promoted activities and products are eligible for tax incentives under the Promotion of Investment Act 1986.

Generally, the Malaysian regulatory environment is based on licensing and approval frameworks that enable regular supervision and control over the players in the agriculture industry. The relevant statutes also provide for penal sanctions (ie, a fine or imprisonment or both) for offences committed under such statutes.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Most of the non-governmental organisations (NGOs) in the agribusiness sector in Malaysia are farmer-based associations or organisations.

Malaysia has a network of farmers' organisations that come under the administrative jurisdiction of the Farmers' Organisation Authority, a statutory body under the supervision of the Department of Agriculture. Under the Farmers' Organisation Act 1973, any person engaged in agricultural or livestock production is eligible to be a member of, and to form, a farmers' organisation registered under the Act.

Other relevant NGOs and associations include the:

- Federation of Livestock Farmers Association of Malaysia;
- Federation of Vegetable Farmers Association of Malaysia;
- Malaysian Fruit Farmers Association;
- Malaysian Animal Health and Nutrition Industries Association;
- Marine Fish Farmers Association of Malaysia;
- Malaysian Seafood Industries Association;
- Malaysian Fisheries Society; and
- Roundtable on Sustainable Palm Oil.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Pursuant to the Federal Constitution of Malaysia (the Constitution), land matters generally lie within the jurisdiction of the various state governments. The Constitution specifically provides, however, for federal legislation to apply for the purposes of ensuring uniformity of law and policy in various aspects of land matters.

The federal legislation governing land matters in Malaysia includes:

- the National Land Code 1965 (NLC), which contains provisions relating to land and land tenure, the registration of title to land and of dealings therewith, within Peninsular Malaysia and Labuan;
- the Sarawak Land Code (Chapter 81), which governs all matters relating to land in the state of Sarawak, including:
 - land tenure;
 - registration of titles relating to land;
 - transfer of land;
 - leases and charges in respect of land; and
 - easements and other rights and interests in land in the state; and
- the Sabah Land Ordinance (Chapter 68), which governs matters relating to land in the state of Sabah including:
 - land tenure;
 - registration of titles relating to land;
 - transfer of land, leases and charges in respect of land; and
 - easements and other rights and interests in lands in the state.

The operation of these statutes is supplemented by various pieces of subsidiary legislation, including various state land enactments and ordinances in force in the respective states in Malaysia.

Pursuant to the NLC:

- the 'entire property' in all state lands situated within Peninsular Malaysia and Labuan is vested in favour of the relevant state authority;

- there are three categories of land use, namely, agriculture, building and industry; and
- each state authority has the power to alienate land:
 - for a term not exceeding 99 years or in perpetuity; and
 - subject to certain conditions such as payment of annual rent, the category of land use and such express conditions or restrictions in interest, as may be imposed by the state authority.

The NLC does, however, restrict a state authority from alienating any land 'so as to have the effect of less than two-fifths of a hectare of land subject to the category of 'agriculture' or to any condition requiring its use for agricultural purpose being held by more than one person or body', except in exceptional circumstances.

5 Outline any rules related to use of farmland for non-agricultural uses.

When land has been categorised as agricultural on the land title, it cannot be used for non-agricultural purposes. Pursuant to the NLC, any breach of a condition to which land is subject may result in the land becoming liable to forfeiture to the state authority.

A land proprietor may, however, apply to the relevant state authority for the alteration of category of land use from agricultural to non-agricultural use.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In Malaysia, security over land, whether granted by the borrower or a third-party security provider, is usually by way of a statutory charge over the land in favour of the financier.

Pursuant to the NLC, the land proprietor is entitled to charge for the whole (but not a part) of any alienated land; or the whole (but not a part) of any undivided share in the alienated land. The power to place a charge over the land includes the power to create a second charge and subsequent charges. Every charge created will take effect upon the registration so as to render the land liable as security in accordance with the provision of the charge. Similar rules apply in East Malaysia.

The first chargee of any land, subject to any agreement to the contrary, is entitled to custody of the land title so long as any liability subsists under the charge.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Creditors in whose favour a charge has been registered would be entitled to enforce the charge by obtaining an order for sale of the land in the event of default by the borrower. The relevant creditor will be required to comply with the relevant provisions under the NLC, which include serving a default notice in the prescribed form, and to apply to the High Court or the relevant land administrator or collector of land revenue, as the case may be, for an order for sale of the land by public auction. Upon the registration of any certification of sale given to a purchaser in respect of the charged land, title to the land will pass to and vest in the purchaser, free from all liabilities under the charge in question. Similar rules apply in the East Malaysian states of Sabah and Sarawak.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

There is no specific legislation pertaining to public control of farmland per se. Under the Land Acquisition Act 1960, however, in Peninsular Malaysia the relevant state authority may acquire any land that is needed:

- for any public purpose;
- by any person or corporation for any purpose that in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally; or
- for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

Upon any land or part thereof being acquired by the state authority in accordance with the provisions of the Land Acquisition Act 1960, the relevant land administrator will take possession of such land or part thereof.

Insofar as Sarawak is concerned, under the Sarawak Land Code, whenever it appears to the Sarawak state government that any land is needed for any of the purposes specified in the Sarawak Land Code, the relevant state minister may make a declaration that such land is required for a public purpose. These include:

- the planning, establishment, extension, improvement, development and redevelopment of towns, bazaars, growth centres, housing estates, sites for industries, factories, trade and commerce; the provision of accommodation for workers employed by factories and in industrial estates; or the provision and establishment of public parks and green open spaces, public amenities or recreational facilities;
- the provision of residential accommodation for any section or class of the community including the officers, servants or employees of the federal or state government and the families and employees thereof;
- the provision or improvement and development of roads and means of communications and any public utility or public service, whether undertaken or managed, or to be undertaken or managed, by the federal or state government or by a public body or private enterprise or otherwise;
- slum clearance or the resumption, with the object of improving the condition thereof, of property that is, or renders other property, unfit for human habitation or is dangerous or injurious to health;
- the provision of land for aquaculture or the cultivation of agricultural crops or for research or experimental purposes in connection herewith;
- the settlement or resettlement of any community or of any section or class of the public;
- any work or undertaking by any person, corporation or statutory body, which in the opinion of the Sarawak state government is beneficial to the economic or social development of the state or any part thereof or to the public generally or any class of the public; and
- any purpose declared to be a public purpose by or under any written law either for the purpose of the Sarawak Land Code or for the purpose of any written law repealed by the Sarawak Land Code.

In contrast, in Sabah, pursuant to the Sabah Land Acquisition Ordinance (Chapter 69) (SLAO), if the Sabah state government considers that any land should be acquired for a public purpose, a declaration may be made to that effect in the manner provided in the SLAO. Any such declaration would then be conclusive evidence that the land to which it relates is required for a public purpose. 'Public purpose' is defined under the SLAO to mean any, or any combination of, the following purposes:

- for the exclusive use of the state government, the federal government or the general public;
- for or in connection with the planning, establishment, extension, improvement or development of any town or township, any purpose reasonably necessary or desirable in regard thereto, including the provision of open spaces and amenities and the setting apart of suitable sites for factories industries and trade;
- for or in connection with the provision of residential accommodation for any section or class of the community including the officers, servants or employees of the state government or the federal government, and the families and employees thereof;
- for obtaining control over land contiguous to, or required for or in connection with, any port, airport, railway, road or other public works of convenience;
- for or in connection with any public utility undertaking or the provision of any public service;
- for or in connection with any scheme relating to the settlement or resettlement of any community, or of any section or class of the public, rural or urban;
- for or in connection with the provision of land for the cultivation of padi, or for agricultural research or experimental purposes; and
- for or in connection with the conservation, improvement or exploitation of natural resources.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

The Guideline on Acquisition of Properties (the Guideline) issued by the Economic Planning Unit, Prime Minister's Department (EPU) is the relevant legislation.

Under the Guideline, a 'foreign interest' (including foreign entities and individuals) is not allowed to acquire, among other things, properties (including agricultural land) valued at less than 1 million Malaysian ringgit per unit.

The Guideline also states that the acquisition of agricultural land valued at 1 million Malaysian ringgit and above, or that amounts to at least five acres, for specific agricultural purposes does not require the approval of the EPU but falls under the purview of the relevant ministries or government departments. However, the form of acquisition mentioned above is subject to the condition that the said property must be registered under a locally incorporated company.

NLC

In Peninsular Malaysia, under the NLC, foreign companies and non-citizens have to apply for and obtain the prior consent of the relevant state authority for the acquisition of agricultural land. Furthermore, where an order for sale of land has been made under the provisions of the NLC pursuant to enforcement of a charge or lien, a foreign company or a non-citizen, regardless of whether he or she is the chargee or a lienholder, will not be entitled to bid at the sale if the property falls under the 'agriculture' or 'building' categories or to any condition requiring its use for a purpose related to agriculture or building, unless the prior approval of the relevant state authority has been obtained by the foreign company or non-citizen in question.

Sarawak Land Code

Under the Sarawak Land Code, no foreigners are allowed to acquire any land in Sarawak without the consent of the relevant state minister.

Sabah Land Ordinance

In Sabah, there are no restrictions on the acquisition of land by foreigners under the Sabah Land Ordinance (except for land categorised as 'native land' in respect of which prior state approval is required). The acquisition by foreigners of non-native land is, however, still subject to the approval of the EPU.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The MOA administers incentive schemes and provides development funds to fishermen (such as the Lembaga Kemajuan Ikan Malaysia (LKIM)). These funds are made available to finance activities closely related to fisheries, aquaculture and processing activities, and to increase fishermen's productivity – including purchase or replacement of boats, engines, nets and equipment, emergency loans – and provision of capital for the Fishermen's Association marketing projects.

The MOA also provides fiscal and non-fiscal incentives to support the development of the agricultural sector. Fiscal incentives are provided in the form of deductions or exemption in the payment of income tax, sales tax or duties. Non-fiscal incentives include advisory and technical consulting, equipment assistance, training courses related to certification, branding, production, entrepreneurship and food marketing.

ScienceFund and TechnoFund

The MOA also maintains the ScienceFund scheme to fund research and development (R&D) to generate new knowledge in strategic and applied science, development of new processes for product commercialisation, and improvement of national research capabilities and expertise in order to achieve national agricultural goals. The ScienceFund focuses on areas such as paddy, herbs and spices, vegetables, rubber, food processing and fisheries. It finances:

- the salary and allowance of researchers;
- travel allowances;
- rent;
- research materials and supplies;
- small-scale modifications and repair;
- special services; and
- equipment and accessories for R&D.

In addition, the MOA also maintains the TechnoFund scheme for the development of new technology and upgrading of existing technology developed through R&D projects financed by the ScienceFund. The TechnoFund focuses on agriculture, fishery, livestock, food and agro-based industries. It covers:

- the financing of pilot plants and equipment;
- field studies for the purposes of test and demonstrations;
- registration of intellectual property in Malaysia (excluding maintenance);
- commercial-ready prototype;
- market testing of commercial-ready prototype, regulatory and standard compliance;
- contract expenditures (eg, contractors and subcontractors salary);
- expenditure of service;
- acquisition of intellectual property; and
- training.

FAMA

The Federal Agricultural Marketing Authority (FAMA) is a body established under the MOA to improve the marketing of agro-food agricultural products and to encourage entrepreneurs to be involved in the agro-food sector. Some of the agricultural support programmes implemented by the FAMA are as follows.

Contract Farming

Under the Contract Farming regime, farmers under the supervision of various governmental departments produce crops that are then purchased and marketed by the FAMA, provided that the crops meet certain minimum requirements.

Contract Marketing Entrepreneur Development

This scheme involves farmers entering into binding agreements with the FAMA, pursuant to which the farmers agree to produce agricultural products according to requirements determined by the FAMA. In return, the FAMA markets the agricultural products, in accordance with the terms of such agreements.

Marketing Contract for Processed Products

This programme involves the selection of certain processed food products or 'winning products' supplied by small and medium-sized enterprise entrepreneurs, which are then distributed by the FAMA under known brand names such as OleMas and AgroMas.

Priority is given to selected or winning products, which are:

- products that are accepted by local and international consumers, with apparent market potential;
- products that do not directly compete with products developed by multinational corporations; and
- products that are supported by sufficient domestic and regional supplies of raw materials.

Marketing Effort

The Marketing Effort initiative is an initiative by the FAMA to introduce and expand agricultural yield product marketing by organising various promotional activities and carnivals, festival expositions and concession sales in supermarkets. Entrepreneurs wishing to participate must be registered with the FAMA and their products must possess market potential.

Plantation Collection Centre

This scheme revolves around clustered agriculture collection centres built in plantation areas to reduce post-harvest damage and add value through the process of grading, labelling and packaging.

Distribution Centre

The Distribution Centre initiative is centred on the provision of marketing infrastructure facilities and centres for redistribution from producers to consumers.

Farmers Market Mega and Farmers Market

The Farmers Market Mega and Farmers Market initiatives that have a mobile and carnival-like atmosphere concept are essentially marketing platforms for farmers and producers to market their crops directly to consumers.

Fresh Food Stall Entrepreneur Development Programme

This programme is set up to develop the entrepreneurship of fruit markets in a more structured and uniformed retail market. All entrepreneurs selected to join this programme will be given assistance in the form of equipment loans, promotional materials, and expert guidance and advisory services.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

At present, the MOA does not have any programmes or government incentives for foreigners to invest in the agriculture sector.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The primary applicable legislation is the Animals Act 1953 and the regulations and rules made thereunder. The Animals Act provides rules in relation to, among other things:

- preventing the introduction or spread of diseases of animals and birds;
- the control of the movement and slaughter of animals and birds; and
- measures pertaining to the general welfare, conservation and improvement of animals and birds.

Rules made under the Animals Act, such as the Animal Rules 1962 and the Animals (Control of Slaughter Rules) 2009, provide detailed requirements in relation to the import, export and quarantine of animals and birds and in relation to the slaughter of animals respectively.

The main distinction between meat for domestic consumption and meat for export lies in the additional licensing and permit requirements applicable in relation to meat for export under the Malaysian Quarantine and Inspection Services Act 2011 (MAQIS Act), administered by the Department of Malaysian Quarantine and Inspection Services and under the Customs (Prohibition of Exports) Order 2017 issued pursuant to the Customs Act 1967.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The food safety regime centres around the Food Act 1983 and the Food Hygiene Regulations 2009 made thereunder. The provisions of the Food Act are intended to protect the public against health hazards and fraud in the preparation, sale and use of food. The Food Hygiene Regulations set out a framework for the registration of food premises by the Ministry of Health and the conduct and maintenance of food premises, including requiring the proprietor, owner or occupier to provide a food safety assurance programme and food traceability system, as well as requiring food handlers to undergo appropriate training.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The Food Act and the Food Hygiene Regulations generally impose penal sanctions such as fines or imprisonment in relation to the offences prescribed thereunder. In addition, upon the conviction of any person of an offence under the Food Act, the court may, in addition to any other penalty that it may lawfully impose, cancel any licence issued to such person under the Food Act or Regulations.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

The Department of Agriculture has developed the Malaysian Organic Scheme to certify organic farms that meet the requirements of Malaysian Standard MS 1529 relating to the production, processing, labelling and marketing of plant-based organically produced foods. The Food Regulations 1985 issued pursuant to the Food Act provide that no label that describes any food may include the word 'organic', 'biological', 'ecological', 'biodynamic' or any other words of the same

significance unless the food conforms to the requirements specified in MS1529.

The Organic Malaysia Mark Scheme is a label scheme operated by Organic Alliance Malaysia (OAM) Bhd in collaboration with the Department of Agriculture. The OAM mark is for use by operators on certified organic products (in respect of domestically produced and imported products) that have been approved by the Department of Agriculture as meeting the requirements of Malaysian organic labelling requirements.

Insofar as genetically modified (GM) foods are concerned, the Biosafety Act 2007 prescribes import approval requirements in respect of 'living modified organisms' (defined to mean any living organisms that possess a novel combination of genetic material obtained through the use of modern biotechnology). This categorisation would apply in respect of certain types of GM food or food materials.

The Food Regulations 1985 provide that no person may import, prepare or advertise for sale or sell any food and food ingredients obtained through modern biotechnology (which would include GM foods) without the prior written approval of the Deputy Director General of Health (Public Health) of the Ministry of Health. Detailed rules are prescribed in the Guidelines on Labelling of Foods and Food Ingredients Obtained Through Modern Biotechnology, issued by the Ministry of Health.

With regard to differentiated products, a halal certification may be obtained to certify foods as halal (or permitted to be consumed by Muslims) from the Department of Islamic Development Malaysia.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

The Food Regulations 1985 set out detailed rules in relation to labelling and packaging of foods. The specific standards and particular labelling requirements for different types of food products are set out in the Food Regulations. Various guidelines have also been issued by the Ministry of Health that are intended to provide guidance to players in the food industry in relation to the rules prescribed under the Food Act and the Food Regulations, including:

- the General Guideline for Food Labelling;
- the Guide to Nutrition Labelling and Claims;
- the Guideline to Labelling of Food Additives; and
- the Guideline to Labelling of Ingredients, regarding ingredients that may cause hypersensitivity.

The Food Act provides that where a standard has been prescribed for any food, any person who prepares, packages, labels or advertises any food that does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard commits an offence.

It is also an offence for any person who prepares, packages, labels or sells any food to do so in a manner that is false, misleading or deceptive with regard to its:

- character;
- nature;
- value;
- substance;
- quality;
- composition;
- merit or safety;
- strength;
- purity;
- weight;
- origin;
- age;
- proportion; or
- compliance with regulations made under the Food Act.

Persons who have committed such offences are liable on conviction to imprisonment for a maximum term of three years, a fine, or both.

In addition, the Federal Agricultural Marketing Authority (Grading, Packaging and Labelling of Agricultural Produce) Regulations 2008 (FAMA Regulations) prescribe grading, packaging and labelling standards in respect of certain types of agricultural produce in its raw form.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The Animals Act contains provisions intended to prevent the introduction or spread of disease in animals and birds.

The Animals Act provides wide-ranging powers for 'veterinary authorities' (ie, the Director General of Veterinary Services, other veterinary officers or persons appointed by the Director) to:

- examine animals or birds suspected of disease;
- order the immediate isolation or destruction of any diseased animal or bird;
- treat any diseased animal or bird or those that may have been exposed to infection;
- order the destruction of stables, sheds, pens, cages and other articles that have been occupied or used in connection with an infected animal or bird; and
- order the disinfection of the body and clothing of any person and of vehicles that have been or may have been in contact with a diseased animal or bird.

In addition, every owner or person in charge of any animal or bird infected with, or reasonably suspected to be infected with, disease, or to have died of disease, is under a duty to immediately make a report to a veterinary authority or to the nearest police station. There are also strict requirements prescribed in relation to the disposal of dead animals or birds that have died from disease.

Furthermore, the chief minister of a state may issue an order declaring a state, or part of a state, to be an infected area, a disease control area or a disease eradication area for the specified disease, pursuant to which he or she may, among other things:

- prohibit either absolutely or conditionally the moving into or out of such area of any animal, bird or carcass;
- the slaughter of any animal or bird within such area; and
- the rearing or keeping of any such animal or bird.

The Animals Act also provides specific power to the chief minister of a state to order the prohibition of movement or slaughter of any cattle or swine for a specified period except under licence.

18 What are the restrictions on the movement of animals within your country?

Under the Animals Act, the chief minister of a state may order the prohibition of movement or slaughter of any cattle or swine for a specified period, except under licence.

19 Describe any restrictions on import of food animals.

The Animals Act contains provisions in relation to the importation and exportation of animals and birds. The Animals (Importation) Order 1962, issued pursuant to the Animals Act, specifies:

- the animals and birds that may be imported into Malaysia;
- the countries from which they may be imported; and
- the permitted purposes for such importation, subject to the restrictions set out in the Animals (Importation) Order (eg, importation to be accompanied by the relevant import licence or a health certificate issued by an authority from the country of import).

Similar requirements apply in relation to the importation of the carcasses of any animal or bird or any part thereof, including the meat. In addition, the MAQIS Act sets out a general requirement for importers of, among other things, any animal to obtain a permit, licence or certificate issued under the Act by the Director General of Quarantine and Inspection Services.

The Customs (Prohibition of Imports) Order 2017 (Customs (Imports) Order) issued pursuant to the Customs Act 1967 lists goods that are either absolutely prohibited or that may be imported subject to the importer obtaining the relevant import licence from the specified authority.

All animals or birds imported or about to be imported will be examined by an enforcement officer at the entry points, quarantine stations or quarantine premises in accordance with the MAQIS Act. In addition, the Animal Rules prescribe immediate quarantine on arrival of any imported animal for a specified period in quarantine stations before such animals may be released.

20 What are the regulations related to livestock slaughtering?

The Abattoirs (Privatisation) Act 1993 (Abattoirs Act) provides a licensing framework in relation to the operation of privately owned abattoirs or slaughterhouses for oxen, buffalo, goats, sheep and pigs. The Abattoirs Act imposes duties on licensed operators to meet performance standards prescribed by the Director General of Veterinary Services, and to have due regard to the efficiency, economy and safety of operations in respect of the services provided by it, and to ensure that operations are carried out under hygienic conditions. The Director General of Veterinary Services is empowered under the Abattoirs Act to exercise regulatory functions in respect of the provision of abattoir services and the running of abattoir facilities by a licensed operator.

The Animals (Control of Slaughter) Rules provide that, except as set out in the Rules, no person may slaughter any animal except at an approved abattoir (ie, an abattoir operated by the Department of Veterinary Services) or a licensed abattoir. Any person who slaughters or causes to be slaughtered or wishes to use any of the services of an abattoir must be the registered user of such abattoir. Applications for registration must be made to the veterinary authority.

The Meat Inspection Rules prescribed pursuant to the Animals Act provide, among other things, for the inspection of slaughterhouses and livestock, carcasses, portions and products thereof by veterinary authorities and prescribes the sanitary requirements of slaughterhouses, and labelling and marking requirements for meat leaving a slaughterhouse.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The Pesticides Act 1974 sets out a licensing regime in relation to the importation, manufacture, sale and storage of pesticides overseen by the Pesticides Board established under the Pesticides Act.

The Plant Quarantine Act 1976 covers the control, prevention and eradication of agricultural pests, noxious plants and plant diseases.

Upon the appearance of a dangerous pest (as may be prescribed by the relevant minister), or any plant diseased by a dangerous pest, owners or occupiers of the land are under duties to inform the Director General of Agriculture and to render assistance to inspecting officers in relation to the destruction of such dangerous pests or diseased plants.

The chief minister of a state in Peninsular Malaysia, or the state minister charged with the responsibility for agriculture of Sabah or Sarawak, may also issue an order in relation to the eradication, destruction or treatment of any diseased plant that is affected by a dangerous pest, or of any plant liable to become so affected, including, among other things, requiring the owner or occupier of the land to clear the land entirely of such plants.

Similarly, an owner or occupier of land is required to completely and effectively destroy any noxious plants found growing in or on any land.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Agricultural operations refer to all agricultural activities conducted on agricultural land for gain or reward, including the growing or harvesting of crops, raising of livestock and cultivation of land. In Malaysia, agricultural farming is characterised by dualism (ie, there is a smallholder sector with an average farm size of one to two hectares and an estate-based sector with farm sizes in excess of 500 hectares). Estate-based agriculture places greater emphasis on cash crops such as oil palm, rubber and cocoa, whereas small-scale farmers focus mainly on food crops like rice, fruits, vegetables and herbs.

Smallholders can be divided into scheme smallholders and independent smallholders. Scheme smallholders generally come under the ambit of land development schemes administered by entities such as the Federal Land Development Authority. These smallholders receive support from such entities in the form of seedlings, fertilisers, technical assistance or credit. In contrast, independent smallholders tend to be self-organised and self-financed, with more autonomy to choose the crop they wish to develop, the manner in which their lands are utilised, etc. Although the smallholder sector is predominantly managed by family households, it is not uncommon for businesses in the form of partnerships or corporations to be involved in farming operations on a small-scale basis.

Estates or plantations with individual units covering 2,000–10,000 hectares are often operated by large corporations.

While upstream activities may be operated by sole proprietors, partnerships or corporations, downstream activities and R&D are usually carried out by corporations. This is because corporations are generally in a better financial position and possess the necessary technical know-how to engage in such activities. For example, FGV Holdings Bhd, a global agribusiness leader and a public-listed company in Malaysia, not only produces palm oil and rubber, but also manufactures a comprehensive range of palm oil-based products and carries out R&D in relation to palm oil.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

Foreign entities generally require the prior approval of the relevant state authority to acquire land subject to the category agriculture in accordance with the National Land Code 1965 and other related land laws of Malaysia.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

There are no specific rules or laws governing the rights of workers for agricultural operations. As is the case with workers from other industries, the rights of workers for agricultural operations are primarily covered under the:

- Employment Act 1955;
- Industrial Relations Act 1967;
- Minimum Retirement Age Act 2012;
- Minimum Wages Order 2016;
- Employees Provident Fund 1991; and
- Employees Social Security Act 1969.

25 How is farmworker immigration regulated in your jurisdiction?

Generally, farmworkers are governed by the same immigration rules and regulations as applicable to workers from other industries. Non-citizens working in Malaysia must obtain the applicable work permits, depending on the types of work carried out.

Under Malaysian immigration laws, foreign workers are only permitted to work in the following sectors:

- manufacturing;
- construction;
- plantation;
- agriculture; and
- services.

Workers in the agriculture sector may be sourced from countries such as Thailand, Cambodia, Myanmar, Laos, Kazakhstan, Nepal, Pakistan, Sri Lanka, Turkmenistan, Uzbekistan, Bangladesh, India, Indonesia, the Philippines and Vietnam.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Health and safety laws in Malaysia are mainly contained in the Occupational Safety and Health Act 1994. Under this Act, there is a general duty on an employer to ensure the safety, health and welfare at work of all its employees so far as is practicable. Such duties are applicable to industries set out in the First Schedule of the Occupational Safety and Health Act, which includes the agriculture industry. Any person who contravenes such provision is guilty of an offence and will, on conviction, be liable to a maximum fine of 50,000 Malaysian ringgit or to imprisonment for a term not exceeding two years, or both.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

As discussed in question 19, the Customs (Prohibition of Imports) Order 2017 and the Customs (Prohibition of Exports) Order 2017 issued pursuant to the Customs Act 1967 list goods that are either absolutely prohibited, or which may be imported or exported subject to the importer or

exporter obtaining the relevant import or export licence from the specified authority.

In addition, the MAQIS Act sets out a general requirement for importers and exporters of, among other things, any plant, animal, carcass, fish and agricultural produce to obtain a permit, licence or certificate issued under the MAQIS Act by the Director General of Quarantine and Inspection Services.

Examination, quarantine, certification and labelling requirements are also applicable under the MAQIS Act and the FAMA Regulations in relation to agricultural products (animal and non-animal) entering and leaving the country.

28 May tariffs, quotas or similar measures be put in place?

The Customs Duties Order 2017 issued pursuant to the Customs Act 1967 prescribes import and export duties in relation to various goods, including agricultural products.

With regard to tariffs and quotas, the Customs Duties Order sets out tariff rate quotas in respect of certain goods.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Malaysia is a signatory to several trade treaties that apply to, among other things, agricultural products. Malaysia has concluded free trade agreements (FTAs) with:

- Australia;
- Chile;
- India;
- Japan;
- New Zealand;
- Pakistan; and
- Turkey.

At the regional level, Malaysia and its partners in the Association of Southeast Asian Nations (ASEAN) have established the ASEAN Free Trade Area, which aims to create a single market among the ASEAN countries.

ASEAN has also concluded FTAs with:

- Australia;
- China;
- India;
- Japan;
- Korea;
- Hong Kong and China (expected to enter into force on 1 January 2019); and
- New Zealand.

Malaysia is also a party to the Framework Agreement on Trade Preferential System among the Member States of the Organisation of the Islamic Conference (OIC), which establishes a trade preferential system among OIC countries.

Finally, Malaysia has also signed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership, comprising 11 members, although such agreement is pending ratification and has not yet been brought into force.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Plant breeders' intellectual property rights are protected via the Protection of New Plant Varieties Act 2008 (PNPVA) and the Protection of New Plant Varieties Regulations (PNPVR). These allow plant breeders to seek formal statutory protection over a new plant variety and confers exclusive rights to breeders to exploit their new plant varieties upon registration.

The PNPVA established a statutory body known as the Plant Varieties Board under the purview of the Department of Agriculture of the MOA that is entrusted to administer and implement the plant variety registration system in Malaysia. The PNPVA also introduced the Register of New Plant Varieties to maintain particulars of plant variety registrations.

Registration of a new plant variety will entitle an applicant to a breeder's right and the issuance of a certificate of grant of a new plant

variety by the Plant Varieties Board. The denomination of the new plant variety and grant of a breeder's right will also be recorded in the Register of New Plant Varieties.

In addition, the registration of the new plant variety and grant of a breeder's right will also be published in the government gazette.

Protection and duration

The holder of a breeder's right is conferred the exclusive right to:

- produce or reproduce;
- condition for the purpose of propagation; and
- offer for sale, market, export, import and stock the material for any of the aforementioned purposes, in respect of the registered plant variety on a commercial basis.

The holder of a breeder's right may license, assign or sell to third parties the registered plant variety alongside the accompanying breeder's right granted under the PNPVA.

Different categories of plant varieties are accorded different terms of protection that take effect from the filing date of the application and will subsist for a period of:

- 20 years for a registered plant variety that is new, distinct, uniform and stable;
- 15 years for a registered plant variety that is new, distinct and identifiable; and
- 25 years for trees and vines.

The term of protection may be extended if the holder so applies and the Plant Varieties Board is satisfied that such extension is desirable on the ground of national needs and interests.

Civil proceedings

A plant breeder's right will be infringed by a person who, without the authorisation of the holder:

- produces or reproduces;
- conditions for the purpose of propagation; and
- offers for sale, markets, exports, imports and stocks the material for any of the aforementioned purposes in respect of the registered plant variety on a commercial basis.

The PNPVA also provides for criminal offences (such as furnishing false or misleading information in respect of an application and acting in contravention of any terms and conditions imposed on the plant breeder as a holder or as a licensee).

There is to date no reported case on infringement of a breeder's right.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The majority of Malaysian farmers have not adopted sophisticated ways of farming, and have limited knowledge and expertise as to new and different crop varieties and plant technologies. In order to assist rural Malaysian farmers to gain access to new crop varieties and plant technologies, the MOA has undertaken continual efforts and initiatives in educating farmers by offering various first-hand assistance and advice relating to crop varieties and plant technologies.

Training and workshops at district offices under the MOA may be conducted upon request nationwide to introduce different crop varieties to farmers and encourage or educate farmers on the use of advanced plant technologies. The MOA also provides advice to farmers on recommended crop varieties and effective plant technologies to be utilised based on the quality and fertility of the soil and land, and farming specialists will be sent to conduct a farming site visit to analyse the same.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Besides the plant variety protection system, there is also the geographical indication protection system and the patent regime that may be applicable to agribusiness in Malaysia.

Geographical indications are protected under the Geographical Indications Act 2000 (GIA). The geographical indication regime falls under the purview of the Intellectual Property Corporation of Malaysia within the Ministry of Domestic Trade, Co-operatives and Consumerism.

A 'geographical indication' is defined as an indication that identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin, whereby 'goods' are defined as including agricultural products.

It is not compulsory to register a geographical indication in Malaysia in order to enjoy the protection afforded by the GIA. A sign that is capable of identifying an agricultural product as originating from a given place with specific qualities, characteristics or reputation of that agricultural product because of the place of origin will be considered as a geographical indication and will be given protection under the GIA regardless of whether it is registered under the GIA. Examples of registered local geographical indications for agricultural products include 'Bario Rice', 'Sarawak Pepper', 'Sabah Tea', 'Tenom Coffee' and 'Tawau Cocoa'.

Once the application for registration of a geographical indication complies with the prerequisites and no opposition has been filed against application, the Registrar of Geographical Indication will register the geographical indication and issue a certificate of registration.

Registered geographical indications remain effective for 10 years from the date of filing and may be renewed for a further 10-year period, subject to payment of renewal fees.

Patents

Plant varieties are classified as non-patentable inventions under the Patents Act 1983. This position goes hand-in-hand with the PNPVA to avoid dual-protection from being granted in respect of a new plant variety.

However, neither the PNPVA nor the Patents Act 1983 addresses protection for GM plants (ie, where the processes for production of plants have heavily involved human intervention). Such inventions of GM plants (eg, plants that are resistant to pesticides) can be patented if the patentability requirements of novelty, inventive steps and industrial applicability are fulfilled.

A granted patent takes effect on the date of issuance of the certificate of grant and remains in force for 20 years (subject to the payment of annual renewal fees) from the filing date of the patent application. The owner of a patent will be granted the exclusive right in relation to the patent to exploit the patented invention, to assign or transmit the patent and to conclude licence contracts.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The Department of Environment under the Ministry Energy, Science, Technology, Environment and Climate Change is the primary regulatory agency responsible for the prevention, elimination and control of pollution and the enhancement of the environment, and is responsible for the administration of the Environmental Quality Act 1974 (EQA).

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Under the EQA, the use and occupation of certain prescribed premises must be licensed by the Director General of Environmental Quality, including those used for the processing of crude palm oil and rubber. Specific regulations apply in relation to licensees engaged in such activities.

Further, under the EQA, any person intending to carry out certain prescribed activities must appoint a qualified person to carry out an environmental impact assessment and submit the report to the Director General of Environmental Quality, and such person may not carry out the prescribed activity unless the report has been submitted and approved. Prescribed activities include, among other things, certain types of activities relating to agriculture, drainage and irrigation and forestry.

More generally, the EQA empowers the Minister Energy, Science, Technology, Environment and Climate Change to issue regulations

- specifying the acceptable conditions for the:
 - emission, discharge or deposit of environmentally hazardous substances, pollutants or wastes; or

- the emission of noise into any area, segment or element of the environment; and
- to set aside any area, segment or element of the environment within which the emission, discharge or deposit is prohibited or restricted.

As an example, regulations have been made in respect of clean air and sewage under the Environmental Quality (Clean Air) Regulations 2014 and the Environmental Quality (Sewage) Regulations 2009 respectively.

The EQA prescribes criminal offences for contravention of restrictions on the:

- pollution of the atmosphere;
- noise pollution;
- pollution of the soil;
- pollution of inland waters;
- discharge of oil into Malaysian waters; and
- open burning.

Persons who have committed such offences are liable on conviction to imprisonment or a fine, or both.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

See question 34.

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Mexico

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The agriculture and food supply chain in Mexico is similar to chains implemented in other countries, but it specifically works towards improving infrastructure and the necessary elements and agents to obtain the final product and placement with the end user, as well as aiming to develop a low-cost, highly specialised workforce.

In line with this, the federal government has set forth an array of goals to make this chain sustainable and to guarantee food security, among other objectives. These goals are contained in Mexico's national agricultural policy, which is detailed in the Sectoral Programme for Agricultural, Livestock, Fishing and Food Development for the years 2013–2018. This programme is administered by the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (Ministry of Agriculture). Since the presidential election in July 2017, a new programme will be issued with the coming change of federal government in December 2018. The issuance of the new programme is expected to happen during the first six months of 2019. Due to the President Elect Andres Manuel Lopez Obrador's ideological profile (a moderate leftist), major structural changes are not expected. Some related topics the president elect has pinpointed as part of his agricultural policy are: recovery of food sovereignty, a boost to domestic agricultural primary sector, and the setting up of warranty prices for some agricultural products in favour of producers. Specific mechanisms to achieve the foregoing have not been announced so far.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The agricultural sector regulations are not protectionist in terms of investment, allow foreign investment (some specific requirements or caps may apply) and are uniformly applicable to all agricultural producers, regardless of their origin. Notwithstanding the foregoing, within this primary sector some specific and strict regulations are applicable when dealing with genetically modified organisms (GMOs), import and export, crop seeds, labelling and food safety, among other aspects.

The main regulators in the sector are:

- the National Service for Agri-food Health, Safety and Quality;
- the National Service Seed Inspection and Certification; and
- the Federal Commission for the Protection Against Sanitary Risk, which carries out sanitary surveillance related to services and products, including food.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

There are various non-profit organisations and associations composed of agricultural producers, commonly known as national or regional chambers or associations, in the Mexican agribusiness sector. These chambers or associations are created to promote and defend the producers' interests over their specific products, such as meat, industrialised corn and wheat, and products related to fishing and aquaculture.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Under Mexican law, in general terms, agricultural land consists of either:

- private land, whether owned by private companies or individuals, national or foreign; or
- agrarian or *ejido* land, (ie, land belonging to an *ejido*, a legal entity composed of a rural collective).

Acquisition of ownership

Ownership of *ejido* land cannot be acquired unless a separation process is followed under the Agrarian Law (after this process, the *ejido* land becomes private property). The transfer of private agricultural land is not generally restricted and is regulated by civil law.

The main laws governing acquisition are:

- civil codes, either federal or local (there are 32 different codes corresponding to each Mexican state and one Federal Civil Code);
- the Agrarian Law, in relation to a separation process from an *ejido* and the transfer of separated *ejido* property;
- the Public Registries of Property related laws; and
- tax laws (property transfer tax).

Acquisition of usage rights

Usage rights on agricultural land are allowed, whether private or *ejido* land. Private companies or individuals can obtain usage rights through agreements such as lease or usufruct agreements. The main laws are:

- the Federal Civil Code;
- local civil codes;
- the Agrarian Law; and
- laws or regulations related to public registries of property.

Rules on easements, treatment of fallow lands and fences are generally contained in the civil codes.

5 Outline any rules related to use of farmland for non-agricultural uses.

In general terms, non-agricultural use of farmland is permitted. However, some restrictions to non-agricultural uses may arise when dealing with specific situations. For example: in *ejido* matters, if an *ejido* members' meeting has agreed that the *ejido*'s common use land shall be used only for agricultural purposes and other uses shall not be allowed; and in zoning matters, if regulations or programmes for urban territorial development (commonly issued in states and municipalities) set forth in zoning maps the agricultural use of lands in order to avoid farmland that has high potential being used for non-agricultural purposes.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

Risk assessments determine how loans are secured. An agricultural product can be a collateral security (see question 7). If the product is considered to be high-risk, financial entities can ask for a guarantee by way of securing agricultural lands, which has become common due to the volatility and specific circumstances of the agricultural sector.

The most common security interest granted over agricultural land is the mortgage. A mortgage is created by the document that grants the mortgage interest. This document must be executed as a notarial deed and then registered in the relevant public registry of property. Administrative and notarial fees apply.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

In general, with respect to default of the payment of loans by farmers and producers, provisions are similar to those regulating financing or credit for other sectors. The agricultural sector's particularities in this regard may be found in the type of collateral security lenders may additionally ask for to guarantee the payment.

In line with this, there are national development banks and public instrumentalities (second-tier entities) that offer various loan options secured by raw materials and other hardware acquired for the production under the loan, as well as by the resulting products or materials. Additional guarantees may apply depending on the producer's risk assessment. Likewise, there are mechanisms through which these second-tier entities grant a hedge (in the form of an additional guarantee) against any default by the producers when the latter receives a loan from other financial entities.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

Expropriation is a tool used by the federal and state governments to gain control over properties under Mexican law, incorporating the expropriated land into the public patrimony. Expropriation rules apply in accordance with the type of property regime the farmland belongs to: private property or *ejido* land. Expropriation shall be made as follows:

The Expropriation Law sets out when private property, including private agricultural land, can be expropriated in the public interest. These include:

- public service purposes;
- construction of public infrastructure;
- defence, conservation, development and exploitation of natural resources;
- measures to avoid the destruction of natural elements; and
- creation or improvement of places with human settlements.

The Agrarian Law establishes further circumstances for expropriation of *ejido* property, in addition to those set forth in the Expropriation Law. These include:

- exploitation of oil and gas, as well as other natural resources;
- regularisation of land property;
- creation, promotion and conservation of production units, to benefit the community; and
- construction of roads, bridges, train tracks, runways and other works for transport purposes.

For any expropriation to be valid, there must be a public interest reason and compensation paid to the landowner.

The amount of compensation is determined by the Institute for Management and Appraisal of National Property, authorised banks, commercial notary publics or valuation professionals. Compensation must be calculated using market value criteria. Once expropriated, the state must have a full right over the land, so that the former owner is fully deprived of all rights over it.

There are state expropriation laws that are similar and may also apply.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Constitutionally, as a general rule, only Mexican individuals or companies can acquire real estate in Mexico. However, foreigners (individuals or companies) can acquire real estate if they execute an agreement in which they renounce the possibility of invoking the protection of their government in relation to the acquired property. Further, foreigners (individuals or companies) cannot acquire direct title to real estate (regardless of its type) in the restricted zone (that is, a strip of land 100km (kilometres) wide along land borders or 50km wide along coastlines). There are certain legal structures to allow foreigners to own real estate in the restricted zone through a bank trust. Irrespective of the

buyer's nationality, there are constitutional restrictions when acquiring agricultural land to avoid a disproportionate accumulation of it. In this line, the Agrarian Law explicitly prohibits the disproportionate accumulation of land.

Further, as to business organisations and regardless of the type of company, in relation to companies that own agricultural, cattle breeding and forestry land, foreign investment cannot exceed 49 per cent of the series of shares or membership interests which represent the value of the land. This is called the 'T Series'.

The Foreign Investment Law allows foreigners to make neutral investments in the T Series in excess of the 49 per cent limit. Subject to previous approval from the National Foreign Investment Commission, neutral investment can be made by a capital injection into shares or membership interests with no voting rights or limited economic rights.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The government, typically through the Ministry of Agriculture, administers various programmes to promote and boost agricultural production through monetary incentives in diverse amounts for producers, either individuals or organisations. Such programmes relate to:

- promotion of agriculture – mainly addressing support for the agricultural processes: innovation, infrastructure, equipment and services, work capital, acquisition of equipment and work tools, increase of production technologies and irrigation systems;
- rural productivity – focused on supporting actions to increase producers' global productivity;
- agricultural and food productivity – designed to foster the development of technology, infrastructure and human resources, including agri-parks;
- promotion of livestock – created to allow livestock, fisheries and rural producers to access to financing;
- promotion of fishing and aquaculture activities – mainly designed to support producers for the increase of their productivity. A requirement is that the producer owns a ship duly registered in the National Registry of Fisheries and Aquaculture;
- food and agricultural health and safety – designed to improve the health and safety in activities involving fisheries, aquaculture and agriculture;
- commercialisation and market development – designed to allow producers to use commercialisation strategies, risk management, commercial promotion and networking;
- participation with state governments (subnational level) – addressed to promote the investment in projects in all areas of the sector; and
- supporting small producers – aims to foster their productivity.

Each of these programmes contains different subprogrammes or components and have different requirements for producers to access them. The amounts of monetary incentives may differ from one programme to another.

There is also a network of national development banks and public instrumentalities (second-tier entities) that offer various publicly funded financing options under favourable conditions for companies involved in agricultural, fisheries and livestock production.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Yes. There are a number of incentive programmes for foreign investment, ranging from those that offer fiscal incentives related to research and development activities in certain productive sectors to those allowing customs-free imports of equipment introduced in Mexico on a temporary basis or make it possible to obtain a drawback of import customs.

These incentives may apply to agricultural activities or other agribusiness-related activities. The requirements and scope for these incentives differ from programme to programme. Eligibility should be assessed on a case-by-case basis.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The animal food industry is regulated by a broad array of laws, regulations, official Mexican standards and a variety of provisions, including environmental, health and consumer protection laws, among others, which involve obtaining authorisations, permits, certifications and registrations. Further, there are provisions at the state and municipal level. The main governing statutes are:

- the Federal Law for Animal Health and its regulations;
- the General Health Law;
- the Law on Biosecurity of Genetically Modified Organisms;
- the Regulation for the Sanitary Control of Products and Services; and
- the Federal Law for Consumer Protection.

In addition, there are a vast number of official Mexican standards with different scopes: sanitary process, mobilisation, slaughtering, quarantines, etc. Likewise, there are a number of unofficial voluntary Mexican standards that may be applied by the animal food industry.

Note that as a member of the World Trade Organization, Mexico observes the *Codex Alimentarius*.

The aforementioned regulations at the federal level provide a uniform regime for animal products, for which the compliance with such is the same, irrespective of the market for the meat, either for domestic consumption or for export. However, if the meat is meant for export, it must comply with further federal certifications regarding the quality of the production process. See question 20.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Although not as strict as the regimes of the United States and European Union, the food safety regime in Mexico, mainly at the federal level, establishes a series of provisions that must be complied with in order to guarantee the product's quality. However, it is well known that the weakness of Mexico's regime is product traceability at levels other than federal, since states and municipalities systems may be deficient.

Animal food is regulated by different statutes (see question 12). Besides those regulations, as applicable, other statutes govern other food products, such as:

- the Federal Law on Plant Health and its Regulations;
- the Federal Law on the Production, Certification and Trade of Seeds and its Regulations;
- the Federal Law on Plant Varieties and its Regulations;
- the Law on Rural Development;
- the Law on Organic Products and its Regulations; and
- the General Law on Sustainable Fisheries and Aquaculture.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

All the regulations related to food matters contain sanctions to enforce them. These sanctions may be administrative, civil or criminal. Specific penalties range from fines, seizure of instruments and suspension of permits (administrative sanctions) to imprisonment. Activities that may be subject to administrative fines include growing substances prohibited by the Federal Law on Animal Health or the alteration or contamination of food for human consumption, or knowingly allowing such alteration or contamination, as set forth in the General Health Law. Activities that may be subject to criminal penalties include the commercialisation, transportation, storage or release of GMOs that negatively affect the environment, as set forth in the Federal Criminal Code.

Civil liabilities may also arise. Producers and suppliers may be liable for defective or contaminated food or food ingredients – under civil legislation for tort liability (noncontractual civil liability) or under the Federal Law of Consumer Protection for product liability (which is also considered non-contractual civil liability).

Irrespective of the claimant filing an action under civil legislation or the Federal Law of Consumer Protection, he or she can claim payment of damages and lost profits if he or she has been physically

or morally harmed by food or food ingredients that are proven to be defective or contaminated.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

In general terms, genetically modified foods and organic products are governed by:

- the Law on Biosecurity of Genetically Modified Organisms and its regulations;
- the Federal Law on the Production, Certification and Trade of Seeds and its regulations; and
- the Law on Organic Products and its regulations.

These laws establish certain powers in favour of authorities or government-approved entities (depending on the case) to certify seeds, GMO-free zones for organic products and production of organic products.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

The main requirements for food labelling are those contained in the General Health Law, the Regulation for the Sanitary Control of Products and Services, the Federal Law for Consumer Protection and the official Mexican standards NOM-051-SCFI/SSA1-2010 (general specifications for labelling of food and non-alcoholic beverages) and NOM-050-SCFI-2004 (commercial information and general labelling for products). In general terms, labelling requirements must be in Spanish, accurate, clear, understandable, useful for the user, supported by scientific and technical information, and must include:

- the name of the product;
- ingredients;
- net content;
- the producer's name;
- country of origin;
- lot;
- expiry date;
- nutritional content;
- frontal nutritional label; and
- warnings.

Further requirements may apply if specific products are involved, such as GMOs, organic products and seeds.

Penalties for non-compliance with labelling requirements are mainly of an administrative nature. Civil liability may also arise.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The Federal Law on Animal Health and its regulations set forth the principal provisions on animal products. Compliance is monitored by the National Service for Agri-food Health, Safety and Quality. Complemented by official Mexican standards and other laws and regulations, mainly of a health and environmental nature, animal health provisions foresee specific norms for the transportation of animals and animal products within Mexico. See question 18.

With regard to disease outbreak and management of animal diseases, see question 21.

18 What are the restrictions on the movement of animals within your country?

Under the Federal Law on Animal Health and its regulations, movement of animals and animal products is permitted. However, such movement may be subject to restrictions related to circulation, either in national territory or in a specific zone, implemented by the Ministry of Agriculture. These restrictions may result in, or be part of, a quarantine.

In general terms, restrictions can be imposed on grounds of the possibility that the animal or animal product represents an imminent threat of plague and disease representing a zoonotic risk in national territory.

Restrictions at the state or municipal level may be applied by the relevant authority.

19 Describe any restrictions on import of food animals.

Living animals, animal products (including animal source foods) and biological agents, including GMOs, among other animal-related goods, must comply with the import requirements set out in the Federal Law on Animal Health. This provides that if the following applies importation is prohibited: if the animal's origin is a country, region or zone that has not been recognised as free of exotic diseases or plagues, and there is a related national campaign in Mexico; or if the emergence of an exotic animal disease, or the animal species itself, is a phytosanitary risk.

Further, if the animal or animal product to be imported comes from a country without veterinary services recognised by the Ministry of Agriculture, its import shall be restricted.

There are certain living animals or animal products for which import is further regulated by the Ministry of Agriculture due to zoonosanitary requirements. A list of regulated goods, including animals and animal products, can be found online in Spanish at http://dof.gob.mx/nota_detalle.php?codigo=5266223&fecha=03/09/2012.

20 What are the regulations related to livestock slaughtering?

Livestock slaughtering is mainly governed by the Federal Law on Animal Health, the Regulation for the Sanitary Control of Products and Services (which contains provisions on measures that the Ministry of Health can conduct to guarantee the safety of products and services for human consumption), and a number of official Mexican standards (compliance with which is mandatory for slaughterhouses), such as:

- NOM-008-ZOO-1994: zoosanitary specifications that must be met for the construction of facilities and related equipment for animal slaughtering and for the industrialisation of meat products;
- NOM-009-ZOO-1994: meat sanitation process;
- NOM-033-SAG/ZOO-2014: methods to slaughter domestic and wild animals (including animals for food supply); and
- NOM-051-ZOO-1995: ethical standards for the movement of animals.

Moreover, when slaughterhouses are located in state and municipal jurisdictions, the relevant state and municipal regulations may be applicable.

If an interested party requests it, the Ministry of Agriculture, or a government-approved certification entity, may certify a slaughterhouse as compliant with the related regulations. If the process is successful, the slaughterhouse is certified as a 'federally inspected facility', which provides a competitive advantage for certain purposes (ie, mobilisation and commercialisation).

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

A number of regulations are applicable to pesticides, such as the animal and plant health laws, environmental laws, the General Health Law, and a significant number of official Mexican standards. The main requirement for the lawful commercialisation and use of a pesticide is its sanitary registration, granted by the Ministry of Health, through the Federal Commission for the Protection Against Sanitary Risk.

When a plant or animal disease or threat thereof arises, specific provisions for the pest management and control apply in the form of a quarantine as follows:

- the Federal Law on Plant Health and its regulations provide powers to quarantine seeds by issuing official Mexican standards, which must set out the particulars of the quarantine; and
- the Federal Law on Animal Health. its regulations and official Mexican standards set out the possibility of imposing the following types of quarantine:
 - regular quarantine for goods in Mexico; and
 - custody-and-control quarantines for goods subject to temporary observation before their introduction to Mexico.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

In the agricultural sector, two types of company are typically used: cooperative organisations and rural production companies. The use of these types of company is generally driven by the possibility of

obtaining governmental subsidies, incentives or tax benefits. They are generally composed of producers of the same type of products.

Cooperative organisations and rural production companies' formation and management are governed by different laws. The General Law of Cooperative Societies is the main governing statute for cooperative organisations. Rural production companies are regulated by the Agrarian Law.

The general aspects of cooperative organisations are as follows:

- there are restrictions on foreign investment, formation requirements and management, unlike rural production companies;
- they are only composed of individual members (not entities) and are restricted in terms of foreign investment (up to 10 per cent of the capital stock);
- members' liability can be limited or supplementary. Limited implies that a member's liability is limited to the payment of his or her contribution. Supplementary means that each member is proportionally liable for the organisation's activities, up to the amount agreed in the by-laws; and
- management positions can only be occupied by Mexican nationals.

Rural production companies' general features are as follows:

- they are widely used when dealing with agricultural production in Mexico and are open to foreign investment with no percentage restrictions. A rural production company can be composed of individuals or companies as members;
- members' liability can be limited, unlimited or supplementary, and this must be expressly stated in the by-laws: limited means each member is liable up to the amount of his or her contribution; unlimited means each member is jointly and severally liable for all the company's obligations; and supplementary means each member is liable up to the amount agreed in the by-laws, in addition to the amount of his or her initial contribution; and
- the management is not restricted on grounds of nationality, unless otherwise agreed in the by-laws.

In some cases, some agricultural producers form social solidarity organisations under the Law of Social Solidarity Organisations to be able to run an agricultural business. However, since foreign investment and foreign members are not allowed in social solidarity organisations, as well as the significant administrative burden and approvals required, this type of organisation is not an option for foreign investment.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

See questions 9 and 22.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

Article 123 of the Mexican Constitution, the Federal Labour Law and the Social Security Law are the main regulations in Mexico that govern labour relationships between employers and employees, regardless of the sector in which they operate – with the exception of the public sector where labour relationships are governed by appropriate legislation. The agricultural sector is also included within the scope of the aforementioned regulations.

As well as having the same labour and social security rights that the relevant legislation provides to other types of workers, farmworkers have further rights in place for their protection, since they are considered to be a vulnerable group exposed to a higher level of risk and their activity is deemed 'special work' (ie, different to other types of work because conditions can be easily affected). Regulations classify farmworkers as permanent, temporary or seasonal. Any temporary or seasonal farmworker who is hired by the same employer for a minimum of 27 continuous weeks shall be presumed to be permanent. Employers in the agricultural sector have special obligations to adhere to farmworkers' rights.

With respect to other types of workers in the agricultural sector (eg, management and operational positions), the rights they are entitled to are the same as those provided in the general labour regime established in the aforementioned legislation.

25 How is farmworker immigration regulated in your jurisdiction?

Immigration matters are governed by the Immigration Law and its regulations. In general, farmworker immigration is treated equally by these provisions as other types of worker immigration are. A foreign farmworker can work in Mexico on a paid basis under one of the following migratory conditions:

- As a visitor with a permit to undertake paid activities. This condition authorises the worker to work if it is the result of a previous job offer or invitation from any authority or institution for a maximum term of 180 days. This migratory condition is authorised by a visa for visitors with a permit to undertake paid activities.
- As a cross-border worker visitor. This authorises a worker who is a national of countries bordering Mexico (Guatemala and Belize) to stay for up to one year in specific states as determined by the Ministry of Internal Affairs (to date, Chiapas, Tabasco, Campeche and Quintana Roo). The worker must have a previous job offer, and he or she may enter and return to Mexico on an unlimited basis within one year. This migratory status is accredited by the appropriate authorisation card issued by the Ministry of Internal Affairs.

Under the regulations to the Immigration Law, key requirements to employ a foreign individual as a visitor to undertake paid activities are: a job offer must exist;

- the job offer must contain the name and nationality of the foreign individual, offered position, wage amount, employment term and workplace, as well as a statement expressing the commitment to finance the foreign individual's relocation; and
- the employer, either individual or company, must be registered as such in the National Immigration Institute.

Cross-border worker visitors must be nationals of countries bordering Mexico. A job offer to said worker must contain the position, integrated or minimum wage amount, employment term and workplace, as well as information regarding the employer's registration in the National Immigration Institute.

The employer must submit a request for a visa allowing the foreign individual to work to the National Immigration Institute. As for cross-border worker visitors, the worker should request the appropriate authorisation card at the border's checkpoints.

Granting a visa or authorisation card is subject to a quota system. Furthermore, under Mexican labour provisions all workers, regardless of their origin, have the same rights. As to foreign workers, even if their migratory status is irregular, they still have the same labour rights.

The Federal Labour Law establishes that at least 90 per cent of workers must be Mexican. In technical and professional positions, workers must be Mexican. If there are not workers within a specific specialisation, foreign professionals may be employed temporarily in a proportion below 10 per cent. These rules are not applicable for management positions.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

The applicable legislation regarding health and safety in Mexico are the Federal Labour Law and the Federal Regulations on Health and Safety in the Workplace. A number of official Mexican standards also exist to set rules in this matter. In relation to collective labour relationships, further regulations may be set in the relevant collective labour agreements.

Labour regulations give the same rights to workers regardless of their sector of activity, origin or migratory status. There are certain kinds of workers who are considered to carry out 'special work', such as farmworkers (see question 24).

In the case of farmworkers, further rights are provided in order to enhance their protection, covering health and safety matters addressed to prevent work risks.

The employer is responsible for the health and safety standards of the workplace and the farmworkers shall be responsible for observing the related rules set forth in legal and workplace provisions, as well as in official Mexican standards.

Health and safety regulations cover matters such as provision of drinkable water, sanitary services, training, medicines and medical supplies and assistance, medical check-ups, and a medical unit when

there are more than 100 workers or a hospital when there are more than 300 workers (in this case, with the employees' consent, the employer may establish an agreement with a nearby hospital, as opposed to constructing a hospital on-site). Compliance with these regulations is assessed by the Ministry of Labour and Social Services.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

Import and export are governed either by the Federal Law on Plant Health or the Federal Law on Animal Health, depending on the type of product.

Non-animal products

Plants, products and by-products and pathogenic agents that enter Mexico, which may be disease carriers, must comply with import and export requirements set out in the Federal Law on Plant Health.

The main requirements for import are:

- issue of a phytosanitary certificate for import;
- interested parties must prove at the phytosanitary checkpoint that the goods comply with regulations, including official Mexican standards;
- if the seed is for commercialisation, the importer must declare the relevant commercial category; and
- further requirements apply to genetically modified seeds, under the Law on Biosecurity of Genetically Modified Organisms.

A key requirement for export is the issue of an international phytosanitary certificate, which is dependent upon compliance with the destination country's health provisions.

Animal products

Living animals, animal products and biological agents, including GMOs, among other animal-related goods, must comply with import and export requirements set out in the Federal Law on Animal Health.

In relation to imports:

- the main requirement for introduction into Mexico is the issue of a zoosanitary certificate for import;
- to introduce product samples for animal use or consumption for research purposes, the Ministry of Agriculture must issue a specific authorisation;
- goods to be imported must come from countries with veterinary services recognised by the Ministry of Agriculture;
- goods to be imported must have a zoosanitary certificate issued in the country of origin; and
- in the case of products for animal use or consumption, the importer must also submit the product's certificate of free sale in the country of origin.

Specific zoosanitary requirements for import must be previously requested through the National Service of Food Health, Safety and Quality Assurance's Consultation Unit of Zoosanitary Requirements for Import, or through a request for a zoosanitary requirements format. These requirements must be complied with before the issue of a zoosanitary certificate.

In relation to exports:

- the main requirement is the issue of a zoosanitary certificate for export, when the destination country requires it;
- the destination country's animal health provisions must be complied with before issue of a zoosanitary certificate for export; and
- on the applicant's request, the Ministry of Agriculture will issue a certificate of free sale of products destined for animal use or consumption in Mexico.

28 May tariffs, quotas or similar measures be put in place?

The Foreign Trade Law and the Customs Law, and their respective regulations, are the main statutes that regulate tariffs and non-tariff measures or barriers and apply to all types of products, including agricultural products.

As a general rule, tariffs apply to the import and export of products in Mexico, except for any benefit framed in a free trade agreement

(FTA) or any other agreement setting preferential tariffs or tariff exemptions (see question 29). Under this legislation, non-tariff measures can also be applied. These other non-tariff measures can be in the form of compensatory quotas, previous permits, maximum quotas, certifications, country of origin labelling, and any other adequate instrument.

The Foreign Trade Law establishes the situations in which a non-tariff measure shall be activated in relation to exports:

- to assure the supply of products allocated to people's basic consumption and the supply of raw materials to national producers, or to regulate or control a country's non-renewable natural resources, in accordance with national market's needs and international market's conditions;
- when foreseen in international treaties Mexico is a party to;
- when dealing with products the commercialisation of which is subject to constitutional restrictions;
- when necessary to preserve the flora and fauna at risk of extinction or to assure their conservation;
- when necessary to preserve goods with historical, artistic and archaeological value; and
- when dealing with situations not foreseen in official Mexican standards as to national security, public health, phytosanitary health or the environment.

In relation to import, circulation and transit:

- when required, on a temporary basis, to adjust an instability in the balance of payments in accordance with international treaties Mexico is party to;
- to regulate the entry of used products, waste materials or products that lack a substantial market in their country of origin;
- when foreseen in international treaties Mexico is a party to;
- when implemented as a response to restrictions to Mexican exports unilaterally imposed by other countries;
- when necessary to impede the entry into the national market of products under conditions of dumping and subsidies; and
- when dealing with situations not foreseen in official Mexican standards as to national security, public health, phytosanitary health or the environment.

Moreover, some other technical barriers may be imposed, such as those of a phytosanitary and sanitary nature, and health and environmental measures.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

To date, Mexico has 12 FTAs with 46 countries, a series of agreements for the promotion and reciprocal protection of investments and various partial-scope agreements within the framework of the Latin American Integration Association. FTAs covering, among other aspects, import and export of agricultural products are:

- North American Free Trade Agreement (US and Canada);
- FTA with Colombia;
- FTA with Chile;
- FTA with Israel;
- FTA with the European Union;
- FTA with the European Free Trade Agreement (Iceland, Liechtenstein, Switzerland and Norway);
- FTA with Uruguay;
- FTA with Japan;
- FTA with Peru;
- FTA with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (this FTA consolidated the three FTAs Mexico kept with Central American countries);
- FTA with Panama; and
- the Pacific Alliance (FTA with Colombia, Chile and Peru).

Along with these FTAs, the other aforementioned types of agreements cover, to a greater or lesser extent, agricultural matters regarding import and export.

Preferential tariffs or total exemption from tariffs may eventually apply under these FTAs and agreements.

Update and trends

The issuance of the new programme is expected to happen soon by President-elect Andrés Manuel López Obrador – see question 1. Even though major structural changes are not expected, the president elect has the agricultural primary sector as one of his core areas to develop in the country based on some actions surrounding topics such as, recovery of food sovereignty and the setting up of warranty prices for some agricultural products in favour of producers. Specific mechanisms to achieve the foregoing have not been announced so far.

Furthermore, a new negotiation to update the North America Free Trade Agreement (NAFTA) between Mexico, Canada and the United States is in process. The agricultural sector of these three countries is one of the main topics in the negotiation. Specifically, Mexico's agricultural sector has lost competitiveness in recent years, for which it is expected that the renegotiation of NAFTA includes some mechanisms to put Mexican primary sector in a competitive position. Although NAFTA's negotiation has not been as time-efficient as expected, many experts have foreseen that negotiation may conclude before 1 December 2018, that is, before López Obrador takes office.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

The legislation that governs plant variety rights is the Federal Law on Plant Varieties and its regulations.

Under the Federal Law on Plant Varieties, to protect a plant variety, the following requirements must be met: novelty, distinctness, stability and uniformity.

A variety denomination must also be proposed, which must meet the following criteria:

- it must be different from any other, in Mexico and abroad;
- it must comply with the other requirements in the regulations of the Federal Law on Plant Varieties; and
- it must not be identical or confusingly similar to one previously protected under Mexican industrial property provisions.

The National Service of Seeds Inspection and Certification processes applications for the granting of plant breeder certificates to protect plant variety rights. Review and approval of the application is made by the Assessment Board of Plant Varieties of the National Service of Seeds Inspection and Certification. The Board will examine whether the requirements of novelty and denomination, and the formal requirements for the application, have been met in full. A confirmation of filing will be issued.

The Board then carries out a substantive examination of the distinctness, uniformity and stability of the variety. This leads to granting of the breeder's certificate or rejection of the application. Following issue of a breeder's certificate, the breeder has a full right to the corresponding plant variety right. If the application is refused, the confirmation of filing will cease to have effect. The applicant can challenge this rejection.

The National Service of Seeds Inspection and Certification can grant a priority right to an applicant for a breeder's certificate who has previously filed the same application abroad, in countries with which Mexico has a relevant convention or treaty.

The extent of protection of a plant variety right is:

- recognition as the breeder of a plant variety;
- use and exploitation of the plant variety and its propagating material for the purposes of production, reproduction, distribution or sale, and production of other plant varieties and hybrids for commercial purposes:
 - for perennial species (forest and fruit trees, vines and ornamental plants) and their rootstocks: 18 years; and
 - for any other species: 15 years.

When these periods expire, the plant variety, and its use and exploitation, becomes public property.

Note that animal breeds are not subject to protection under Mexican intellectual property provisions.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

When dealing with protected plant varieties, under the Federal Law on Plant Varieties, a farmer can use a protected variety for:

- the genetic improvement of other plant varieties;
- the multiplication of propagating material for personal use, as grain for consumption or seed for sowing; and
- use for human or animal consumption for the exclusive benefit of the person harvesting it.

The farmer does not have to obtain the consent of the plant variety right owner or pay compensation to such owner.

As for plant technologies (eg, genetic engineering), these can be subject to a patent under the Industrial Property Law. A farmer who is not the right holder can use the protected biotechnologies if, among other things:

- the intended use is for research, teaching and experimental purposes (non-commercial), within academic and private fields, by utilising a process similar to the protected one;
- it is for commercialisation, acquisition or use of a product derived from a protected process, after such product has been lawfully introduced into commerce; and
- the foregoing does not constitute an infringement of patent rights.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Under the Federal Law on Plant Varieties and its regulations, further restrictions to protected plant varieties may apply. In this line, the Ministry of Agriculture can grant an emergency licence to use the plant variety right. This will be issued in the public interest, when exploitation of a plant variety is considered essential to meet the basic needs of the population and there is a deficiency in supply or stock. The licensee can be the breeder or a third party through a public bid. Compensation is paid to the breeder. When the emergency licence expires, the owner will recover all his or her rights.

Moreover, if a plant variety has not been exploited within three years from the date of issue of the breeder's certificate, the Ministry of Agriculture can consider this as affecting the public interest, and grant a licence to use the protected plant variety.

Environmental issues**33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.**

The regulators in environmental matters, including those of agricultural production are:

- the Ministry of Environment and Natural Resources – the main government agency in charge of the environmental policymaking;
- the Federal Environmental Protection Agency, which is responsible for enforcing environmental laws; and
- the National Water Commission, which acts as a regulator when, for example, national waters are used for agricultural purposes.

In relation to agricultural production using GMOs, the Ministry of Agriculture may be involved through the National Service of Food Health, Safety and Quality Assurance with respect to notifications and permit procedures for confined use and release into the environment of GMOs.

Other federal agencies may be involved in environmental matters to a lesser extent. Further, regulators at the state and municipal level may act in relation to sustainable agricultural production.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The General Law of Ecological Equilibrium and Environmental Protection is the main statute in matters of pollution prevention, control and reduction in all sectors, including agriculture. Additionally, there are further regulations and official Mexican standards governing the activities that may contaminate both the water and atmosphere (air). Moreover, when dealing with national waters, pollution is additionally regulated by the National Water Law.

Other regulations at the state and municipal level also apply.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Liquid, semi-solid and solid waste management is foreseen in both the General Law of Ecological Equilibrium and Environmental Protection as the main statute in environmental matters and the General Law for the Prevention and Integrated Management of Waste, which considers waste derived from agricultural activities as special management waste.

Additional regulations may be involved when specific circumstances are involved, such as the National Water Law, as well as official Mexican standards and situations in which state and municipal jurisdictions are competent to deal with waste management.

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

Despite its small size, the Netherlands is a major hub for international food processing and trading, and is the second-largest exporter of agricultural and food products in the world (after the US), with exports totalling €91.7 billion in 2017. Including agriculture-related goods, such as machinery for the food industry, exports topped €100 billion in 2017.

The most exported agricultural goods of 2017 were: horticulture including cut flowers, bulbs, plants and nursery products (€9.1 billion), dairy (€8.9 billion), meat (€8.3 billion) and vegetables (€6.7 billion). If only domestic produce is taken into account, the same goods can be found in the top four. Fruit ranks fifth on the list of top agricultural export goods, although this is largely re-exports of foreign produce.

More than half of the nation's land area is used for agriculture. The Dutch agricultural sector is diverse; it covers a wide range of livestock and plant-cultivation sectors that include, arable and dairy farming, cultivation under glass, tree-growing and pig farming.

In 2017 there were approximately 55,000 businesses active in the primary agricultural sector employing approximately 170,000 workers, primarily in animal husbandry, agriculture (crop growing) and horticulture. The number of farms is down from almost a 100,000 in 2000, while at the same time the agricultural land area declined with 9 per cent. In contrast productivity per farm has increased.

Agricultural know how is also a key global export product. Wageningen University WUR ranks as the number 1 agricultural university in the world for three consecutive years. Out of the top 40 food and drinks companies in the world, 12 have research and development (R&D) centres located in the Netherlands.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The regulatory environment for primary agriculture and primary food processors in the Netherlands is primarily shaped by EU legislation on food hygiene and food safety, which have been implemented into Dutch law. The sector is regulated on behalf of the Ministry of Agriculture, Nature and Food Quality by the Netherlands Food and Consumer Product Safety Authority (NVWA). The NVWA monitors animal and plant health, animal welfare, and the safety of food and consumer products. In addition it is the enforcing authority for legislation related to nature.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

There are a variety of non-governmental organisations and other non-profit organisations that are active in the food and agribusiness sector in the Netherlands. Nearly every sub-sector within the industry has at least one organisation that aims to promote the interests of the subsector, and promote international trade and innovation. A selection of agricultural industry organisations are:

- the Dutch Federation of Agriculture and Horticulture is an entrepreneurial and employers' organisation representing and promoting around 50,000 agricultural businesses;

- the Netherlands Crop Farming Union, an industry organisation promoting crop farmers in the Netherlands;
- the Netherlands Poultry Farmers Union, an industry organisation promoting poultry farmers in the Netherlands;
- the Dutch National Federation of Food Industry represents and lobbies on behalf of 500 companies and 20 industry organisations in the food industry;
- Seed Valley – a regional organisation in the north west of The Netherlands with the aim of fostering collaboration between companies and local governments active in the fields of plant breeding, seed technology and associated services; and
- Food Valley – a regional organisation aimed at boosting innovation performance by fostering collaboration between businesses, knowledge institutions and (local) government.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The Netherlands has over 2 million hectares of agricultural land, which means more than half of the overall surface of the Netherlands is used for agricultural purposes. The average price of a hectare of agricultural land was €59,500 in 2017. Prices vary greatly per region. Generally prices are highest in Flevoland and lowest in Friesland.

The land in The Netherlands is devised according to governmental spatial planning. Land-use plans are the most important tool in spatial planning. Such plans set down where construction may take place, what may be built, the size of the structure and what it may be used for. The land that is designated for agricultural purposes may not be used for other purposes such as housing.

Basically, there are no restrictions with respect to the acquisition of agricultural land by a foreign party. Transfer of ownership is not specifically regulated under Dutch law. The general provisions on immovable property apply, which, in essence, means that the ownership of land is transferred through a notarial deed.

Most agricultural land usage rights in the Netherlands are acquired by a specific agricultural lease regulated in Book 7 of the Dutch Civil Code, and a distinction has to be made between establishing the lease and transferring the lease. Establishing the lease requires approval of the lease contract by the Agricultural Tenancies Authority. The lessee can transfer the lease to direct family members without the consent of the lessor upon application to the agricultural tenancies division of the district court.

An agricultural lease agreement must in principle be concluded for a definite period of time, being 12 years for farms and homesteads and six years for separate land or buildings. Lease agreements for longer terms are allowed but only if a clear termination date is included in the agreement.

It should also be noted that the lessor, who intends to offer agricultural land for sale, has an obligation to offer the land to the lessee first. Since the lessor must offer the value of the land under leased conditions (which depresses the market value of the land), land lease operations in the Netherlands are less attractive.

5 Outline any rules related to use of farmland for non-agricultural uses.

As discussed above, designated agricultural land cannot be used for other purposes. An application for a change of purpose is rarely granted by the local government.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

No special regulations apply to farm lending.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

There are no specific provisions related to creditors' rights on default by farmers.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

There is no specific regulation related to public control of farm property.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

As mentioned above, there are no such restrictions.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The EU's Common Agricultural Policy (CAP) programme, which primarily subsidises farmers through direct income support, is implemented in the Netherlands by the Netherlands Enterprise Agency, part of the Ministry of Economic Affairs and Climate Policy. In 2016, through the CAP, €736 million is available as direct income support (decreasing to €701 million in 2020). Additionally, a joint programme funded by CAP and the Dutch government allocates €176 million (2016) to rural development. The CAP makes another €150 million available for emergency relief for the agricultural sector as well as promoting market competitiveness.

In addition the Dutch government has included both the food and agribusiness sector as well as the horticulture and propagation material sector as one of its nine top economic sectors. Businesses in these sectors are eligible for government support to stimulate technological development by facilitating collaboration between the private sector, knowledge institutions and the government. The objective is, among other things, to improve the international competitiveness of the sectors.

A variety of financial and other incentives are available to agricultural companies established in the Netherlands, including the Research and Development (Promotion) Act (WBSO), innovation credits and the Dutch Good Growth Fund.

The WBSO (an R&D tax credit) aims to provide entrepreneurs with incentives that lower wage costs for R&D and other R&D costs and expenditures, such as prototypes or research equipment to invest in R&D. Innovation credits are available to support risky innovation projects that do not qualify for ordinary bank loans.

The Dutch Good Growth Fund provides financial support for investment, collaboration and exports to emerging markets by Dutch companies.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

While there are no government programmes that provide assistance or government incentives for investment by foreign ownership in agribusiness, any business that is established in the Netherlands and fulfils the relevant criteria is eligible for benefits, subsidies and incentives available to other (Dutch) companies. Therefore foreign held Dutch agricultural companies are eligible for the same subsidies as domestically held companies.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

Domestic legislation is included in the Animal Act 2011, the Decree on Trade in Living Animals and the Decree on Keepers of Animals, which regulate the health of food animals, transportation as well as disease outbreak and management. In addition, the NVWA has issued detailed rules concerning specific issues relating to animal welfare and transportation, including rules on housing and use of medicine.

The Netherlands has implemented Directive 94/65/EC of 14 December 1994, which lays down the requirements for the production and placing on the market of various types of meat in the decree relevant to meat, minced meat and meat products. This decree stipulates, among other things, that it is forbidden to prepare meat and meat products that do not comply with the criteria contained in it, what parts may not be used for human consumption and how meat must be categorised.

The NVWA is also tasked with enforcing these rules.

There is no distinction made between meat for domestic consumption and meat for export.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The food safety regime in the Netherlands is principally based on the European Union (EU) Regulation (EC) No. 178/2002 (General Food Law), which lays down general principles, requirements and procedures that underpin decision-making in matters of food and feed safety, covering all stages of food and feed production and distribution.

One of the basic principles of the General Food Law is the responsibility for food safety placed on the 'food and feed operators' (including agricultural companies), as they are in the best position in the production chain to ensure compliance with all relevant safety regulations.

In addition to the General Food Law, there is a large and diverse body of European legislation on various topics. Some legislation prescribes general rules for all products (horizontal legislation). The scope of other legislation is limited to specific products or product groups (vertical legislation).

Likewise, Dutch food safety laws are a tapestry of acts of parliament, local regulations, ministerial orders, and regulations by semi-public trade organisations. The basis is the Commodities Act, which acts as a framework law, under which a variety of decrees and regulations have been issued that relate to the production and preparation of food, labelling, testing, hygiene, trading and selling to consumers.

Compliance and enforcement of product quality or food safety regulations in all parts of the production chain including issuing a variety of permits, conducting inspections and investigations relating to food safety and animal welfare, is largely the responsibility of the NVWA.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The primary method of enforcement in food supply chain safety is through administrative procedures. Within the NVWA, the General Inspection Service is the enforcement agency with police-like investigative authority. A Regulatory Framework provides the underlying principles for the NVWA's enforcement authority.

Typically violations of food safety regulations are subject to administrative fines (under the Commodities Act: up to €820,000) and retractions of permits. However, certain more serious violations are also liable to criminal prosecution, which may result in criminal liability of both legal persons and natural persons, the latter including the possibility of arrest and jail.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

Although not banned, commercial cultivation of genetically modified organism (GMO) crops does not take place in the Netherlands. The genetic modification of plants is generally supported by the Dutch government, as it enables more efficient creation of improved plant varieties. However, it is only permitted if careful scientific research shows

that the possible risks to humans, animals, and the environment are negligible.

GMO legislation in the Netherlands is subject to the legal framework of the EU to ensure that the development of modern biotechnology, and more specifically of GMOs, takes place in safe conditions. On a national level, the Decree on Genetically Modified Organisms 2013 and the Regulation on Genetically Modified Organisms 2013 regulate the admission and use of GMOs. Admission of a GMO is subject to an environmental impact analysis and a permit is required. A permit is subject to conditions and may be revoked if these are not observed.

The Netherlands is party to the Cartagena Protocol on Biosafety, which includes international rules on the import and export of GMOs.

For organic products, Regulation (EC) 834/2007 provides the legislative framework on organic production and labelling of organic products. As of 1 January 2021, Regulation (EC) 2018/848 on organic production and labelling of organic products will replace Regulation (EC) 834/2007. For organic products from outside of the EU, a certificate of control is required that can be applied for electronically.

As for novel foods, since 1 January 2018, Regulation (EU) No. 2015/2283 replaces the Novel Foods Regulation (Regulation (EC) No. 258/97, and lays out detailed rules for the authorisation of novel foods, ingredients and processes. The new regime includes further clarification on the definition of novel foods, a centralised approval procedure at EU level through the European Food Safety Authority. On a domestic level, the Commodities Act Decree on Novel Foods and GMO applies.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

Food labelling requirements are laid down in the Commodities Act Decree on Information on Food Products, which implements Regulation (EU) No. 1169/2011 on the provision of food information to consumers. Mandatory information on a label must include the name of the food, a list of ingredients, quantity, allergens if so included in the product, best before date, special storage conditions and conditions for use, name and address of the food manufacturer and country of origin, and nutritional information. Such mandatory information must be presented in the Dutch language, with minimum letter size of 1.2 millimetres. Labelling information may not be misleading, including suggesting health claims.

The NVWA is tasked with enforcing labelling requirements. Failure to comply with applicable regulations may result in an order to take products out of circulation and fines.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

EU legislation applicable to the health of food animals, including transportation includes:

- Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine;
- Directive 91/68/EEC on animal health conditions governing intra-Community trade in ovine and caprine animals;
- Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations; and
- Regulation (EC) No. 21/2004 establishing a system for the identification and registration of ovine and caprine animals.

Domestic legislation is included in the Animal Act 2011, the Decree on Trade in Living Animals and the Decree on Keepers of Animals, which regulate the health of food animals, transportation as well as disease outbreak and management. In addition, the NVWA has issued detailed rules concerning specific issues relating to animal welfare and transportation, including rules on housing and use of medicine.

The NVWA is also tasked with enforcing these rules.

18 What are the restrictions on the movement of animals within your country?

Regulation (EC) No. 1/2005 provides rules on how transport is to be conducted and that a permit is required (except for transporters transporting animals within 65 kilometres). Different types of permits are required depending on whether transports (including the time spent on loading and unloading of animals) exceed eight hours.

19 Describe any restrictions on import of food animals.

Live animals that are imported into the EU are subject to veterinary controls under Directive 91/496/EEC and Regulation (EC) No. 282/2004. The NVWA jointly with Customs conducts inspections at entering the country to ensure compliance.

20 What are the regulations related to livestock slaughtering?

Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing prescribes the framework for the killing of animals bred or kept for the production of food. It also includes operational requirements and requirements for the construction, layout and equipment of slaughterhouses.

Domestic legislation on livestock slaughtering is included the Animal Act 2011 and several detailed regulations and guidelines, which stipulate how animals are to unloaded and offloaded, how they should be handled at the slaughterhouse, and how sedation and slaughtering is to take place.

The NVWA is in charge of enforcement of these rules.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

Only pesticides that have been approved by the Board for the Authorisation of Plant Protection Products and Biocides for the Netherlands market may be used. Regulation (EC) No. 1107/2009 concerning the placing of plant protection products on the market and the Crop Protection Products and Biocides Act provide for the legal framework for market approval of pesticides and crop protection products. The use of pesticides is only permitted if they do not cause harmful effects to humans, animals and the environment.

The Regulation (EU) No. 528/2012 concerning the making available on the market and use of biocidal products and its supporting legislation such as the Biocides Review Regulation (EU Regulation No. 1062/2014) prescribe that only biocides and biocidal products may be used that are allowed in the European market.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

The private limited liability company (BV) is most commonly used as business entity for farming. A BV has legal personality and it has an equity divided into shares. Shareholders or directors can be foreign residents. A BV is designed as a flexible instrument with very limited rules on capital protection. The flexibility is one of the reasons why a BV is very suitable type of entity for structuring joint ventures as well. The total incorporation procedure for a Dutch BV is straightforward and can normally be completed in a couple of days.

Although most farms are privately owned, the Dutch agricultural sector has a high percentage of cooperatives. In 2013, 68 per cent of Dutch agricultural products were sold through cooperatives. In the last few decades, there has been strong consolidation between cooperatives, leading to only a few or even just one cooperative per sector. Several agricultural cooperatives operate internationally or are multinational, and belong to the world's largest cooperatives.

A cooperative is a legal entity able to enter into agreements and own assets. Cooperatives have members rather than shareholders. The profits of the joint enterprise can be distributed to the members. The cooperative can be organised to limit or exclude the liability of the members for losses remaining after its dissolution.

Dutch cooperative law is flexible concerning internal governance and attracting equity from members or third parties. It has led to a large number of structures in the by-laws of cooperatives to suit their strategic needs. This often includes a legal separation between the cooperative association and the cooperative firm. As the cooperative does not have a capital divided into shares it cannot be acquired as such. However, its assets, and its individual member firms, are open to investment and can be acquired.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

There are no such restrictions.

Update and trends

The European Patent Organisation (EPO) on 25 March 2015 (Cases G2/12 (Tomatoes II) and G2/13 (Broccoli II)) ruled that products derived from essentially biological process might be patentable, even if the process used to obtain the product is essentially biological and thus not patentable.

In response to calls from both the European Parliament and the Council in relation to this decision, the Commission on 8 November 2016 issued an explanatory notice on certain articles of Directive 98/44/EC on the protection of biotechnological inventions, stating that products created through essential biological processes should be excluded from patentability.

On 20 February 2017, the Council of the European Union adopted conclusions confirming the Commission's explanatory notice that products created through essential biological processes should be excluded from patentability. The Council's conclusions urged member

states, in their capacity as members of the EPO, to advocate that the practice of the EPO be aligned with the content of the conclusions.

The Council's conclusions furthermore call on the Commission to carry out further analysis of the development and implications of patent law in the field of biotechnology and genetic engineering.

On 25 July 2018, the Court of Justice of the European Union (ECJ) ruled that gene-edited crops should be subject to the same stringent regulations as conventional GM organisms. This constituted a setback for proponents of gene-edited crops, including seed growing companies that had hoped that organisms created using relatively new, precise gene-editing technologies such as CRISPR-Cas would be exempted from existing European law that has limited the planting and sale of GM crops. However, the ECJ ruled that crops created using these technologies are subject Directive 2001/18, which imposes high hurdles for developing GM crops for food.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

There are no specific rules or laws governing the rights of workers or employees for agricultural operations.

25 How is farmworker immigration regulated in your jurisdiction?

There are no specific regulations for immigration of farmworkers. Within the European Union there is a policy of freedom of movement for workers. Therefore, no immigration procedures apply to European workers.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

There are no specific regulations related to farmworkers. The primary responsibility for a health and safety policy within a company lies with the employer and the employees. Trade unions and branch organisations can also put forward adequate health and safety measures. Besides, the Dutch government is actively involved in the execution of health and safety policies. The Working Conditions Act provides a basis for a sound health and safety policy. It applies to all employers and employees in the Netherlands.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

The Netherlands is bound by the principles of free movement of goods, which also applies to trade in agricultural and food products between member states, as well as the principles of the CAP and the various detailed regulations on its operation with regard to the import and export of agricultural products.

For certain products applicable requirements, including registration, licences, or quotas in relation to the import or export of such agricultural product, may apply.

The NVWA is authorised to issue wellbeing or veterinary certificates for livestock import and export.

28 May tariffs, quotas or similar measures be put in place?

The EU is competent to negotiate or establish tariffs, quotas or similar measures that will then have direct effect in the Netherlands (and all other member states).

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

In addition to EU legislation, the Netherlands is bound to Free Trade Agreements that are agreed between the EU and several third countries, which may, for instance, reduce or slash tariffs on agricultural products will directly affect the import and export of agricultural products from and to the member states.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

The Netherlands is a member of the International Union for the Protection of New Varieties of Plants Convention since 1968 and is party to the latest Act of 1991. The UPOV 1991 Act has been implemented in national law through the Seeds and Planting Materials Act 2005 and further implementing decrees.

Regulation (EC) No. 2100/94 on Community plant variety rights establishes a system of EU plant variety rights (PVR) for its member states. A clear distinction is made between granting a PVR, and the right to place propagation material on the market (trading).

The Community PVR system exists in parallel with national systems. If a national (Dutch) PVR is granted for a new variety, it is added to The Netherlands Register of Varieties. Once the national right has been obtained, the applicant can apply for a Community PVR with the Community Plant Variety Office in Angers, France. If a Community PVR is granted and registered in the EU Common Catalogue, the national PVR will become 'dormant' for the period the Community PVR is in force.

Trading of new plant varieties (agriculture crops, forestry, fruit and vegetables) may require prior admission to the National Plant Variety Register. Registration on this list may be subject to a Value for Culture and Use test. This test is required for most agriculture crops, but not for fruit and vegetables. Once a variety has been admitted to the National Plant Variety Register, the Dutch Plant Varieties Board will notify the EU and other member states and the propagation material can be freely traded in the EU. Horticulture plant varieties can be traded without registration in the National Plant Variety Register.

Granting of plant breeders' rights is dependent upon whether the variety complies with novel, distinct, uniform and stable (DUS) criteria and has a suitable name. Conformity with DUS criteria is verified by the Netherlands Inspection Service for Horticulture.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

A farmer's privilege is the right of a grower to use harvested materials within the premises of their company for propagation purposes. This privilege only applies to crops in sectors in which the use of own seeds and seed materials is customary (for example, grain and potato crops). In this respect, the grower must:

- inform the PVR holder of the details of his company and the use of the seeds and seed materials; and
 - pay a reasonable licence fee for the use of the harvested materials.
- In general, 60 per cent of the licence fee that is due in trade for use of that variety is considered reasonable.

A breeder's exemption allows a third party to use the protected variety to breed a new variety, without paying a royalty fee. This breeder's exemption is not an infringement of the rights of the PVR holder.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

The international licensing platform for vegetable plant breeding ILP Vegetable was set up in the Netherlands with the objective to guarantee worldwide access to patents that cover crucial vegetable plant traits currently covered by patent claims from ILP Vegetable member companies, which currently represent more than 50 per cent of the global seed market. Under the terms and conditions of this platform, the members of the ILP Vegetable will make all of their patents accessible to their fellow members, who can obtain a licence for breeding and commercialisation of new varieties. The licensee has to pay a royalty for the commercialisation of the new variety, if still covered by the patent, in countries where a patent right exists.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The primary regulatory agency is the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and the Environment, which is charged with enforcing regulations relating to sustainability and safety, processing of (waste) materials and products, on the quality of the water and soil, and on spatial planning.

The NVWA is in charge of enforcement of animal manure legislation and carries out inspections on animal farms and manure transportation and processing companies.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The regulatory framework on water and air pollution stems from EU directives that are transposed into national law, including the Water Act. Based on this legislation, it is prohibited to dispose of waste, residues or other materials into the water system, unless a 'water permit' has been obtained authorising a specific disposal. A water permit can be obtained from the local council where the proposed activities are to take place.

The regulatory environment relating to air quality is designed to implement and meet the objectives primarily established through the EU regulatory framework. With regard to air quality, the Ministry of Infrastructure is taking measures against particulates pollution caused by livestock farming in the Netherlands.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Under Chapter 10 of the Environmental Management Act, the general principle is established that all operators dealing with waste are obliged to take all precautionary measures reasonably possible to reduce to the extent possible negative impacts for the environment.

The Fertilizers Act provides the regulatory framework for all types of fertiliser (including vegetable and animal waste) and provides strict rules on the transport, use and trade of such fertiliser.

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

Ukraine has earned the nickname 'breadbasket of Europe' because of its fertile soil and extensive fields of wheat and other food products. Agriculture accounts for 18.5 per cent of the country's total gross domestic product. Ukraine is a net exporter of agricultural products with sales worth US\$17.8 billion in 2017, which accounted for 41 per cent of total exports. Up to three million people are employed in the agriculture industry (17 per cent of the employed population).

Fertile lands, a favourable climate, a large population and a geographically advantageous position with access to the Black Sea make Ukraine a strategically important player in the food supply chain at a regional and global level.

Ukraine has a strong position in practically all stages of the food supply chain, in particular with regard to raw material, production, processing, wholesale trade, retail trade, consumption and export.

Agriculture forms the raw material base with primary production, supplying the processing industries and further distribution through wholesale and retail chains. The export process is supported by strong infrastructure. Ukraine is the world's third-largest grain exporter and the largest exporter of sunflower oil.

Development of the Ukrainian agriculture industry resulted in:

- the emergence of vertically integrated agricultural holdings operating with significant land banks (up to 600,000 hectares);
- the emergence of a modern food retail sector, rapidly expanding from key cities to small towns;
- rapid development of production and exports in niche industries (eg, walnuts, honey and berries); and
- increased investments in infrastructure.

Ukraine's food processing industry has experienced significant growth during the past 10 years resulting in the development of well-structured subsectors including dairy products, sunflower and vegetable oils, grains processing, meat and meat products, baked goods and sugar processing. The country has strong potential as a market of locally sourced goods as well as for their international distribution.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

Primary agriculture production and food processing should be in line with the key requirements for veterinary, sanitary and phytosanitary control, hygienic control and food safety according to the Law on Principles and Requirements on Safety and Quality of Food Products (the Food Safety Law).

All producers should comply with the following requirements:

- to obtain an operational permit for each operational facility;
- to register production facilities;
- to provide hazard analysis and critical control points (HACCP) certification (obligatory as of 20 September 2017 with a three-year transition period for different types of companies and activities in the agribusiness sector);
- to comply with requirements regarding the traceability of purchased ingredients;
- to meet hygiene requirements;

- to obtain a veterinary certification (if applicable);
- to obtain a quarantine certification (if applicable);
- to meet requirements on identification of livestock (if applicable); and
- to meet requirements on declaration of crop production.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Ukraine's agricultural sector is represented by more than 20 non-governmental organisations (NGOs) that cover the main subsectors such as grains, meat, oil, poultry, dairy and milling. The government has recently initiated systematic reform of NGO regulations in order to provide them with the status of self-regulatory organisations and thus to delegate selected powers and functions of the state bodies.

The main NGOs in the agricultural sector are the:

- Ukrainian Grain Association;
- Ukrainian Agrarian Confederation;
- Ukrainian Agribusiness Club;
- Agrarian Union of Ukraine;
- Association of Farmers of Ukraine;
- Association of Oil Producers; and
- Association of Milk Producers of Ukraine.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The principal act governing land relations in Ukraine is the Land Code, dated 25 October 2011. Other important acts regulating various aspects of land matters are as follows:

- the Law on Land Valuation;
- the Law on Land Melioration;
- the Law on Lease of Land;
- the Law on State Expertise of Land Management Documentation;
- the Law on State Land Cadastre;
- the Law on Land Planning;
- the Law on Land Protection; and
- the Law on State Control over Land Tenure and Protection of Land.

Overall, more than 50 legal acts (including laws, resolutions and orders) regulate agricultural land issues in Ukraine.

The Land Code determines that farmland is land that is used for agricultural production, carrying out agricultural research and training, and allocation of production infrastructure, including infrastructure for wholesale markets for agricultural products.

Agricultural land includes:

- agricultural areas (arable lands, perennial plants, hayfields, pastures and fallows); and
- non-agricultural areas (farm roads and trails; field shelter belts and other protective plantings, except those that are part of the forest fund; lands under farm buildings and yards; land under the infrastructure of wholesale markets for agricultural products; temporary out-of-use land, etc).

Agricultural land plots must be used strictly in line with their designated purpose (zoning), which is specified in land allotment projects and title documents.

Agricultural land can be owned and used by the following subjects:

- citizens – for the purpose of individual farming, gardening, mowing and grazing, and agricultural commodity production;
- agricultural companies – for agricultural commodity production;
- agricultural research institutions – to conduct scientific research and promote new farming practices in agriculture;
- non-agricultural entities, institutions and organisations, and religious organisations – for subsidiary farming;
- associations – for household farming; and
- wholesale markets – for the purpose of selling agricultural products.

Transactions regarding agricultural land are currently restricted because of a moratorium on the sale of agricultural land introduced in 2002 and in effect until 1 January 2019. The moratorium provides that agricultural land plots owned by individuals or companies for agricultural commodity production or farming cannot be sold, and their designated use cannot be changed except in cases of inheritance, barter or buyout for public needs. Any agreements in violation of the above (including powers of attorney and contracts on the future sale) are null and void.

Until either the end of the moratorium or the enactment of the law on turnover of agricultural land (whichever comes first), state-owned and municipal agricultural land cannot be sold unless it is acquired to satisfy public need. Agricultural land plots owned by individuals or companies for agricultural commodity production or farming also cannot be sold, nor their designated use changed, except in cases of inheritance, barter or buyout for public need. The designated use of agricultural land can be changed to carry out activities under production-sharing agreements with investors.

Foreigners cannot own agricultural land (this includes foreign individuals and companies, stateless persons and foreign states). Foreigners and stateless persons who inherit agricultural land must dispose of it within one year.

The government of Ukraine has recently initiated a broad public dialogue on cancelling the moratorium for sales of agricultural land. We anticipate this vital reform for Ukraine may be launched in 2018–2019.

5 Outline any rules related to use of farmland for non-agricultural uses.

Ukrainian legislation provides priority status for agricultural land, specifying that land suitable for agriculture must be available primarily for agricultural use. The existing moratorium significantly limits use of farmland for non-agricultural purposes.

However, restrictions that fall under the moratorium shall not apply to land plots that, at the time of their transfer into private ownership, were designated for purposes other than ‘for agricultural commodity production’. Such designations include:

- subsidiary farming;
- gardening;
- mowing and grazing;
- research and educational purposes;
- promoting new farming practices; and
- building wholesale markets infrastructure for agricultural products.

There are no restrictions on the sale, purchase or other alienation of the above-mentioned land plots, or changes to their designated use.

Ukrainian legislation specifies that it is preferable that non-agricultural areas of land or lower-quality agricultural land plots should be used for the purpose of construction of:

- production plants;
- housing and utility infrastructure;
- railroads and motorways;
- electric and communication lines;
- pipelines; and
- for other purposes not connected with agricultural production.

Foreign citizens and stateless persons can acquire ownership rights to non-agricultural land plots within the boundaries of localities, as well as non-agricultural land plots outside localities on which objects of real estate, privately owned by such citizens and stateless persons, are

situated. Foreign legal entities and joint ventures established in partnership with foreign individuals or legal entities can acquire the ownership rights to non-agricultural land plots within the boundaries of localities in the case of purchasing real estate objects (other than land plots), as well as for construction of objects for conducting entrepreneurship and outside localities in case of purchasing real estate objects (other than land plots).

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

Land lease is the most common instrument to access agricultural land because of the moratorium described in question 5. All Ukrainian nationals (including locally incorporated companies) can obtain the right of agricultural land lease.

The right to lease a land plot is subject to state registration and shall be done in writing by way of execution of a lease agreement with further notarisation. The government has developed a standard lease agreement that must contain three key elements: the object of the lease, the lease term and the rent value.

The minimum lease term for agricultural land is set at seven years and the maximum is 50 years. The amount of rent cannot be less than 3 per cent nor more than 12 per cent of the land’s value. The rent is paid in monetary form; however, often settlements of lease payments may be concluded with goods that have a combined value equivalent to the lease rate. Lease of state and municipal land plots is paid exclusively in monetary form.

7 Are there provisions relating to creditors’ rights on default by farmers that apply in your jurisdiction?

The principal act governing bankruptcies in Ukraine is the Law on Restoring Debtor Solvency or Declaring a Debtor Bankrupt (the Bankruptcy Law).

The Bankruptcy Law provides specific provisions with respect to insolvency proceedings of agricultural companies, if it is established that their main activity is production or processing of agricultural products and the total revenue from sales of such products is more than 50 per cent of total revenue of the company.

If the agriculture producer is declared bankrupt and enters liquidation, all land used under their lease agreements (of temporary or permanent use) shall be returned to its owners and the lease agreements will be terminated.

In the course of immovable property sales to which the bankrupt has title and is used for production purposes, other agricultural producers operating on the neighbouring land plots shall have priority right to purchase such property.

Upon the request of the committee of creditors and under the presence of a representative from the local authorities, the court can order a rehabilitation procedure for the agricultural producer that may last up to 15 months.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

The State Service of Ukraine for Geodesy, Cartography and Cadastre (StateGeoCadastre) is the central executive body responsible for implementation of state policy in matters of topography, geodesy, cartography, land relations and state land cadastre.

The following are the key functions of the StateGeoCadastre:

- conducting legislative activities within the scope of competence;
- developing international cooperation in the mentioned directions;
- coordinating and ensuring state control under the sphere of topography, geodesy and cartography;
- developing the state geodesic network;
- developing National Spatial Data Infrastructure and standards relating to geodesy and cartography;
- coordinating the activities regarding geographical names and the creation of the National Register of Geographic Names;
- administering the state land cadastre;
- providing state registration of land parcels;
- managing state-owned agricultural land; and
- maintaining the state register for land surveyors.

The Land Code also provides that StateGeoCadastre is empowered to control the use of farmland, particularly with respect to construction and maintenance of farm property located on agricultural land plots.

Under Ukrainian law, use of farm property must conform to the zoning (designated use) of the land plot.

In some cases, farm property can be placed on agricultural lands provided that the quality of such land is low and under the permission of respective authorities conducting public control over construction.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

See responses to questions 4 and 5.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

In 2017, the state budget of Ukraine provided 5.4 billion hryvnias in support for agricultural development.

In particular, the budget was assigned to:

- financial support for repaying loans to agricultural producers (300 million hryvnias);
- state support of livestock production (170 million hryvnias);
- financial support on financial leasing programmes (3.8 million hryvnias);
- providing loans to farmers (65 million hryvnias); and
- financial support for agricultural producers (4.7 billion hryvnias).

Access to state support is through the Ministry of Agrarian Policy and Food of Ukraine, which is in charge of funds.

In 2018, the state budget envisages 6.3 billion hryvnias of support as follows:

- financial support for repaying loans to agricultural producers (66 million hryvnias);
- state support of livestock production (4 billion hryvnias);
- financial support for hop growing, gardening and walnut cultivation (300 million hryvnias);
- financial support to farmers (1 billion hryvnias); and
- financial support for agricultural producers (945 million hryvnias).

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

In Ukraine, there are no special government incentives for investments in agribusiness. Any investment activity in agribusiness is subject to general investment regulations, unless the government decides to enter into a public-private partnership with a foreign investor and to set specific conditions of cooperation, including various types of incentives that can be foreseen.

Generally, protection of foreign investments in Ukraine is regulated by the Law on Regime of Foreign Investments and the Law on Protection of Foreign Investments. This sets the basic principles of foreign investments in Ukraine as follows:

- in the event of a change of guarantees in relation to protection of foreign investment, the state guarantees effective legislation at the time of investment would apply within 10 years from the date of enactment of such changes; and
- the state authorities of Ukraine are not entitled to take foreign investments, except for emergency measures in the event of natural disasters, accidents, epidemics and epizootics. Such requisition and its conditions can be made based on a government decision. Investors have the right to appeal such decisions in court.

Foreign investors are entitled to reimbursement for losses, including lost profits and moral damage caused by the actions, omissions or improper performance of duties by the state authorities of Ukraine or their officials towards a foreign investor or enterprise with foreign investments, according to the law of Ukraine. Reimbursement is based on current market value.

In the case of termination of investment activities, a foreign investor has the right to return, within six months following termination

of such activities, their investments in kind or in the currency of the investment (ie, the actual amount of the investment), without payment of customs duties, as well as revenues from such investments, in monetary or goods form at real market value at the date of termination of investment activities.

In practice, because of numerous regulations, execution of the aforementioned principles is costly and time-consuming, and requires qualified legal assistance.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The principal acts applicable for primary processors of live animals are as follows:

- the Food Safety Law;
- the Law on Veterinary Medicine;
- the Law on Identification and Registration of Live Animals;
- the Law on Animal By-Products not intended for Human Consumption; and
- the Law on the Protection of Animals from Cruelty.

There are no special regulations regarding meat for domestic consumption and for export, except for special requirements set by the importing country for meat exported from Ukraine.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The food safety regulatory system has changed significantly following the implementation of the Food Safety Law that entered into force on 20 September 2015. As it is based on the principle 'from farm to fork', the Food Safety Law introduced all basic EU standards applicable to the cycle of production, processing and distribution of agricultural food (eg, the principles of HACCP, traceability and responsibility of business operators). In addition, the Law envisages a new approach in which the system of state supervision and control over the market is assigned to only one authority: the State Service on Safety of Foodstuffs and Consumer Protection.

The new Law reduced the number of administrative procedures, cancelled licensing and certain other procedures (which are absent in EU legislation), and provided detailed requirements for the procedure of state control of food products on the Ukrainian market and imported products respectively. It also facilitates the conditions of obtaining operating permits that are mandatory only for enterprises that have activity connected with the production or storage of food of animal origin. Other businesses should just obtain registration.

In particular, as set out in the Food Safety Law, the government regulates food safety by:

- setting up sanitary measures;
- imposing requirements for certain food safety products;
- state registration of sanitary objects;
- issuing, annulling and renewing operational permits;
- imposing health requirements for employees involved in food production; and
- providing state control of food safety.

On 4 April 2018, food safety control regulations came into effect that were introduced in Ukraine as part of the EU-UA Association Agreement. This resulted in the creation of a separate system of control over food production, sales, etc. As the Food Safety Law is relatively new, and taking into account recent changes, more than 30 by-laws are to be adopted to fully introduce a new regulatory system of food products.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The State Service on Food Safety and Consumer Protection, as the competent authority, is entitled to order the suspension of production or circulation of food products that present a danger to human health for a maximum of 10 calendar days, with submission of a corresponding application to the court.

Suspension of production or circulation of food products for more than 10 days shall be possible only by a decision of the court for the term required to remedy the identified violations.

If, within a feasible term, a market operator does not fulfil the technical requirements under the law, another executive document on the suspension of operations of a facility or part of a facility, or a temporary ban on the circulation of objects of sanitary measures, it may have its operating permit suspended. In certain cases, an operational permit can be recalled and cancelled.

Violation of food safety requirements is classified as any of the following:

- not complying with hygiene requirements;
- producing and storing food products at facilities that are not registered;
- producing and storing food products without an operating permit;
- failing to perform duties regarding the introduction of ongoing procedures at facilities, which are based on HACCP principles;
- mislabelling food products;
- infringing traceability requirements;
- failing to perform duties on recall or withdrawal of unsafe food products from circulation;
- using unregistered processing aids and materials in contact with food products;
- using unregistered objects subject to sanitary control;
- circulating unsuitable food products;
- infringing safety parameters of objects of sanitary measures;
- not fulfilling legal requirements (decisions) of the competent authority officials regarding elimination of legislative violations on safety and specific quality parameters of food products within the term agreed upon with the competent authority;
- not fulfilling legal requirements (decisions) of the competent authority officials regarding destruction of food products and processing aids that are unsafe for human consumption or intended to be used otherwise;
- concealing information (non-provision), refusing to provide information, or providing unreliable information to the competent authority officials; and
- refusing to provide access to competent authority officials to carry out state control.

Depending on the type of violation, the penalty is a fine of twice or up to 75 times the minimum wage (currently, 3,200 hryvnias).

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

The Law on the State Biosafety System at the stage of development, testing, transportation and use of genetically modified organisms (GMOs) provides obligatory registration of all types of GMO prior to their use in Ukraine. However, as of the time of writing, there are no registered GMOs in Ukraine.

If a food product contains GMOs, or if a part of a food product exceeding 0.9 per cent contains, consists of or is produced from GMOs, the labelling of such product shall contain a 'with GMO' mark. A market operator can include a 'GMO-free' mark in its labelling at its own discretion. However, the absence of GMO in a food product is subject to confirmation as per legislative requirements on safety and specific quality parameters of food products. Data from the suppliers regarding the presence of GMOs in ingredients not being available shall be sufficient proof for the application of such labelling.

In July 2018, a new Law 'On the Basic Principles and Requirements for Organic Production, Marking and Distribution of Organic Products' was adopted. Adoption of this Law would subsequently allow Ukrainian producers to be certified according to Ukrainian organic standards and thus, create a 'National Organic Standard'. New provisions concerning state control over the organic segment, accreditation requirements for the certification bodies, the liability for violations in this sphere, and provisions regulating issues concerning the export or import of organic products were adopted, thus creating a completely new regulatory framework compliant with EU legislation.

Organic production for agricultural companies is available starting from entry in the State Register of Organic Producers (currently more than 300 companies are registered as organic producers).

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

Circulation of food products with labelling that does not comply with legislative requirements on safety and specific quality parameters of food products is prohibited. All food products in circulation in Ukraine shall be labelled in the official language, but there may be translations into other languages beside the text.

Labelling may contain references to certain substances and their quantity without specifying the properties that a food product has because of such substances. Thereby, the market operator must have evidence regarding the composition of such substances that, in particular, includes laboratory analysis and information on the origin of the ingredients.

It is prohibited to advertise dietary additives as follows:

- statements regarding potential therapeutic effect or relief of pain;
- letters of appreciation, recognition and advice if they are related to the treatment or relief from a disease, as well as any reference to such information; and
- statements that may cause or contribute to a negative psychological condition in the consumer.

Legal entities that are responsible for mislabelled food products will incur a penalty of five to eight minimum wages and recall of the product, or the withdrawal of such products from circulation. Individual entrepreneurs responsible for mislabelling will incur a penalty of three to five minimum wages and recall of the product, or withdrawal of such products from circulation (one 'minimum wage' is currently 3,200 hryvnias).

17 Outline any applicable legislation regarding the health of animals reared as livestock, including transportation and disease outbreak and management.

See question 12.

18 What are the restrictions on the movement of animals within your country?

The following restrictions are applicable to the movement of animals in Ukraine:

- movement of animals without their identification according to the law is prohibited;
- transportation of animals shall be made under appropriate conditions and with the accompanying set of documents (identification number, veterinary certificate, consignment documents); and
- prohibition on the movement of animals from quarantine zones set by the government.

19 Describe any restrictions on the import of food animals.

Importing food products of animal origin for consumption without the appropriate packaging is prohibited.

According to the Law on Veterinary Medicine, the government maintains a register of specific countries from which imports are prohibited, and goods that are prohibited from being imported into Ukraine for safety reasons. The register may also include a list of production facilities in the exporting countries, the products of which may be subject to import prohibition because of non-compliance with Ukrainian legislation on food safety production.

20 What are the regulations related to livestock slaughtering?

The Law on Identification and Registration of Animals requires obligatory registration of livestock that is due to be slaughtered in the respective state register.

It is prohibited to slaughter an animal that does not have an accompanying veterinary certificate attesting to its health, or to slaughter domestic animals in a slaughterhouse that does not have an operating permit (which is required if the operation exceeds three to five units per day).

All slaughterhouses must obtain an operating permit and are subject to state veterinary control.

All animals are subject to compulsory post-slaughter (post-mortem) state control carried out by a state officer, including animals killed by humans (eg, those killed in traps or hunted game), irrespective

Update and trends

Ukraine is actively working on the implementation of the Deep and Comprehensive Free Trade Agreement with the EU to comply with European standards in agriculture. In particular, in 2018, Ukraine adopted new organic law and phytosanitary regulation law, which is step forward for niche agriculture producers. Additionally, a number of laws and the SPS and TBT sectors are on their way to being approved. A separate direction of regulation work is the improvement of land turnover and development of laws necessary to launch the land market.

of whether the products thereof are intended for human consumption or to feed animals.

A mark of suitability shall be applied only to animals (domestic ungulates, farm-raised wild mammals other than lagomorphs and large wild animals) that undergo ante-mortem and post-mortem inspections in accordance with legislative requirements.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The State Service on Food Safety and Consumer Protection (created in 2014) is in charge of pest control in Ukraine. Currently, pest control and issuance of phytosanitary certificates is exclusively carried out by state laboratories. However, the government initiated changes to the relevant legislation in accordance with EU practices that aim to delegate powers of laboratory inspections to private labs that would take place from 2019.

Ukraine has recently cancelled obligatory quarantine certification, with the exception of movement of goods outside the country's set quarantine zone and, in certain cases, of imports – in particular, when goods were repacked after initial documents from the producer were issued.

Customs clearance of cargo in Ukraine is made only after phytosanitary control has been carried out, both for export and import operations.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Currently, foreign investors may establish the following types of companies in Ukraine, operating in agribusiness:

- traditional business companies (limited liability companies (LLCs), joint-stock companies, additional liability companies, general partnerships, or limited partnerships);
- enterprises with foreign investments;
- subsidiaries ('daughter enterprises');
- private enterprises; or
- a representative office in Ukraine.

The most popular forms of legal entities for conducting agribusiness in Ukraine are LLCs and private enterprises.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

Not applicable.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

See question 26.

25 How is farmworker immigration regulated in your jurisdiction?

There are no special regulations on the immigration of farmworkers; general rules apply.

Enterprises in Ukraine are entitled to employ a foreigner provided that the State Employment Service of Ukraine has issued a work permit for their employment. The law provides that a work permit shall be issued providing one of the following conditions is applicable:

- there are no qualified Ukrainian employees suitable for the role or if the necessity to employ a foreigner is duly substantiated;
- a foreigner seconded by a foreign business entity to Ukraine under agreements between a Ukrainian and a foreign business entity (the number of foreigners hired shall not exceed half of the total number of employees of the respective Ukrainian business entity);
- a foreigner has been seconded to Ukraine as an intra-corporate transferee; or
- a foreigner has applied for refugee status.

The work permit is usually valid for the term of the employment contract but cannot exceed one year; however, it may be prolonged repeatedly for one-year periods.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Health and safety regulations relating to farmworkers in Ukraine depend on the type of work carried out.

There are various occupational safety and health rules applicable for agricultural production, livestock production, plant breeding, and the use of agricultural machinery and pesticides issued in the form of respective regulations. Generally, safety regulations are subject to certification in certain cases. Farmworkers are required to be educated in specific areas and upgrade their qualifications depending on the type of work they undertake and the occupational risk level.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

Under Ukrainian law, all documents necessary for the import and export of goods can be generally divided into two groups: documents submitted with respect to all products and documents that are submitted depending on the particular customs code. The documents required for exportation and importation of all products are listed in article 335 of the Customs Code of Ukraine.

Products of animal origin are subject to veterinary control, while products of non-animal origin are subject to phytosanitary control. The facilities used by producers exporting food products must be included in the 'list of approved exporting facilities'. Exporting facilities may only be included in the list after the relevant audit of the producer.

For the importation of food products, the importer has to present an 'international certificate', issued by the competent authority of the country of origin. Other objects of sanitary control must be accompanied by documents certifying the safety and quality of the respective product. Food products exported from Ukraine must also be accompanied by an international certificate or other document ensuring the safety of the product and issued by the competent authority (depending on the requirements of the importing country).

Starting from mid-2014, Russia banned imports of milk, dairy and confectionary products from Ukraine. Additionally, starting from July 2014, the import ban was extended to cover juices, canned fruit and vegetable products as well as canned fish. As a response to this aggressive trade policy, Ukraine banned imports of certain meat products, fish, dairy, baked goods, milk, vodka and cigarettes originating from Russia, starting from January 2016.

28 May tariffs, quotas or similar measures be put in place?

As a member of the World Trade Organization (WTO), Ukraine does not apply quotas or similar restrictions, except for those listed in the Schedule of Concessions of Ukraine. The Schedule of Concessions sets forth the maximum import duty rates that may be levied on the products imported from the territories of other WTO members. Other tariffs, quotas or similar measures can be put in place as an exception from WTO rules in certain cases prescribed in GATT and other WTO-related agreements.

In addition, Ukraine actively concludes free trade agreements (FTAs), in the framework of which the duties and other restrictive regulations of commerce are eliminated. Ukraine has effective FTAs with:

- the EU;
- European Free Trade Association (Iceland, Lichtenstein, Norway and Switzerland);
- Canada;

- Georgia;
- Macedonia;
- Turkmenistan; and
- Montenegro.

Ukraine is also a member of the Commonwealth of Independent States Free Trade Area, which includes Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Uzbekistan and Russia.

Ukraine has the right, according to WTO regulations, to impose quotas or similar measures in certain cases, particularly for the protection of human health and morals, in case of critical shortage of goods, and for public need, but only subject to compliance with WTO rules.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The import and export of agricultural products is regulated by WTO Agreements (the General Agreement on Tariffs and Trade, the WTO Agreement on Agriculture, the WTO Sanitary and Phytosanitary Agreement, etc) and FTAs.

Ukraine has a separate treaty with China on the supply of certain agricultural products – mainly soft commodities.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

In accordance with the Law on the Protection of Plant Variety Rights, registration of a plant variety may impose the following rights:

- personal non-property rights on plant variety;
- intellectual property rights on plant variety; and
- intellectual property rights to distribute the plant variety.

Confirmation of plant variety rights are given in the form of a certificate of the authorship of the plant variety, the patent of the plant variety and the certificate of state registration of plant variety.

If a patent is received in the territory of Ukraine, the owner has the exclusive rights to authorise or restrict the following acts in respect of the planting material:

- production or reproduction (for the purpose of propagation);
- conditioning for the purpose of propagation;
- sales;
- marketing;
- exports;
- imports; and
- storage.

The right to commercialise the plant variety is given upon registration in the respective state register and receipt of the certificate on state registration. State registration is also a condition for commercialising planting material in Ukraine.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

A licence agreement on the transfer of plant breeders' rights can only be concluded in respect of those plant varieties that are protected by patent and require authorisation of the patent holder.

However, a common practice applies when a commercialised plant variety in Ukraine has no patent protection. By virtue of the registration of such a plant variety in the state register and receipt of the certificate on state registration, the holder of the certificate enjoys only the intellectual property right to commercialise the plant variety in Ukraine. Authorisation to commercialise the plant variety is given by the holder of the certificate on state registration of plant variety to another entity and is not covered by the motion of licence (licence agreement). The licence may be issued (ie, the licence agreement concluded) only in respect to those plant varieties that have patent protection.

Thus, the authorisation to commercialise the plant variety (by the holder) may be recognised as a licence or other agreement on transfer of intellectual property rights.

There are two types of licence agreement that can be concluded in respect to intellectual property rights in plant varieties: in respect to patented plant varieties; and in respect to plant varieties that are registered in the state register but have no patent protection in Ukraine.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Other intellectual property considerations specific only to agribusiness are not applicable. General intellectual property regulations shall apply.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

There are three main state bodies managing the environmental impact of agricultural production in Ukraine:

- StateGeoCadastre (for the use of land);
- State Service on Food Safety and Consumer Protection (for pest control, and veterinary, sanitary and phytosanitary control); and
- State Ecological Inspection (for ecology and radiology control, land conservation, use of water and air pollution).

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The State Service on Food Safety and Consumer Protection provides state control over maintenance of the sanitary norm on use of water for production and consumption purposes, and set levels of indicators in the soil.

Emissions into the atmosphere of pollutants and other substances are controlled by state permits in accordance with set thresholds. According to the law, emissions are allowed if a permit is granted. There are three types of permit based on set thresholds that are valid for seven years, 10 years, or an unlimited term.

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If primary agricultural production produces air pollution above permitted levels, production must be authorised by obtaining a permit from the Ministry of Ecology and Natural Resources.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

The regulatory framework of liquid and other waste policy in Ukraine is encompassed by, among other things:

- the Law on Waste;
- the Law on Ensuring Sanitary and Epidemic Safety of the Population; and
- the National Solid Waste Management Programme for 2013–2020.

The Law on Waste sets forth the general principles for activities related to the prevention or reduction of waste, its collection, transport, storage, sorting, recycling and disposal, as well as a reduction in the negative impact of waste on the environment and human health within Ukraine.

Furthermore, the Law on Air Protection prohibits the disposal of agricultural waste within the territory of agricultural enterprises, except when this is done with the use of special devices in compliance with environmental regulations. It is obligatory for primary agricultural producers dealing with liquid and waste processing to declare their activity to local authorities according to regulation requirements. Such activity is subject to state control and, in certain cases, when special requirements are applied, it is prohibited to carry out any activity that produces waste without a permit, subject to issuance by the local authorities.

A special permit must also be obtained for operations that involve pesticides, for their transportation, storage, etc.

United Kingdom

Nicolas Carbonnelle, Sally Shorthose and Joanna Ketteley

Bird & Bird

Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

Currently, the UK has a well-developed food and drink supply chain in terms of complexity, variety and availability of processed foods. It is the United Kingdom's single-largest manufacturing sector and is estimated to be worth £80 billion per year, accounting for 7 per cent of gross domestic product and employing around 3.7 million people in the UK. The food chain is made up of four sub-sectors: retail, manufacture, wholesale and non-residential catering, which accounted for £104 billion in gross value added in 2016 (<https://www.gov.uk/government/publications/food-chain-productivity/total-factor-productivity-of-the-united-kingdom-food-chain-2016-provisional-release>). In 2015, the UK exported approximately £18 billion worth of food and drink (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515048/food-farming-stats-release-07apr16.pdf), but is not self-sufficient in food production and imports around 40 per cent of the total food consumed. Since the UK is exporting more than 70 per cent of production in the food and beverage sector to European Union (EU) countries, Brexit poses major challenges for the UK in that sector and the imposition of tariffs on UK-EU trade would be particularly significant for the industry.

From food retailers to farmers, technology and innovation is being implemented throughout the supply chain to reduce waste and increase efficiency. Food retailers yield great influence over the supply chain and use this power to drive performance and improve traceability in the food manufacturing industry through analysing the information flow within the chain.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The applicable food law in the UK includes both domestic and European legislation. In view of Brexit, however, the European Commission notified in its notice to stakeholders on the withdrawal of the UK and EU food law of 1 February 2018 (https://ec.europa.eu/food/sites/food/files/notice_brexit_eu_food_law.pdf) that, unless a ratified withdrawal agreement provides otherwise, all EU food law shall cease to apply to the UK from 30 March 2019. The House of Lords subsequently published the library briefing 'Leaving the EU: Food Safety' (<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2018-0050>) on 26 April 2018 stating that the European Union (Withdrawal) Bill currently progressing through Parliament would preserve all existing EU legislation in UK law but would give ministers the power to transfer the functions of the EU authorities to UK public authorities.

European food law currently includes the General Food Law Regulation (EC) No. 178/2002, which provides the general principles and requirements of food law in the EU as well as other regulations on, inter alia, food labelling, food information, organic status and genetically modified food. Both primary food processors and primary agriculture are also subject to harmonised EU food hygiene regulations.

In the UK, the Food Standards Agency ensures that food law is applied across the entire food chain and produces a Food and Feed Law Code of Practice setting out how food law should be applied by local authorities.

The Food Safety Act 1990 provides the framework for food legislation in Great Britain and creates offences in relation to safety, quality and labelling. It was amended by the Food Safety and Hygiene Regulations 2013 in England, which also provides for the enforcement of certain provisions of Regulation (EC) No. 178/2002.

Within pastoral farming there is a complex web of legislation covering areas such as the health of animals for consumption, cleanliness of animals at slaughter, veterinary medicines permitted, hygiene during milking and controls on raw drinking milk.

For arable farming the Chemicals Regulation Division of the Health and Safety Executive (HSE) is responsible for UK policy on pesticides, which authorises and monitors pesticides. It is responsible for registration and approval of plant protection products, for which harmonised rules have been enacted at EU level as well.

All food business operators including primary food processors are required to put in place appropriate controls that demonstrate they are managing food safety within their business.

The Food Safety and Hygiene Regulations 2013 in England regulate food business operators, including the food temperature control requirements in the UK.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

The main organisations are as follows.

The UK Food Group is a network of around 50 development, environment, farmer and academic organisations in the UK working on global food and agriculture issues.

Feeding the 5,000, a campaign organised by the environmental campaign group Feedback, aims to prevent fruits, vegetables and other food from being wasted. The organisation encourages farmers to allow volunteers to collect aesthetically unattractive produce, which would otherwise be wasted, for consumption.

The Soil Association is a charity that campaigns for humane and healthy food through sustainable farming and land use. The organisation works closely with communities to create trust in organic farming methods and to actively engage farmers, growers and permaculturalists in programmes with links to academic institutions.

The Courtauld Commitment aims to reduce the weight and carbon impact of household food waste, grocery product and packaging waste. It is supported by 53 retailers, including four leading supermarket chains.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Most UK farmland is owner-occupied. The Agricultural Tenancies Act 1995 and the Agricultural Holdings Act 1986 (the 1986 Act) address Farm Business Tenancies and pre-1 September 1995 tenancies respectively.

Pre-1 September 1995 tenancies usually have lifetime security of tenure and leases granted before 12 July 1984 carry potential succession rights, which may mean up to two further generations of farmers can occupy the agricultural holding.

Agricultural property transactions offer generous tax reliefs such as an exemption from inheritance tax after two years of ownership and self-farming. There are further opportunities for deferred capital gains tax.

There are some land designations including sites of special scientific interest, special areas of conservation and special protection areas that may affect the management or sale of agricultural land.

5 Outline any rules related to use of farmland for non-agricultural uses.

Land must be used for agriculture in order to qualify for security of tenure under the 1986 Act. In the appeal of *Howkins v Jardine* 1951, a requirement in the tenancy agreement to use farmland for agricultural purposes only was upheld, meaning it was not sufficient for merely a substantial part of the tenancy to be used for agriculture to be protected by the 1986 Act.

Unfortunately, 'open farm' activities, such as school visits, are not considered to be agricultural use. This makes diversification problematic and so it is always necessary to carefully consider the scope of any agricultural tenancy.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In addition to mortgages and debentures, farmers trading as a sole trader or partnership can create agricultural charges over farming stock and other agricultural assets under the Agricultural Credits Act 1928 (ACA 1928). Other agricultural assets include machinery, certain livestock and crops but not a farmer's bank account, entitlement to agricultural subsidies, land, leased assets or debts owed to the farmer. These are further defined under section 5(7) of the ACA 1928.

A farmer may only grant this unique charge to a registered deposit-taking bank.

All agricultural charges must be registered with the Agricultural Credits Department in Plymouth within seven days of creation, otherwise it is void against any third party but still enforceable by the bank against the farmer. Registration constitutes actual notice of the charge to all persons.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Section 6(4) of the ACA 1928 limits a bank's recourse with regard to a farmer improperly selling a charged asset. A bank does, however, retain common law rights to a trust or personal claim for repayment if the proceeds cannot be identified.

As a farmer's bank account is not subject to an agricultural charge, it is important for creditors to retain a right of set-off with regard to any account containing cash. Furthermore, it is imperative to appoint a receiver immediately following default because assets acquired by the farmer after crystallisation will not fall within remit of the security.

As of 6 April 2014, the procedure for commercial rent arrears must be used for commercial property, which includes agricultural land. This supersedes the previous procedure of 'distress' that afforded fewer barriers to creditors.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

The government has the right to make a compulsory purchase orders over agricultural land, usually because of a need for increased housing or infrastructure development. In most cases, but not all, the Acquisition of Land Act 1981 as amended by the Planning and Compulsory Purchase Act 2004 governs the procedure for compulsory purchase of land and acquiring authorities should be able to demonstrate close compliance with the compulsory purchase process and the Crichel Down Rules guidance for the best chances of success.

Compensation is not limited to the open market value of the land but may also include compensation for 'disturbance' or 'injurious affection'. 'Disturbance' is based on the principle of equivalence (ie, an owner should be left no worse off than if his or her land had not have been acquired). 'Injurious affection' claims occur where land has been injuriously affected (ie, its value has been affected or physical damage caused).

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

There are no restrictions on foreign ownership of farm property in the UK.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

Not applicable.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Not applicable.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

Goods derived from animals are referred to as 'products of animal origin' (POAO), which include certain live animals for direct human consumption, foodstuffs, by-products and goods that may have come into contact with animals, such as hay and straw. POAO are subject to animal feed and food hygiene legislation. The Meat Industry Guide is published by the Food Standards Agency (FSA) to assist UK meat plant operators with compliance.

Unless there is a major outbreak of disease, intra-EU transactions of POAO are relatively simple. Here again, the repercussions of Brexit will need to be monitored closely. When exporting POAO to a non-EU country (a 'third country') from the UK, it is the exporter's responsibility to ensure that they are aware of any restrictions and what export conditions apply in advance. Advice can be provided by Defra.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The FSA is responsible for food safety and hygiene across the UK. It works with local authorities to enforce food safety regulations and its staff work in UK plants to check the standards are being met. The FSA regularly issues guidance to the food industry, often as a result of new regulations coming into force.

The General Food Law Regulation is directly applicable EU legislation and sets out principles of food safety, which include food traceability requirements and the obligation to only place safe food on the market, with prompt withdrawal or recall of unsafe food. The Food Safety and Hygiene (England) Regulations (2013) (as amended) provide for the enforcement (including imposing penalties) of certain provisions. The Food Safety Act (1990) (as amended) also provides the framework for all food legislation in UK.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

Regulation 4 of the General Food Regulations (2004) creates a criminal offence for breaches of the provisions relating to food safety requirements, presentation or traceability. The penalties include a fine or imprisonment for a term not exceeding two years, or both.

The Food Safety Act 1990 provides the framework for food legislation in Great Britain and creates offences in relation to safety. It was amended by the Food Safety and Hygiene Regulations 2013 in England, which also provides for the enforcement of certain provisions of Regulation (EC) No. 178/2002.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

Each application for the introduction of a new genetically modified (GM) food to the market is reviewed on a case-by-case basis, including a detailed consideration of the potential for toxic, nutritional and

allergenic effects, by the European Food Safety Authority in conjunction with the FSA in the UK. In evaluating the application, the FSA seeks expert advice on GM foods from the independent Advisory Committee on Novel Foods and Processes as appropriate.

GM foods may only be authorised for sale if they are judged not to present a risk to health, not to mislead consumers and not to be of less nutritional value than the foods they are intended to replace.

The Novel Foods Regulation (Regulation (EC) No. 258/97, which has been repealed and replaced by Regulation (EU) No. 2015/2283 as of 1 January 2018) lays out detailed rules for the authorisation of novel foods, ingredients and processes. Organic products are notably subject to compliance with the requirements defined under Regulation (EC) No. 834/2007 on organic production and labelling of organic products. These new Regulations effective from 2018 will bring significant amendments for business operators in the sectors, including clarification on the definition and scope of novel foods regulations, a centralised approval procedure at EU level through the European Food Safety Authority, and a five-year period of data protection for applicants in gathering information and data on a novel food application. Whether and to what extent the UK will implement equivalent changes in spite of Brexit remains to be seen.

It is also relevant to note that in its 25 July 2018 decision the Court of Justice of the European Union held that all organisms subject to genome-editing techniques, including the use of CRISPR and other techniques or methods of mutagenesis, fall within the definition of GM organisms. This thus expands the application of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

Regulation (EU) No. 1169/2011 on the provision of food information to consumers (FIC) provides general rules on food and nutrition labelling. It applies to pre-packed foods from 13 December 2014, with mandatory nutrition declarations coming into force on 13 December 2016.

The Food Information Regulations 2014 (FIR) transpose the FIC into national legislation, incorporating national derogations permitted by the FIC. In England, the FSA leads on food safety aspects of food labelling and liaises with food authorities concerning enforcement.

The FIR enforcement regime uses a system of improvement notices. Failure to comply with an improvement notice will result in a criminal offence (summary conviction, or fine not exceeding £5,000). Criminal offences exist for the contravention of certain provisions, for example, mislabelling of foods containing allergens (as this may result in a risk to consumer health and safety).

Specific categories of products are subject to more detailed requirements. Examples include chocolate and honey. Furthermore, specific labelling requirements are laid down in other legislation such as EU Regulation (EC) No. 1924/2006 on nutrition and health claims.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The welfare of farmed animals (and prevention of unnecessary suffering) is governed by the Animal Welfare Act 2006 and the Welfare of Farmed Animals (England) Regulations 2007 (as amended, 2010). Requirements include providing a suitable living environment and diet, ensuring normal behaviour patterns and protection from pain, injury, suffering and disease. Anyone who is cruel to an animal, or does not provide for its welfare needs, may be banned from owning animals, fined up to £20,000 or sent to prison.

Biosecurity measures prevent the spread of farmed diseases and protect agricultural workers. During an outbreak, Defra will impose restrictions on animal movements and suspend agricultural markets and shows.

Regulation (EC) No. 1/2005 on the protection of animals during transport applies to the transport of live vertebrate animals in connection with an economic activity. The Regulation is implemented by the Welfare of Animals (Transport) (England) Order 2006. Enforcement is carried out by local councils and the Animal and Plant Health Agency (APHA) at markets, ports and roadside, and at supervised loadings of export consignments. Under the foregoing, those that

transport animals over 65km in connection with an economic activity are required to hold a Defra transporter authorisation.

18 What are the restrictions on the movement of animals within your country?

Regulatory restrictions on the transport of animals are covered by question 17. Animal movement licences under the Animal Health Act 1981 and the Disease Control (England) Order 2003 (as amended) control livestock movement and ensure the location of animals can be easily identified. There are four general licences, each setting out mandatory rules on cleansing and disinfection, scheduled stops, animal identification and marking, the movement standstill period and exemptions. Livestock-specific movement recording protocols are also required.

All licences stipulate that:

- foot-and-mouth disease checks must be done before moving animals, with positive identifications notified to the local Animal Health and Veterinary Laboratories Agency office;
- animal transport vehicles must be cleaned and disinfected as per animal transport regulations;
- multiple animal pick-ups and drop-offs are permitted;
- transport of more than one species is permitted; and
- animal identification must comply with the relevant identification regulations.

The movement of female livestock or animals that are in the final 10 per cent of their gestation period, or that have calved within the previous week, is not permitted.

19 Describe any restrictions on import of food animals.

The import of POAO from non-EU countries into England (they do not apply to other members of the United Kingdom) is governed by the Trade in Animals and Related Products Regulations 2011, under the responsibility of the APHA. Importers may require import licences dependent on the type of product being imported. General EU food safety and hygiene requirements will also apply (eg, Regulation (EC) No. 178/2002). The import of POAO from within the EU requires the relevant health certification and product-marking requirements specific to each type of product, standardised across the EU. Once the POAO has entered the UK, the goods must meet any relevant UK regulations such as labelling requirements. Special requirements apply to some POAO, such as eggs and butter. If the goods are rejected, they must be either re-exported or destroyed.

Animal products include dairy products, eggs and egg products, honey, red meat, poultry, farmed and wild game, and foods containing these, and gelatine (other than capsules for food supplements for human consumption).

Each consignment of animal products must:

- come from EU-approved premises, except for egg products and honey;
- be accompanied by animal health and public health certification (certifications found in Regulation (EU) No. 215/2010); and
- enter the EU through a border inspection post (with veterinary checks).

20 What are the regulations related to livestock slaughtering?

Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing lays down rules for the killing of animals bred or kept for the production of food, wool, skin, fur or other products, and the killing of animals for depopulation. The Regulation introduces a series of new, directly applicable operational requirements, and requirements for the construction, layout and equipment of slaughterhouses.

The Regulation also permits EU member states to maintain existing national rules in force at the time the Regulation came into force, where they provide greater protection for animals at the time of killing than those in the Regulation, and provides a derogation to allow religious slaughter without prior stunning.

The Welfare of Animals at the Time of Killing (England) Regulations 2015 (WATOK) enforces the requirements of Regulation No. 1099/2009 and maintains national rules. Anyone carrying out (certain) slaughter operations must hold a certificate of competence (issued by the FSA), under the WATOK Regulations. The FSA issues certificates for slaughterers and other animal operatives such as handlers or shacklers, making sure they have the right training and

competence for the types of animals they are handling and the duties they are carrying out.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

Biocides control viruses, bacteria, fungi, insects and animals. Safeguards are crucial to ensure safety to people, the environment or animals. The HSE is the UK competent authority.

Two regulatory schemes assess the safety of biocides and active substances within them:

- Biocidal Product Regulation (Regulation (EU) No. 528/2012) (BPR), and its supporting legislation such as the Biocides Review Regulation (EU Regulation No. 1062/2014), cover a diverse group of products, including disinfectants, pest control products and preservatives; and
- the Control of Pesticides Regulations 1986 (COPR) is a UK scheme covering various pest control products that contain active substances that are not yet regulated under the EU BPR. These products are commonly referred to as 'non-agricultural pesticides' such as wood preservatives, insecticides for public hygiene use, rodenticides and insect repellents, including those applied to animals.

The EU BPR are enforced under the Health and Safety at Work etc. Act 1974 (HSWA), in line with the Health and Safety (Enforcing Authority) Regulations 1998 (SI 1998 No. 494), by virtue of Regulation 8(1) of the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

There is no specific type of legal form that must be used in the agricultural sector. Depending on their size and complexity, agricultural operations may be structured as companies, partnerships, joint ventures, 'branches' of overseas companies or cooperatives (which must be registered in one of several legal forms).

Farming operations, specifically, are generally run in one of the following ways:

- partnerships, where two or more persons operate a single farming business together for profit;
- contract farming agreements, in which the landowner owns a farming business and employs contractors to carry out various farming activities;
- share farming agreements, under which the landowner and share farmer share the land but run separate farming businesses on it;
- farming business tenancies, whereby the landowner leases land to a tenant who carries on a farming business; or
- cooperatives, within which farmers cooperate across production, collection or processing products.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

The acquisition of or investment in agricultural operations or businesses by foreign companies is not subject to governmental approval, although mergers with foreign corporations will be subject to review from a competition perspective. Approval is not required for foreign companies setting up agricultural research and development centres or acquiring agricultural land.

Agricultural operations or businesses will be subject to general governmental restrictions on foreign ownership or investment (eg, restrictions on the provision of funds to or dealing with the assets of sanctioned individuals and entities). General restrictions on mergers that threaten specified public interest concerns or that lessen competition also apply.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

Those who work in agricultural operations will be covered by any rules and laws that govern the rights of workers and employees generally in

the UK (eg, the right not to be subjected to unlawful discrimination and, if they have sufficient continuous employment, the right not to be unfairly dismissed). In particular, agricultural workers must receive at least the applicable UK national minimum wage (or national living wage for workers over 25 years old), minimum paid holiday entitlements and statutory sick pay (subject to eligibility criteria).

Agricultural workers in England who are still engaged on a contract entered into before 1 October 2013 may be entitled to enhanced levels of pay (depending on grade), particular terms dealing with allowances, grants and supplements (eg, dog allowances and night work supplements) and more favourable terms dealing with holiday and agricultural sick pay (as were provided for under the Agricultural Wages (England and Wales) Order 2012). Such additional entitlements will continue until the relevant employment contract is changed by mutual agreement or is terminated.

However, all agricultural workers in the rest of the UK are entitled to enhanced, industry-specific terms and conditions (including an 'Agricultural Minimum Wage' where this exceeds the minimum wage applicable to workers more generally). In this regard, in Wales, current minimum requirements are set out in the Agricultural Wages (Wales) Order 2018; in Scotland, equivalent protections are currently detailed in the Agricultural Wages (Scotland) Order (No. 65); and in Northern Ireland, the Agricultural Wages (Amendment) Order 2018 represents the current position.

25 How is farmworker immigration regulated in your jurisdiction?

Following the closure of the Seasonal Agricultural Workers Scheme – which permitted fruit and vegetable growers to employ migrant workers – at end of 2013, there are no longer any immigration schemes that are focused on farm or agricultural work, and employers in these industries are required to comply with the requirements of UK immigration law that apply to all other industries. In particular, companies are required to undertake document checks on all employees to ensure that they have the right to live and work in the UK.

Under current laws, farm and agricultural workers who are nationals from outside the European Economic Area (EEA) require a specific immigration permission to work in the UK, which may require them to be sponsored under Tier 2 of the points-based system. The majority of roles in the farm and agricultural sectors – such as farmers, horticultural trades, certain agricultural and fishing trades and managers and proprietors in agriculture and horticulture and forestry, fishing and related services – are at present only capable of sponsorship in certain limited circumstances. However, in order to alleviate some of the fears of farming staff shortages resulting from Brexit, the Home Office has recently announced a pilot initiative whereby up to 2,500 visas will be issued to enable fruit and vegetable growers to recruit seasonal workers to during peak production periods between spring 2019 and December 2020.

Brexit will, inevitably, have a more general impact upon the UK's immigration regime as the current freedom of movement rules (which allow EU and EEA nationals to live and work in the UK without any formal immigration permission) will cease to apply upon the UK formally leaving the European Union. Under current proposals, freedom of movement will continue to apply until the end of an 'implementation period' on 31 December 2020 with any EU or EEA nationals (including agricultural workers) who arrive in the UK before this date being able to remain and continue to work (subject to registering with the Home Office). Individuals who have been in the UK for five years will be granted 'settled status' (which allows them to remain indefinitely subject to certain restrictions) and those who have been in the UK for fewer than five years will be granted 'pre-settled status' (to allow them to remain lawfully until they reach five years and are eligible for settled status). Any EU or EEA national wanting to enter the UK from 1 January 2021 onwards will need to meet the requirements of the Immigration Rules at that time and there have already been recommendations from certain industries (including agriculture) that the skilled working visa rules will need to be updated so that certain key positions that do not meet the current minimum skill-threshold can still be recruited.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

The HSWA and the Management of Health and Safety at Work Regulations 1999 (MHSWR) require companies and individuals to ensure that adequate provision is made for health and safety at work. Under the HSWA and MHSWR, employers – including those in the agricultural sector – must ensure the health, safety and welfare of employees and any other potentially affected individuals. This includes making a suitable and sufficient assessment of health and safety risks and providing the necessary information, training, instruction and supervision in light of those risks.

There are a number of further regulations made pursuant to the HSWA and MHSWR that deal with specific health and safety issues (eg, the Health and Safety (First-Aid) Regulations 1981, which require employers to have adequate arrangements for first aid). The HSE has responsibility for enforcing the HSWA and MHSWR and has identified the agricultural sector as one of particular focus given that studies have demonstrated a high incidence of injuries and fatalities in the sector. The HSE has a website dedicated to promoting health and safety in the agricultural sector, which contains numerous helpful resources from FAQs to a bespoke guidance manual, *Farmwise*.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

The EU has created a Common Agricultural Policy (CAP) aimed at, among other things, stabilising markets and assuring the availability of supplies at reasonable prices while ensuring a fair standard of living for the EU agricultural community. The EU has enacted various regulations in view of the requirements for the proper operation (including import and export) of the CAP that are directly applicable in all EU member states.

The CAP covers a broad scope of agricultural products, ranging from basic to processed food and drink products. By using the applicable commodity code (ie, Combined Nomenclature code for customs purposes) of the agricultural product, the business operator can determine: whether the relevant agricultural product falls under a CAP scheme; and the applicable requirements (eg, registration, licence, refunds and quotas) in relation to the importation or exportation of the relevant agricultural product.

Defra is responsible for the agricultural policy (including licences for animal health imports) as well as representing UK interests at most international meetings, and consulting with UK trade interests and providing information on EU requirements to all interested parties. The Rural Payment Agency is responsible for applying certain EU CAP schemes in the UK, publishing information to trade bodies about CAP measures, processing registration, issuing import and export licences, and export refunds in the UK.

28 May tariffs, quotas or similar measures be put in place?

The EU can impose autonomous and preferential tariff import quotas that have direct effect in all EU member states (including the UK). Such import quotas can allow the import of specific agricultural products to be made at a reduced or nil rate of import duty and may be subject to import licences and security in the EU member state of importation. In practice, most import quotas work on a first-come, first-served basis irrespective of where the goods are imported into the EU.

Licence rules and the availability of quotas change frequently. It is recommended to check the UK Rural Payments Agency (RPA) pages for announcements.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The Treaty of Rome, creating the European Economic Community, was the founding legal basis for the CAP. Currently, the Treaty on the Functioning of the European Union sets out the objectives of CAP that are further shaped and effectuated by various EU regulations. On 1 June 2018, the European Commission presented legislative proposals on the future of the CAP for the period after 2020.

In addition, free trade agreements (FTAs) that the EU has concluded with various third countries can be applicable and have effect in relation to the importation and exportation of agricultural products.

The UK, by virtue of the European Communities Act 1972, is legally bound to the EU Treaties (eg, Treaty on European Union and Treaty on the Functioning of the European Union) and enacted regulations and concluded FTAs by the EU.

Following the referendum on 23 June 2016, the UK government has formally announced on 29 March 2017 that the country will leave the EU. As from 29 March 2017, a two-year period was started following article 50 of the Treaty on European Union to negotiate future relations between the EU and the UK. During this period, EU law will continue to apply. After this period, and possibly after an agreed transition period (agreed between the UK and the remaining 27 EU member states) in which EU law may continue to apply, the UK will not be part of the EU any more, and thus will most likely no longer be part of – among others – the CAP and the Common Commercial Policy (ie, EU FTAs). At this stage, it is said that UK agriculture, post Brexit and, post transition, will be operating outside of the EU's Common Agricultural Policy (CAP) under any future set-up scenario between the UK and EU.

As negotiations are still pending, it is, however, unclear how future relations between the EU and the UK will look like when the two-year period will end, which will be on 29 March 2019.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

In the UK, plant breeders' property rights are protected by the Plant Varieties Act 1997. The duration of these rights is 30 years from the date of grant for potatoes, trees and vines varieties and 25 years for other plant varieties. In order to qualify, the plant variety must be distinct, uniform, stable and new. The plant breeders' rights entitle the holder to prevent others from using the protected plant variety for production or reproduction, conditioning for the purpose of propagation, selling, offering for sale or other marketing, exporting, importing, or stocking the protected plant variety for any prohibited purpose.

A notable exception is the 'breeder's privilege', which allows the use of the protected plant variety as a starting point for breeding a further plant variety. The plant breeders' rights also do not extend to plant varieties used for private and non-commercial, or experimental purposes. Plant varieties will not be deemed new if sold or disposed for the purpose of exploiting the variety in the UK more than one year before the application or, for elsewhere than in the UK, more than four years (or six years for trees and vines) before the application. After two years of plant breeders' protection, any person can apply for a compulsory licence, upon fulfilment of certain criteria, if the rights holder unreasonably refused the grant of such licence or imposed unreasonable terms of such licence.

A similar regime is available at EU level through the Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights. The Union rights are granted for the entire territory of the European Union (ie, 28 member states). The term of the Community rights is 25 years, and 30 years for vine and tree species. However, a plant breeder must surrender its national plant breeder's rights upon grant of Community plant variety rights.

According to patent law in the UK and the European Patent Convention, plant breeders may to some extent benefit from patent protection. Plant and plant material are patentable; however, plant varieties are excluded from patentability irrespective of the way they were produced. Processes that are not essentially biological processes used for the production of plants (ie, crossing or selection breeding) are patentable and this protection extends to products directly obtained by such processes. Products and products-by-process, which are not plant varieties but result from essentially biological processes, are also patentable. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions also establishes that a new plant variety bred as a result of genetically modifying a particular plant variety is excluded from patent protection, even if the genetic modification is the result of a biotechnological process, but biotechnological inventions relating to plants are patentable if the technical feasibility of the invention is not confined to a particular plant variety.

Update and trends

Trade secrets and competitive intelligence

For many agricultural businesses, the most difficult intellectual property to protect is trade secrets and know-how, such as financial data and valuable information relating to unique manufacturing methods. The only way to protect these assets has traditionally been by way of contract; however, a pending change in law means this will no longer be the case. The new law presents both a sword and a shield, not only enabling agribusinesses to better protect their own trade secrets, but also providing an opportunity to legally access those of their competitors.

Brexit

Brexit has created a number of uncertainties for agribusinesses, including: the status of direct farm subsidies outside the CAP; access to foreign unskilled labour; changes to import regulations; supply and distribution contract compliance; and the implications for valuable EU-protected food names.

Big data

Like many economic sectors, the agribusiness sector can benefit from the potentialities of 'big data', which can notably improve forecast accuracy and support decision-making at many levels, from logistics management along the supply chain to pricing or crop production planning. The sector will thus be sooner or later confronted with the legal questions that the use of big data raises, including the need to comply with data protection legislation, including the requirements under the GDPR, where personal data is involved.

Focus on food safety and official controls

Consumers are increasingly concerned about the safety aspects of their food products. Regulatory requirements surrounding traceability and origin, nutritional information and labelling have a huge impact on agribusinesses. Regulators are becoming increasingly strict. In the aftermath of widespread fraud and shortcomings identified in the sector, such as the horse meat scandal in 2013 and the Fipronil eggs scandal that emerged in 2017, a recast set of EU rules on official controls and enforcement has been enacted, that will gradually be implemented in the coming years.

Innovation in farming and production methods

Continuous innovation in farming and manufacturing methods, processing, packaging and chemical substances used as pesticides and biocides will be accompanied by new regulatory requirements. New developments in agritech (or 'ag-tech') are driving disruptive change in the sector, and will have a huge impact on how agribusinesses are managed.

Novel foods

The global trend towards more sustainable consumption and production has stimulated research on new sources of protein. The large-scale breeding of insects is a new segment in the farming industry, and the first applications for authorisation of insects as food for human consumption have been filed with the European Commission. After they have been assessed by the EFSA, it is expected that the first authorisations will be issued in the second half of 2019. Insects are also increasingly used as a source of protein in animal feed, and have notably been authorised for use in fish feed.

More generally, innovation in the food sector falls under the scope of a specific set of rules, namely the novel food regulation, of which a recast has entered into force on 1 January 2018. Unlike most types of foods, novel foods have to undergo a pre-market approval process. The new rules notably provide for a data protection mechanism that allows innovative companies to enjoy a five-year exclusivity period in relation to their proprietary data.

Organic farming and GMO regulations

The EU legislature has enacted a new regulation on organic farming. While the main principles have been maintained, the regulation has been designed to establish a level playing field for EU-based operators and operators based outside the EU. The regulation maintains the prohibition of use of any GMO or GMO-derived product in organic production, which means that in the light of the decision issued by the Court of Justice of the EU in July 2018 whereby the court held that crops modified using the CRISPR technology have to be considered as GMOs, this technology will not be suitable for use in organic production.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

Farmers have access to protected plant varieties through 'farmer's privilege', which allows them to use for propagating purposes and on their own holdings the product of the harvest obtained by planting propagating material of the protected variety or of a variety essentially derived from it.

The UK Patent Acts 1977 also provides for an exception to patent infringement for any act that consists of the use by a farmer of the product of his or her harvest for propagation or multiplication by him or her on his or her own holding, where there has been a sale of plant propagating material to the farmer by the proprietor of the patent or with his or her consent for agricultural use. This exception only applies to specific plant species and groups listed in Schedule A1(2) of the Patents Act. The farmer is still liable to pay the rights holder an equitable remuneration for that authorised use unless the farmer is a 'small farmer' as defined in the same Schedule.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

In the UK, the Plant Varieties Act 1997 provides for the registration of the name of the protected plant variety. This registered name must be used when selling, offering for sale or otherwise marketing propagating material of the variety. This duty to use the registered name continues after the expiry of the plant breeders' rights. The name of a plant variety can also be protected by trademark rights, but the trademark or trade name, whether registered or not, can only be used if it is juxtaposed with the registered name and if the latter is easily recognisable.

A similar rule exists for plant varieties protected under the Community regime. In this case, the designated plant variety denomination must be easily recognisable as such, when used with a trademark or trade name associated with it. This also extends beyond the termination of the Community plant variety right.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

Defra is the government department responsible for protecting the UK's natural environment and supporting its food, agriculture and fisheries industries. In particular, Defra is in charge of implementing CAP reform as well as of monitoring environmental quality relating to agriculture (eg, by monitoring pesticide use).

Defra works closely with other executive non-departmental public bodies (including the Environment Agency) and executive agencies (such as the APHA). The Environment Agency is an important body, responsible for regulating major industry and waste operations, water quality and fisheries, among others. Agricultural businesses in need of environmental permits relating to waste, water or other activities must obtain their permit from the Environment Agency (or sometimes the local council; see question 35). Other bodies that may be involved with the environmental impact of farming include Natural England (it manages the Countryside Stewardship scheme) and local planning authorities (who manage general planning permission issues).

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Water and air pollution stemming from agricultural activity is regulated through EU directives that are transposed into national law (such as the Nitrates Directive), as well as national regulations, policies and initiatives. The process by which water and air pollution is regulated will likely change following Brexit.

Air pollution is currently tackled in a variety of ways. For example, businesses that emit potentially harmful substances (such as large chicken farms) are required to obtain an environmental permit, which sets limits or controls on emissions to air or water. In addition, several farming sectors participate in voluntary agreements made by UK

industry and the Environment Agency to reduce energy use and carbon dioxide emissions.

Water pollution is subject to similar restrictions – an environmental permit issued by the Environment Agency may be required if an activity involves discharging liquid effluent or wastewater into surface or groundwater. In addition, the use of nitrates is controlled through the Nitrate Vulnerable Zone rules, enforced by the Environment Agency. Another example of water pollution regulation is the controls on use of pesticides, whereby farmers may need to obtain a certificate of competence before spraying pesticides and follow a code of practice issued by Defra and the Health and Safety Executive.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Agricultural businesses must normally apply to the Environment Agency (or possibly the local council, depending on the type of activity and the pollution risk) for an environmental permit if they use, recycle, treat, store or dispose of waste. This includes farms running small waste incineration plants or solvent emission activities (releasing organic solvents into the air). Environmental permits must also be obtained if an entity carries out a standalone water discharge activity or standalone groundwater activity.

Some waste operations are exempt from needing a permit and can instead operate under a waste exemption, subject to certain criteria, such as storing sewage sludge at a farm before it is spread on land (the sludge must then be used in accordance with the Sludge (Use in Agriculture) Regulations 1989), or burning certain waste products on bonfires. Furthermore, the Environment Agency is not enforcing the requirement for an environmental permit in specific cases for certain activities – Regulatory Position Statements explain the circumstances when you do not need to apply for a permit for these activities.

Planning permission for a waste operation may also be required. If a business produces, holds or stores hazardous waste, that hazardous waste must be collected and recycled or disposed of by an authorised business. Finally, waste transporters, buyers, sellers, brokers or dealers should register with the Environment Agency as a waste carrier.

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The United States produces a wide array of agricultural products both domestically and globally. In 2016, the output of America's farms contributed \$152.5 billion to the US gross domestic product (GDP), which was less than 1 per cent of GDP. Moreover, US land area amounts to nearly 2.3 billion acres, with approximately 1.2 billion acres in agricultural land comprising:

- 408 million acres of cropland;
- 614 million acres in pasture and range;
- 127 million acres in grazed forestland; and
- 12 million acres in farmsteads and farm roads.

Domestically, in terms of sales value, the western state of California leads the country as the largest producer of agricultural products (crops and livestock), accounting for almost 11 per cent of the national total. The central states of Iowa, Texas, Nebraska and Minnesota round out the top five agricultural-producing states, and represent more than one-third of US agricultural-output value. California, Iowa, Illinois, Minnesota and Nebraska are the five states with the highest value of crop sales. Livestock production and sales occur in all 50 states. Finally, the central states of Texas, Iowa, California, Nebraska and Kansas lead the country in terms of sales value for livestock and derivative products.

Historically, bulk commodities (eg, wheat, rice, coarse grains, oilseeds, cotton and tobacco) comprised most of the US's agricultural exports. However, in the 1990s, US exports of consumer-oriented products including high-value products (such as dairy products, meats, poultry, live animals, oilseed meals, vegetable oils, fruits, vegetables and beverages) have reflected steady growth, while exports of bulk commodities have tended to fluctuate more widely. From 2013 to 2015, East Asia, Mexico and Canada combined to account for about 62 per cent of US agricultural exports.

US consumers also rely heavily on imports for certain products where demand far outweighs domestic production capacity. Over 95 per cent of the coffee, cocoa, spices, fish and shellfish products consumed in the US are imported, as are about half of the fresh fruits and fruit juices, and almost one-third of the wine and sugar. As high US incomes drive consumption, the volume of US agricultural imports has increased by 4 per cent annually, on average, since 2000. Mexico and then Canada are expected to remain the top US agricultural suppliers in fiscal year 2017.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

A number of federal and state statutes regulate agricultural activity in the US. The US Congress has the power to regulate agricultural production under article 1, section 8 of the Federal Constitution. Programmes and laws that pertain to farming are overseen by the Secretary of Agriculture, who represents the US Department of Agriculture (USDA) in the president's cabinet. The USDA is the federal executive department responsible for developing and executing federal government policy on farming, forestry and food. It has a number of purposes, such as being responsible for the safety of poultry, egg products and meat.

The 10th Amendment of the Constitution gives states the right to pass laws that promote the general safety and wellbeing of the public. Courts have found that agricultural production and consumption directly affect public health and safety. Thus, the 10th Amendment provides the basis for states to enact their own agricultural laws, provided that such laws are not in contravention of federal laws and regulations.

The US addresses agricultural and food policy through a variety of programmes, including commodity support subsidies, nutrition assistance and conservation. The primary legal framework for federal agricultural policy is set through a legislative process that occurs approximately every five years. The current farm law, the Agricultural Act of 2014 (2014 Farm Act), was signed on 7 February 2014, and will remain in force through 2018, and beyond, with respect to some provisions. The effects of the 2014 Farm Act included:

- major changes in commodity programmes;
- new crop insurance options;
- streamlined conservation programmes;
- modification of certain provisions of the Supplemental Nutrition Assistance Programme; and
- expanded programmes for:
 - specialty crops;
 - organic farmers;
 - bioenergy;
 - rural development; and
 - beginning farmers and ranchers.

As of September 2018, a new farm bill has not been passed. On 18 May 2018, a block of conservative Republican lawmakers joined Democrats in the United States House of Representatives to vote against the \$867 billion new farm bill. Points of contention for the new farm in Congress revolve around more robust work requirements before someone can claim food stamps, immigration, tariffs and environmental conservation.

Furthermore, the federal Food and Drug Administration (FDA) is responsible for ensuring that the US food supply is safe, wholesome, sanitary and properly labelled. The FDA regulates the production and supply of food products through the Food, Drug, and Cosmetic Act (FDCA) and related rules and regulations.

Parties that violate federal and state laws and regulations for food production and distribution can face severe civil and criminal penalties and lose the ability to distribute food products.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Non-governmental organisations (NGOs) and non-profit organisations play integral parts in shaping US agricultural policies and programmes. Overarching programmes, such as the Farm Credit System (Farm Credit), finance rural infrastructure projects and agricultural activities across the sector, with its source of capital from Wall Street. Farm Credit made its first loan more than a century ago and comprises a nationwide network of 77 customer-owned lending institutions that are cooperatively owned institutions that lend to:

- farmers;
- ranchers;
- farmer-owned cooperatives and other agribusinesses;

- rural homebuyers; and
- infrastructure providers in rural America.

Combined, Farm Credit organisations provide more than US\$235 billion in loans, leases and related services, which is more than one-third of the credit needed by US agriculture. Capital extended by Farm Credit finances approximately 500,000 borrower-owners in agricultural production activities, land and farm equipment acquisitions, and the construction of facilities for commodities storage, packaging and processing.

Other NGOs and nonprofit operate at the state or federal level. For instance, the American Farm Bureau Federation provides a national advocacy platform to advance the educational, economic and social interests of farmers and ranchers. State farm bureaus provide targeted agricultural support at the local level. Additionally, specific sectors and states have trade organisations that focus on particular commodities and geographical areas, such as the California Fresh Fruit Association, the Corn Refiners Association, and the US Dairy Export Council.

Finally, organisations, such as 4-H, serve as youth development programmes that encourage students to pursue agricultural-related interests and careers to bolster the pipeline of the next generation of farmers and ranchers.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

There are no federal laws requiring tendering or prior approval for the sale of privately owned agricultural land and, as such, private parties can contract for the sale of agricultural land. This is usually facilitated by a purchase and sale agreement. However, there may be reporting requirements for foreign investors of US real property, a breach of which could lead civil penalties and cause the land to escheat to a specific state with a reimbursement to the foreign owner at market value.

Additionally, the US government currently owns approximately 28 per cent of the country's total land base. Property owned by the federal government is not usually available for purchase by the public. However, if government property is deemed surplus, the General Services Agency can ultimately make it available for purchase through a competitive sale process. Finally, while most states have legislation addressing agricultural leases, federal law primarily relates to grazing.

The 2008 Farm Act expanded support for conservation practices on all cultivated land (including fallow land). To remain eligible for specified programme benefits, farmers cropping highly erodible land are required to implement an approved conservation plan (highly erodible land conservation provisions or sodbuster) and to be in compliance with wetland conservation provisions. Programmes, such as the Environmental Quality Incentives Programme and the new Conservation Stewardship Programme, provide assistance on lands in production. Land retirement programmes – including the Conservation Reserve Programme (CRP), the Conservation Reserve Enhancement Programme, and the Wetlands Reserve Programme (WRP) – remove environmentally sensitive land from production and establish long-term, resource-conserving cover. Under the 2014 Farm Act, the acreage cap for the CRP was scheduled to decline from 32 million acres to 27.5 million acres beginning in fiscal year 2014 and by 24 million acres in 2017.

Agricultural conservation easements are used by the federal and state governments and non-profit to preserve farmland. Development restrictions are recorded on deeds and run with the land either permanently or for an agreed length of time. Landowners voluntarily restrict their land in order to receive benefits either in terms of direct cash payments or tax incentives.

5 Outline any rules related to use of farmland for non-agricultural uses.

The US is primarily an urban population living in a rural nation, according to the US Department of Agriculture Economic Research Service (USDA ERS). A key policy objective is to mitigate the loss of farmland for reasons of food security, preservation of rural lifestyle, environmental protection, and the prevention of urban sprawl.

All 50 states have enacted their own right-to-farm laws. These statutes seek to protect qualifying farmers and ranchers from nuisance lawsuits filed by people or companies that move into a rural area where normal farming operations exist and who later use nuisance actions to attempt to stop such farming operations. A variation of the right-to-farm law creates agricultural districts. Agricultural operations located within these districts are protected from nuisance suits and local regulations that limit normal agricultural practices. In addition to nuisance suit protection, some districts may include tax incentives for landowners.

Additionally, some states use zoning as a means of protecting farmland. Zoning regulations can dictate minimum parcel size, limit permissible uses, and deter sale for other uses. Permissible uses are generally associated with the overall agricultural purpose and include farm labour housing, processing facilities, and marketing facilities.

Furthermore, Urban Growth Boundaries (UGBs) are planning boundaries used to focus urban expansion and growth inward. UGBs set the limits for a city's projected growth. An urban development cannot extend past an UGB and more compact efficient development occurs in already urban neighbourhoods within the boundary.

Finally, several states have statutes or constitutional provisions that restrict the power of certain corporations to engage in farming or agriculture, or to acquire, purchase, or otherwise obtain land that is used or usable for agricultural production. Most corporate farming laws are enacted as statutes rather than constitutional amendments. Nine states have laws that prohibit or limit corporate farming. These are:

- South Dakota;
- North Dakota;
- Oklahoma;
- Iowa;
- Minnesota;
- Wisconsin;
- Nebraska;
- Missouri; and
- Kansas.

The primary goal of corporate farming laws is to protect the economic viability of family farms in light of the threats from competition with corporate-owned or corporate-managed farms.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

US farm debt has been steadily rising. The USDA estimates that total farm business debt was \$357 billion at the end of 2015, an increase from \$279 billion in 2010. The USDA's current estimates reflect that farm business real estate debt outstandings rose 36 per cent and non-real estate farm business debt rose 18 per cent in the five years ending in 2015.

While traditional mortgages allow for the purchase or refinance of a residential property, farm financing is specifically for properties that are zoned agriculturally, and as such, the property has to involve the production of agricultural products, such as growing fruits and vegetables or raising livestock. Additionally, agricultural lenders typically require that a borrower have enough experience working on and running a farm or agricultural property to justify a loan.

Farm Credit continues to be the dominant lender to US agriculture. Commercial banks held nearly half of all non-real estate (production) farm debt, with Farm Credit holding more than 46 per cent of farm business real estate debt (farmland-secured debt) in 2015. Loans priced through Farm Credit are based on bonds issued by the Farm Credit Funding Corporation (FCFC). The bonds are considered to be risk-free because they are guaranteed or backed by the FCFC, a government-sponsored entity.

The Farm Service Agency (FSA) is a part of the USDA. The FSA offers loan programmes to farmers that are unable to obtain personal or commercial loans. The FSA offers loans that are guaranteed and are direct loans to the borrower. Guaranteed loans provide the lender with a guarantee of repayment of 95 per cent of the loan amount if the borrower defaults on the loan. These guarantees help borrowers because it makes agricultural lending more attractive to lenders.

Congress created the Federal Agricultural Mortgage Corporation Farmer Mac (Farmer Mac) as a secondary market for farm mortgages. In order to accomplish its goal, Farmer Mac offers three loans

programmes: Farmer Mac I, Farmer Mac II and Rural Utilities. Farmer Mac is not a direct lender, instead offering its programmes through various lenders around the country.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

The US Constitution delegates authority to Congress to enact uniform bankruptcy laws, thus barring states from having individual forms of bankruptcy. However, state laws defining and regulating the debtor-creditor relationship affect bankruptcy proceedings since some sections of the Bankruptcy Code incorporate these state laws. The Bankruptcy Code is found in Title 11 of the US Code. It provides five different types of proceedings under the two broad categories of liquidation or reorganisation. The individual proceedings are referred to by the code chapters where they are established. Chapter 7 involves liquidation, while Chapters 9, 11, 12 and 13 involve reorganisation. Chapter 12 applies specifically to eligible farmers, farms and farm businesses.

The agriculture crisis of the 1980s led US Congress to enact emergency legislation creating a bankruptcy proceeding specifically applicable to farmers. Chapter 12 was created to provide farmers with a mechanism to reorganise their debts and retain their land. Owing to the urgency surrounding the enactment of legislation and the uncertainty of its ultimate success, Chapter 12 was originally enacted as a temporary measure and contained a sunset provision that required periodic action to renew the code section. In 2005, however, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (codified in scattered sections of Title 11 of the US Code), which made Chapter 12 a permanent part of the Bankruptcy Code.

Once a debtor files for Chapter 12, the proceeding automatically stays most collection agents. The court appoints an impartial trustee to evaluate the case and aid with disbursement. Each debtor, however, is entitled to remain in possession of the farm assets, subject to specific duties and can only be removed for cause. After a debtor has organised a repayment plan, a meeting of creditors is held where creditors and the trustee question the debtor regarding their financial affairs and the proposed plan. After the court confirms the repayment, the debtor must meet their obligation to make regular payments to the trustee in order to ensure creditors receive payment.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

The federal government, under the Fifth Amendment to the Constitution, and state governments, under the 14th Amendment to the Constitution, can take privately owned land for public uses (US Constitution amendments V, XIV section 1). This right to take private property is called 'eminent domain'. There is no definition of 'public use', but courts have upheld 'public use' to include:

- the construction of governmental buildings;
- transportation improvements;
- the development of utilities; and
- other purposes benefiting the public.

If a government exercises its eminent domain powers, under the Constitution it must give the landowner 'just compensation' for taking the real property. This is generally the fair market value of the property (ie, the amount a buyer would willingly pay a seller).

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Foreign investors in agricultural land are subject to the Agricultural Foreign Investment Disclosure Act of 1978 and state anti-corporate laws. (See question 5.)

Though not specific to agriculture, the US has established a committee to review foreign investments in domestic companies (Committee on Foreign Investment in the US (CFIUS)). If a foreign investment is subject to CFIUS approval, the parties must first submit a voluntary notice to CFIUS. However, CFIUS can review transactions under its jurisdiction, even if no notice is submitted. Upon receipt, the staff chairperson confirms that the notice satisfies the regulatory notice requirements and if so, circulates the notice to the other CFIUS members triggering the start of a 30-day review period. CFIUS then reviews the transaction to identify whether it poses any national security concerns. CFIUS can request additional information, initiate another

investigation, or refer the transaction to the president in its discretion, all of which extend CFIUS' review period.

In addition to the CFIUS approval, there are several statutes that require information gathering and disclosure relating to foreign investment in domestic companies. The International Investment and Trade in Services Survey Act of 1976 authorises the US president to collect information on international investments and US foreign trade.

The Foreign Direct Investment and International Financial Data Improvements Act of 1990 directs the Bureau of the Census and the Bureau of Economic Analysis of the Department of Commerce to exchange business data obtained under the census that is relevant to the International Investment and Trade in Services Survey Act.

The Agricultural Foreign Investment Disclosure Act of 1978 requires a foreign person acquiring an interest in agricultural land to report the transfer or acquisition to the Secretary of Agriculture within 90 days.

The Domestic and Foreign Investment Improved Disclosure Act of 1977 requires any party acquiring 5 per cent or more in a company registered with the Securities and Exchange Commission (a public company) to disclose certain identifying information to the government).

Finally, foreign investments can also be subject to antitrust laws and restrictions.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The USDA administers programmes to support farm income, assist farmers after disasters, and conserve natural resources. The USDA provides support through agricultural subsidies and insurance, which cost about \$20 billion annually.

Insurance

Crop insurance provided by the USDA's Risk Management Agency has become the largest farm programme with annual outlays of about US\$8 billion. Subsidised insurance protects against various business risks, such as adverse weather, low production, and low revenues and covers more than 100 crops. The Risk Management Agency subsidises both insurance premiums and the administrative costs of the 19 private insurance companies that offer policies to farmers.

Agricultural risk coverage (ARC)

This programme pays subsidies to farmers if their revenue per acre, or alternately their county's revenue per acre, falls below a benchmark or guaranteed level. More than 20 crops are covered by the ARC. While ARC subsidies fluctuate, they amounted to approximately \$7 billion in 2016.

Price loss coverage

This programme pays subsidies to farmers based on the average national price of each particular crop compared to the crop's reference price. Price loss coverage subsidies cover more than 20 crops and were about \$2 billion in 2016.

Conservation programmes

The USDA runs numerous farm conservation programmes, which cost more than \$5 billion a year. The largest is the CRP, which pays farmers about \$1.7 billion a year to conserve millions of acres of their lands by keeping them out of production. (See question 4.)

Marketing loans

This programme delivers higher payments to farmers when market prices are low and cost about \$400 million in 2016.

Disaster aid

The government operates various disaster aid programmes for different types of farmers, such as wheat growers, livestock producers and orchard operators. In addition to permanent disaster programmes, Congress sometimes distributes additional aid after adverse events. Disaster and supplemental amount to \$1 to \$2 billion a year.

Marketing and export promotion

The Agriculture Marketing Service spends about \$1.2 billion a year on farm and food promotion activities. The Foreign Agricultural Service spends about \$1.4 billion a year on a range of activities, including marketing US farm and food products abroad through 93 foreign offices.

Research and other support

The USDA spends about US\$3 billion a year on agriculture and food research at more than 100 locations. The department also provides other support services, such as statistical information and economic studies.

Finally, the USDA offers a variety of grants and loans to assist farmers in producing and selling agricultural commodities.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

While the US does not directly promote foreign investment in US agriculture, it is a strong proponent of investment in agriculture overseas.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

There are specific regulations for meat and poultry. The Federal Meat Inspection Act was passed in 1906 and is intended to ensure that only healthy meat products are sold by regulating slaughter, processing and handling. The Act requires the USDA to inspect meat processing plants that conduct business across state lines. The Pure Food and Drug Act, enacted on the same day in 1906, also gave the government broad jurisdiction over food in interstate commerce.

The four primary features of the Meat Inspection Act are:

- mandatory inspection of livestock before slaughter (cattle, sheep, goats, equines and swine);
- mandatory post-mortem inspection of every carcass;
- sanitary standards established for slaughterhouses and meat processing plants; and
- authorisation of the USDA's ongoing monitoring and inspection of slaughter and processing operations.

The Wholesome Meat Act (also called the 'Equal To' law) amended the Federal Meat Inspection Act in 1967 to establish a statute for federal meat inspection programmes. It required that states have inspection programmes 'equal to' that of the federal government, which are administered by the Food Safety and Inspection Service (FSIS) of the USDA.

Similar to the Federal Meat Inspection Act, the Poultry Products Inspection Act of 1957 was enacted to ensure that only healthy poultry products are sold by regulating slaughter, processing and handling.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Food safety is regulated through several bodies of legislation:

- The Federal Food, Drug and Cosmetic Act (FFDCA) is the predominant legislation governing food safety. It authorises the FDA to oversee the safety of food, drugs and cosmetics.
- The FDA Food Safety and Modernization Act of 2010 (FSMA) is the most significant food safety legislation since the FFDCA. It focuses regulations on preventing contamination and authorises the FDA to regulate how foods are grown, harvested and processed.
- As noted in question 12, the Meat Inspection Act and the Poultry Products Inspection Act regulate meat and poultry.
- The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulates pesticides and is designed to protect applicators, consumers and the environment.

While several federal agencies are involved in food safety, the FDA and the USDA FSIS are primarily responsible for enforcing the regulations. The FDA has jurisdiction over all US 'food', and the FSIS has jurisdiction over products containing meat, poultry and processed egg products.

Under the FSMA, the FDA promulgates safety standards. First, the FDA publishes a proposed standard in the Federal Register, which makes the standard available to the public and provides an opportunity to comment for a period usually ranging from 30 to 90 days. Next, the FDA reviews comments submitted on the proposed standard and may revise the standard based on the feedback received. The FDA then publishes the final standard in the Federal Register, and those parties subject to the final standard must come into compliance by the effective date of the standard as published in the Federal Register.

It should be noted that state agencies may promulgate additional safety regulations.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The array of enforcement tools available to the FSIS and the FDA include:

- warning letters;
- adverse publicity;
- injunctions;
- product retention;
- seizure;
- criminal prosecution; and
- recall.

These tools are not mutually exclusive. There is a considerable overlap of food enforcement authority between the states and the FDA.

By comparison, FSIS's enforcement authority is more narrowly defined, encompassing primarily meat, poultry and eggs. Owing to federal pre-emption there is less overlap with state authority in this context.

The recall of food is considered the most important tool in the enforcement of food safety regulations. With the amendments made to the FSMA in 2010, the FDA has the statutory authority to order companies to recall food, while all recalls administered by FSIS remain voluntary.

Section 11,017 of the Food, Energy, and Conservation Act of 2008 (Farm Bill 2008), requires any establishment subject to FSIS inspection to promptly notify the USDA if it has reason to believe that a misbranded or adulterated meat or poultry product has entered commerce. FSIS-inspected establishments are also required to develop and maintain recall plans for inspectors to copy and review. Since FSIS inspection is mandatory for certain products under its oversight, FSIS can sanction a firm by withdrawal of inspection. Loss of inspection often results in the closing of the business establishment.

The threat of criminal penalties against corporations and individuals for violations of food regulations is the ultimate enforcement tool for the FDA and FSIS. Offences may be prosecuted as misdemeanours or felonies, and penalties may involve fines or imprisonment. The legal standard for individual criminal liability under the FDCA is set forth in *United States v Park*, 421 US 658 (1975). The US Supreme Court held that FDCA is a strict liability law with respect to responsible corporate officials, meaning that corporate officials can be responsible irrespective of whether they have actual knowledge of the violative condition.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

If a food product is organic, the producer may choose to label it as such, but then must satisfy the criteria of the USDA and National Organic Program before it can label any food product as 'organic' (Nutrition Labelling and Education Act of 1990 (NLEA), 7 CFR section 205). Individual states may also have voluntary organic certification programmes.

New technologies have generated considerable controversy with the safety of food. One is biotechnology, which is the manipulation of the genetic material of living seeds or embryos usually before they reach the farm. The US approach to the regulation of genetically modified organisms (GMOs) is termed 'substantial equivalence'. Under this standard of new GM products are compared to conventional products that have been consumed for many years. New crop varieties produced through biotechnology – if they are 'substantially equivalent' – are treated the same as their conventional counterparts.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

NLEA dictates how prepared foods, including canned and frozen crops, must be labelled. Raw fruits and vegetables are not subject to the NLEA's labelling requirements. Pursuant to NLEA, labels for regulated foods must identify food type, volume, ingredients and other information.

The 2002 Farm Bill introduced country of origin labelling requirements. These requirements oblige sellers of perishable agricultural products, including fresh fruits and vegetables, and related items to identify the country where the product was produced.

With respect to GMOs, currently three US states have laws on the books mandating the labelling of GM foods. Connecticut and Maine respectively passed their laws in June 2013 and January 2014, both including trigger clauses requiring four neighbouring states to pass similar legislation. In April 2014, Vermont became the first state to pass labelling laws without a trigger clause, which went into effect on 1 July 2016.

Civil and criminal penalties can apply to farmers and food processors that breach food labelling.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The majority of animal cruelty laws are enacted and offences prosecuted on the state level.

On the federal level, the first statute enacted was the Animal Welfare Act (AWA), initially passed in 1966 to prevent pets from being stolen for sale to research laboratories, and to improve the treatment and wellbeing of animals intended for research. Since that time, it has been amended six times with the latest change occurring in 2007. Under the AWA, businesses and others with animals covered by the law must be licensed or registered, and they must adhere to minimum standards of care. Farm animals are among those not covered by the Act, which nonetheless provides a broad set of statutory protections for animals.

At the state level, laws to prevent deliberate animal cruelty sometimes apply to farm animals, but few states have prescribed on-farm treatment standards. The three exceptions are:

- Florida, where voters in 2002 approved a ballot measure outlawing gestation crates for pigs;
- Arizona, where voters outlawed pig gestation crates and veal stalls in 2006; and
- California, where pig gestation crates, veal stalls and battery cages for hens were prohibited in the November 2008 election.

18 What are the restrictions on the movement of animals within your country?

The Twenty-Eight Hour Law, 49 US Code section 80,502, was first re-enacted in amended form in 1994 by Public Law No. 103-272. It is also known as the Cruelty to Animals Act, the Live Stock Transportation Act, and the Food and Rest Law. It provides that:

a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals [across state lines] may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

The Twenty-Eight Hour Law also provides that '[a]nimals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least five consecutive hours'. However, the statute 'does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest'.

The 28-hour period, however, is subject to several exceptions, such as:

- allowing extra confinement for sheep under certain conditions;
- abeyance of the statute with respect to all animals if such animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

- when the owner or person having custody of the animals requests that the period be extended to 36 hours.

Violation of this statute allows the US Attorney General to bring a civil action against the violator, and the penalty is a fine between \$100 and \$500 for each violation.

19 Describe any restrictions on import of food animals.

The importer must obtain a permit from the Animal and Plant Health Inspection Service (APHIS). Since there are different import protocols depending on the species and country of export, the importer would need to work directly with APHIS in order to determine the exact process and requirements needed for the proposed import. The importer must generally obtain a USDA veterinary permit. The procedure varies depending on the type of animal product and intended purpose, such as whether the product is intended for human consumption. Some animals and animal products do not require an APHIS permit. A list of such animals and animal products is available on the USDA's website (www.aphis.usda.gov).

20 What are the regulations related to livestock slaughtering?

The Humane Slaughter Act is enforced by the Secretary of Agriculture under provisions of the Federal Meat Inspection Act, 21 US Code section 603(b). The central provision of this statute outlines the methods of slaughter that are deemed to be 'humane', and thus appropriate for use in slaughtering livestock.

While poultry is excluded from the provisions of this Act, their slaughter is governed by the Poultry Products Inspection Act 21 US Code A section 451-472 (PPIA). PPIA and accompanying regulations require that poultry be slaughtered using 'good commercial practices', and give the FSIS the authority to govern those practices.

21 Outline the regulatory regime relating pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The US Environmental Protection Agency (EPA) is the primary entity charged with regulation of pesticides, although it works in conjunction with state agencies. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), establishes the general system of federal pesticide regulation, and the FFDCA, establishes the system to govern pesticides in food and feed. States are generally permitted to enact legislation that restricts pesticide use more than federal law requires.

The EPA regulates pesticides through registration and labelling requirements. As part of the registration process under FIFRA, manufacturers must submit scientific data on pesticide toxicity and environmental behaviour. If a pesticide will be used on food or a feed crop, data must be supplied to identify scientific methods that will detect the pesticide or its residues on food and specify the acceptable amounts that may be present in the food.

Pesticides may not be sold unless they are registered and labelled. The portions of the FFDCA that affect pesticides guide the establishment of tolerances for pesticides and their residues in food and feed. Foods that have residue amounts higher than allowable tolerances or where no tolerance has been specified are deemed to be adulterated and cannot be sold.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Cooperatives are typically utilised in the agricultural sector because they enable farmers and other industry participants to maximise the value of their goods and services. Though not specifically regulated with respect to foreign investment, it is challenging for a foreign party to invest in a cooperative because members must provide and use the services of the cooperative, therefore, a local presence is generally required. Other entity types, such as corporations and limited liability companies (LLCs), are regularly used in agriculture. Foreign investors should also note whether a corporation is an 's corporation' and whether a LLC has elected an 's status', as these designations prevent ownership by a foreign person pursuant to the US Tax Code (26 US Code section 1361(b)(1)(c)).

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

As noted in question 9, foreign ownership of agricultural operations is also subject to antitrust prohibitions. In recent years, there have been numerous antitrust cases in the US agricultural industry, particularly among seed companies. Three bodies of law combine to form US anti-trust law:

- Sherman Act of 1980: prohibits transactions and activities that lessen trade and create monopolies;
- Clayton Act of 1914: covers those mergers and acquisitions that lessen trade and create monopolies that are not already covered under the Sherman Act;
- Hart-Scott-Rodino Antitrust Improvements Act: amends the Clayton Act, and requires parties engaged in covered transactions to receive approval that such covered transaction will not negatively impact US commerce pursuant to the US antitrust laws upon filing of a pre-merger notification with the US Federal Trade Commission (FTC) and Department of Justice; and
- Federal Trade Commission Act of 1914: prohibits unfair competition and deceptive practices, and also establishes the FTC.

Together, these laws prevent practices that unreasonably restrict trade, lessen competition and create monopolies. Finally, most states have individual antitrust laws that are based upon and supplement the federal antitrust laws.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The Fair Labor Standards Act of 1938 (FLSA), is a sweeping federal statute that:

- sets minimum wages;
- requires overtime wages;
- restricts child labour; and
- mandates some record keeping by employers.

The FLSA covers employees of employers engaged in interstate commerce directly or engaged in the production of goods and services for interstate commerce. However, agricultural employers are exempt from certain requirements of the FLSA. Under the FLSA agriculture is defined as farming and all its branches, raising livestock or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations. Regulations and case law further define agricultural employees as persons employed in farming, by a farmer, or on a farm. The exemptions for agricultural employers are different for each broad coverage area of the FLSA.

25 How is farmworker immigration regulated in your jurisdiction?

The Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA), was enacted to protect migrant and seasonal workers and is the primary agricultural labour statute.

MSPA establishes, in part, wage and working condition requirements and requires the registration of farm labour contractors. 'Farm labour contractors' are defined by the statute as any person other than agricultural employers, their employees, or agricultural associations, that recruit, solicit, hire, employ, furnish or transport any migrant or seasonal agricultural worker for money or other valuable consideration.

The only workers covered by MSPA are persons engaged in seasonal or temporary agricultural employment. While MSPA is enforced by the US Department of Labor, it also creates a private right of action.

The Immigration Reform and Control Act of 1986 (IRCA), limits unauthorised immigration into the US. The statute creates employer sanctions for employing unauthorised aliens. All employers are required to verify the employment eligibility status of employees. Once verified as eligible, employers may not discriminate against employees based on citizenship or national origin.

The Immigration and Nationality Act, as amended by IRCA, also creates the current H-2A programme. This allows agricultural employers that have a shortage of qualified domestic workers to import non-immigrant aliens into the US. These workers are permitted to remain only temporarily for the purpose of seasonal agricultural work.

The current administration's enforcement of immigration policy is impacting the agricultural sector. As of September 2018, the Immigration and Customs Enforcement agency has conducted high profile raids on sugar, pig and wheat farms in the US. The ramifications of these raids are being felt both by undocumented employees, who are subject to deportation, and their employers, who face steep penalties and reputational risk.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

The Occupational Safety and Health Act of 1970 (OSHA), assures safe and healthy working conditions through the enforcement of workplace standards, provision of research and information in the field of occupational safety and health, and aid to state programmes that assure safe and healthy working conditions.

Agriculture is covered under OSHA in areas of:

- temporary labour camps;
- tractor rollover protection;
- guarding of farm field equipment;
- storage of anhydrous ammonia;
- field sanitation;
- hazard communication;
- cadmium usage; and
- logging operations.

Two exemptions are available for agricultural employers to remove them from coverage under OSHA. First, immediate family members of the farm employer are not considered employees and thus are not covered. Second, Congress has repeatedly included language in Department of Labor appropriations bills to exclude agricultural workers in operations that have had 10 or fewer employees, excluding family members, within the last 12 months, unless a temporary labour camp was maintained during the same time period.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

APHIS's Plant Protection and Quarantine (PPQ) division manages the import of plants and plant products into the US. If a party desires to import a plant or plant product (including genetically engineered seeds or crops) it must apply for a permit from APHIS, although certain plants and plant products may be imported without a permit.

PPQ also issues phytosanitary certificates for plants and plant products to be exported from the US, as well as export certificates for processed plant products. To obtain a phytosanitary or export certificate, an applicant must request an inspection and certification from PPQ in writing.

Under the Meat Inspection Act and Poultry Products Inspection Act, the FSIS is responsible for determining the equivalence of other countries' meat and poultry safeguards. A foreign plant cannot ship products to the US unless FSIS has certified that its country has a programme that provides a level of protection that is at least equivalent to the US system. In addition, FSIS operates a re-inspection programme at US border entry points. Under the FDCA, the FDA can refuse entry to any food import if it 'appears', based on a physical examination or otherwise, to be adulterated, misbranded, or in violation of the law.

28 May tariffs, quotas or similar measures be put in place?

The US levies tariffs and imposes quotas on various agricultural commodities. Under the US Constitution's Commerce Clause, Congress has exclusive power to regulate international trade.

United States President Donald Trump has imposed a series of tariffs commencing in January 2018. Some of these tariffs, particularly those enacted on Chinese goods, has elicited retaliatory measures that have adversely impacted US agricultural commerce. As of September 2018, the US has imposed tariffs on \$50 billion of Chinese goods, and China has responded by assessing tariffs on an equal amount of US exports, particularly soybeans. (Soybeans are the US's largest agricultural export to China, with more than \$14 billion exported to China in 2016.) To offset losses, in July 2018, the Trump administration announced it would pay farmers up to \$12 billion.

Update and trends

The new US farm bill, though not passed as of September 2018, is likely to be more conservative than its 2014 predecessor. More robust work requirements before parties can collect state benefits for food and other items will likely be included in this iteration of the farm bill.

The outcome of US international trade policy as it relates to tariffs will dictate which measures and countermeasures will be enacted on US exports, particularly agricultural ones. If tariffs continue to become more onerous, mitigation techniques, such as subsidies, may continue to be utilised.

Finally, immigration reform may have unintended consequences for 'smart technology farming'. As US farmers may not be able to rely on undocumented labour, purveyors of agricultural robotics and other tools for automated farming have seen a drastic increase in orders and interest in their products.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The US is party to the following international agricultural treaties and organisations.

General Agreement on Tariffs and Trade and World Trade Organization

The General Agreement on Tariffs and Trade (GATT), which was adopted in 1948, created a multilateral trading framework that established rules among participating nations to assure the predictable international trade of goods. The Agreement Establishing the World Trade Organization (WTO) of 1994 was part of the Final Act of the 1986–1994 Uruguay Round, the last GATT round.

The Uruguay Final Act of 1994 also included agreements related to agriculture such as the Agreement on Agriculture (AA), the Agreement on Sanitary and Phytosanitary Measures (SPS), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Agreement on Agriculture

The AA focuses on market access, domestic support and export subsidies. Market access is addressed by tariffication and the reduction of tariffs.

Developed countries must reduce their tariffs more quickly and to a greater degree than developing countries, and least-developed countries are not required to reduce their tariffs.

Agreement on Sanitary and Phytosanitary Measures

The SPS recognises the importance of a nation's right to protect food safety, animal health, and plant health. However, the agreement attempts to ensure that these laws are applied to protect health and safety rather than as trade barriers.

Agreement on Trade-Related Aspects of Intellectual Property Rights

TRIPS regulates ideas and knowledge as part of trade. Intellectual property rights are of particular importance in the agricultural sector as they relate to biotechnology, conventional species breeding, and agricultural input products, such as pesticides and mechanical equipment.

Finally, the US has trade agreements with individual countries and multiple countries within a region, in addition to broad agreements from the WTO and GATT negotiations and North American Free Trade Agreement (NAFTA) undertakings.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

The Plant Variety Protection Act (PVP) protects breeders' rights by granting control over new sexually reproduced or tuber-propagated plant varieties. Under the related Plant Variety and Protection Regulations, a breeder can obtain a plant variety certificate from the Plant Variety Protection Office (PVPO), which gives the breeder the ability to prohibit others from selling, reproducing, exporting, importing, and developing a hybrid or different variety of the certified plant.

To obtain a plant variety certificate, the breeder (an individual person, not an entity) must submit a detailed application to the PVPO.

In contrast to the PVP, the Plant Patent Act protects breeders' rights by granting control over new plant varieties other than sexually produced and tuber-propagated plants and prohibiting third parties from asexually reproducing, selling or using patented plants.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

Third parties may use protected plant varieties for additional breeding or other bona fide research without infringing upon the rights of a breeder's plant variety certificate. However, any third party wishing to sell, offer for sale, reproduce, import, export or use a protected variety to produce a hybrid or another variety must contact the breeder for consent before conducting such activity, otherwise the third party may be deemed to have infringed upon the breeder's rights of protection granted under the certificate.

Under applicable law, a farmer who receives a licence from, or is otherwise permitted by, a certificate holder to produce or sell the seed of a certified variety may also save the seed for replanting and sell saved seed to other farmers. This right to save seed for replanting or sale to other farmers is known as a 'crop exemption' (7 USC section 2,543 and *Asgrow Seed Co v Winterboer et al* (1995)).

A farmer must generally negotiate the terms of the licence or permission to use the seed for commercial purposes directly with the certificate holder before he or she is able to take advantage of the crop exemption. A farmer who produces or sells certificated varieties without a licence or consent from the certificate holder may not be entitled to the crop exemption and may further be subject to legal action for infringing upon the rights of the certificate holder.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

The term of most plant variety certificates is 20 years from the date of issuance, and certificates for trees or vines survive 25 years.

Additionally, animal genes, as well as animal breeding and genetics technologies, can be protected under a utility patent much in the same manner as plant genes and plant breeding and genetics technologies.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The EPA is the primary federal regulatory body that administers and enforces environmental laws in the US. When Congress drafts an environmental law, the EPA implements it by writing regulations. The EPA sets national standards that states and tribes enforce through their own regulations. Nearly half of the EPA's budget is allocated to grants to state environmental programmes, nonprofits, educational institutions and other sources.

States and municipalities also enact environmental laws.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The Clean Water Act (CWA) is the primary legal and policy instrument for regulating the pollution of the nation's waters. The EPA is the primary agency tasked with implementing and enforcing the CWA, although it works in conjunction with state environmental agencies and the US Army Corps of Engineers.

The CWA is designed to 'restore and maintain the chemical, physical, and biological integrity of the Nation's waters'. It operates by authorising water quality standards for surface waters, requiring National Pollution Discharge Elimination System permits for 'point source' discharges of pollutants into navigable waters, assisting with funding for construction of municipal sewage treatment plants, and planning for control of nonpoint source pollution. 'Navigable waters', defined in the statute as the 'waters of the United States', is a controversial term that has been further defined by agency regulations and numerous conflicting judicial interpretations.

Enacted originally in 1955 to protect the nation's air quality, the Clean Air Act (CAA) was amended in 1990 to its current form. The CAA seeks to protect human health and the environment from

emissions that pollute ambient, or outdoor, air. It requires the EPA to establish minimum national standards for air quality, and assigns primary responsibility to the states to assure compliance with those standards by requiring the development of state implementation plans. Areas not meeting the standards, referred to as non-attainment areas, are required to implement specified air pollution control measures. Finally, it addresses the prevention of pollution in areas with clean air and protection of the stratospheric ozone layer.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Several federal environmental statutes address the storage, handling and disposal of hazardous waste. The key pieces of legislation include the Resource Conservation and Recovery Act (RCRA), the Toxic Substance Control Act (TSCA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Resource Conservation and Recovery Act

Congress passed RCRA in 1976, which gives the EPA the authority to control hazardous waste from the 'cradle-to-grave', encompassing the generation, transportation, treatment, storage, and disposal these materials. RCRA also sets forth a framework for the management of nonhazardous solid wastes such as garbage. The 1986 amendments to RCRA enable the EPA to address environmental problems that could result from underground tanks storing petroleum and other hazardous substances.

Toxic Substance Control Act

In 1976 Congress also enacted TSCA. Under this Act, the EPA was given the responsibility to track and publish a database of the numerous industrial chemicals currently produced or imported into the United States. The EPA repeatedly screens these chemicals and can require reporting or testing of those that may pose an environmental or human-health hazard.

Comprehensive Environmental Response, Compensation, and Liability Act

In 1980, CERCLA (also known as 'Superfund') was enacted. This federal statute addresses discharges of hazardous waste into the environment by 'potentially responsible parties'.

Administered by the EPA, it develops a federal 'superfund' through the collection of taxes on hazardous materials, which may be used to clean up uncontrolled or abandoned hazardous waste sites as well as accidents, spills and other emergency releases of pollutants and contaminants into the environment.

Potentially responsible parties who can be identified bear the burden of the clean-up costs under joint and several liability.

The fund created by CERCLA is used to clean up abandoned sites, or those where responsibility cannot be established.



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