

FIRST
EDITION
2015

GLOBAL AGRICULTURE LAW

A GLOBAL GUIDE FROM PRACTICAL LAW

Long-term demand for a range of agricultural (food) products will be increasing dramatically over the coming decades. This demand is mainly being driven by developing countries in Asia.

International merger and acquisition activities in the agri-food and biotech industry have surged worldwide. New technologies and growing methods are changing the conventional agricultural business models. In spite of the need for cross-border operations and investment, it has remained difficult for investors to navigate through domestic agricultural policies, laws and regulations.

This publication is unique in its field. It takes a foreign investor's stand-point and makes cross comparisons between countries and different practice areas relating to foreign investment in agriculture business.

General Editor: Jan VM Holthuis
HIL INTERNATIONAL LAWYERS & ADVISERS

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Preface

Jan VM Holthuis
HIL INTERNATIONAL LAWYERS
& ADVISERS

Foreword

Dr William S Niebur
VP/GM North ASIA
DUPONT PIONEER

Argentina

Pablo Viñals Blake &
Ignacio Sánchez Echagüe
MARVAL, O'FARRELL & MAIRAL

Australia

Andrew Hay, Peter McMahon,
Nick Thomas, Cameron Gascoyne,
Gary Berson, Richard Hoad,
Dr Michael Maxwell, Scott Girdler,
Cain Sibley & Yehudah New
CLAYTON UTZ

Belgium

Philippe de Jong
ALTIUS

Brazil

Alexei Bonamin,
Andreia de Andrade Gomes,
Darcy Teixeira Junior,
Elysangela de Oliveira Rabelo,
Luiz Renato Okumura, Vera Kanas &
Vladimir Miranda Abreu
TOZZINFREIRE ADVOGADOS

Chile

Matias Araya & Sebastián Norris
ARAYA & CÍA ABOGADOS

China

Jan VM Holthuis, Yi Tao,
Gerard van Swieten, Liu Shu &
Dan Wei
HIL INTERNATIONAL LAWYERS &
ADVISERS

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STUDIO LEGALE ALBISINNI

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Daisuke Beppu
BLAKEMORE & MITSUKI

The Netherlands

Jan VM Holthuis,
Marc van der Velden &
Behnam Sobhani
HIL INTERNATIONAL LAWYERS &
ADVISERS

Nigeria

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DAYO AMOKAYE & CO

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FORMOSA TRANSNATIONAL
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Thailand

Prateep Naboriboon,
Siradapat Ratanakorn &
Chaiwat Keratisuthisathorn
TILLEKE & GIBBINS

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Zeynep Özkan Özeren &
İpek Güngörer
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William Neville & Alice Scott-Gatty
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EXACT SCIENCES CORPORATION

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Linh Duy Mai
TILLEKE & GIBBINS

Zimbabwe

Tatenda Mawere & Regis Chawatama
MAWERE & SIBANDA LEGAL
PRACTITIONERS

Global Agriculture Law

First edition 2015

**General Editor:
Jan VM Holthuis
HIL International Lawyers & Advisers**



THOMSON REUTERS

General Editor:
Jan VM Holthuis
HIL International Lawyers & Advisers

Commissioning Editor
Emily Kyriacou
emily.kyriacou@thomsonreuters.com

Commercial Director
Katie Burrington
katie.burrington@thomsonreuters.com

Publishing Editor
Dawn McGovern
dawn.mcgovern@thomsonreuters.com

Editor
Stuart Fellows
stuart.fellows@thomsonreuters.com

Editorial Publishing Co-ordinator
Nicola Pender
nicola.pender@thomsonreuters.com

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Contents

Preface	Jan VM Holthuis HIL International Lawyers & Advisers	vii
Foreword	Dr William S Niebur VP/GM North ASIA DuPont Pioneer	ix
Argentina	Marval, O'Farrell & Mairal Pablo Viñals Blake & Ignacio Sánchez Echagüe	1
Australia	Clayton Utz Andrew Hay, Peter McMahon, Nick Thomas, Cameron Gascoyne, Gary Berson, Richard Hoad, Dr Michael Maxwell, Scott Girdler, Cain Sibley & Yehudah New	31
Belgium	Altius Philippe de Jong	63
Brazil	TozziniFreire Advogados Alexei Bonamin, Andreia de Andrade Gomes, Darcy Teixeira Junior, Elysangela de Oliveira Rabelo, Luiz Renato Okumura, Vera Kanas & Vladimir Miranda Abreu	89
Chile	Araya & Cía Abogados Matias Araya & Sebastián Norris	115
China	HIL International Lawyers & Advisers Jan VM Holthuis, Yi Tao, Gerard van Swieten, Liu Shu & Dan Wei	135
Germany	Dr Gregor Rechtsanwalt Dr Philipp M Gregor	161
Ghana	Lithur Brew & Co Cephas Motey, Mame Esaama Orleans-Lindsay & Victoria Kiki Quansah	177
Hungary	Bihary, Balassa & Partners Attorneys at Law Ágnes Balassa & Réka Versics	193
India	DH Law Associates Nusrat Hassan	215
Italy	Studio Legale Albisinni Ferdinando Albisinni	243
Japan	Blakemore & Mitsuki Takashi Hirano Taketo Nasu & Daisuke Beppu	263
The Netherlands	HIL International Lawyers & Advisers Jan VM Holthuis & Marc van der Velden & Behnam Sobhani	289
Nigeria	Dayo Amokaye & Co Dr Oludayo G Amokaye	311
Taiwan	Formosa Transnational Attorneys at Law Yulan Kuo & Hui-ming Huang	341
Thailand	Tilleke & Gibbins Prateep Naboriboon, Siradapat Ratanakorn & Chaiwat Keratisuthisathorn	365
Turkey	Özkan Law Office Zeynep Özkan Özeren & İpek Güngörer	393
Ukraine	Arzinger Law Office Anna Zorya & Kateryna Zviagina	415
United Kingdom	Burges Salmon LLP Sian Edmunds, Kevin Kennedy, William Neville & Alice Scott-Gatty	433
United States	Exact Sciences Corporation Gretchen E Cleveland	459
Vietnam	Tilleke & Gibbins Kien Trung Trinh, Dung Thi Kim Vu & Linh Duy Mai	481
Zimbabwe	Mawere & Sibanda Legal Practitioners Tatenda Mawere & Regis Chawatama	507
Executive summary		527
Contact details		563

Preface

Jan VM Holthuis HIL International Lawyers & Advisers

Being an international lawyer living in Beijing, it continues to impress me how comprehensively agriculture influences economy, society and people's health. Economies like India and China have an urgent need for modern agricultural technologies to secure sustainable production and safe food products while, in contrast, developed countries are in need of new (export) markets.

Long term demand for a range of agricultural (food) products will continue to increase dramatically over the coming decades. This demand is predominantly driven by developing countries in Asia. International merger and acquisition activities in the agriculture, food and biotech industry have surged worldwide. New technologies and breeding methods are changing the conventional agricultural business models. Agriculture related trade issues have become complex and can involve the national security of a country. This makes agriculture a global and strategic business affair.

Agriculture law covers a comprehensive and dynamic legal playing field in which national or regional laws interact with international obligations and standards as stated in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, the UPOV Convention, the Cartagena Protocol on Biosafety and the Codex Alimentarius.

Agricultural law has become a distinct discipline in the legal landscape and deserves to be treated as such, next to the more established conventional legal practice areas like banking, M&A, real estate, intellectual property, employment, litigation and tax, to name a few.

This publication addresses different legal practice areas such as agricultural land ownership, agriculture related foreign investment issues, seed law, plant variety protection (including breeder's exemption and farmer's privilege), animal and plant gene rights, GM food trade, food safety standards and food product liability. The publication is not exhaustive. It does not advocate any particular agricultural policy or legal regime.

The purpose of these jurisdictional comparisons is to enable foreign investors, food producers, legal professionals and policy makers to make cross-border comparisons between countries on different agriculture practice areas.

This first edition has been a tremendous challenge to create. It covers key jurisdictions across Asia, Europe, Africa, and North and South America. At the time this first edition of the Agricultural Law Global Guide goes to print new candidate firms have already expressed interest in providing additional country contributions to be incorporated in a future edition and the online version.

My thanks go to all contributing lawyers and their respective firms for sharing their expertise, their time and their patience to comply with the stringent question format in order to bring about this unique publication. Great thanks are also due to Katie Burrington, Dawn McGovern, Emily Kyriacou, Nicola Pender and Stuart Fellows of the Thomson Reuters team, for their encouragement to start this particular publication project and for their ongoing professional support.

Finally, comments on the subject matter of this publication or suggestions to add certain chapters to a future edition or the online version will be gratefully received.

Jan V.M. Holthuis
General Editor
jholthuis@hil-law.com
Beijing, March 2015

Foreword

Dr William S Niebur VP/GM North ASIA DuPont Pioneer

Like in so many other industries, globalisation is impacting and changing agriculture. International markets present enormous growth opportunities in the coming decade in this industry for companies such as DuPont. While we see great potential for increasing global agricultural productivity, with technological innovation, international collaboration, and agricultural modernisation in developing countries in particular, navigating the different legal systems and markets to maximise the potential is not always obvious. In a major agricultural market like China, our AG and Nutrition business commits to the improvement of local agricultural productivity, professionalism and modernisation of local agriculture and food security for the entire country. Our commitment, nevertheless, presupposes an understanding and ability to work within China's legal and regulatory landscape. Starting with compliance with applicable laws and regulations, we conduct business and serve customers. The same discipline applies everywhere globally where we operate business as the DuPont company.

The Agricultural Law Global Guide provides an overview of agriculture laws and policies in key jurisdictions worldwide, and compares these countries on different aspects of agricultural law and practice areas. As such, I consider it a valuable guide for investors and businesses who would like to understand and navigate the agricultural laws and policies of these countries.

After working and living in China for the past five years, I am confident that China's agricultural and rural reforms will progress and improve. Today, the Chinese government considers the "rule of law" foundational to developing the rural China agriculture sector. Rural social, legal and environmental issues will be further regulated in the upcoming years. Regulators in other parts of the world will have to create the same momentum for change to ensure alignment across systems. I believe that the readers of this guide will find the information and perspectives helpful in operating in China under the conditions called the "new normal", as well as in other parts of Asia and the world.

Dr. William S. Niebur
VP/GM North ASIA
DuPont Pioneer

Thailand

Tilleke & Gibbins Prateep Naboriboon,
Siradapat Ratanakorn & Chaiwat Keratisuthisathorn*

AGRICULTURAL POLICY

1. State whether and when your jurisdiction has joined the following:

- **The World Trade Organization.**
- **The Food and Agriculture Organization of the United Nations.**
- **The International Plant Protection Convention.**
- **The Office International des Epizooties, also known as the World Animal Health Organization.**

World Trade Organization (WTO)

Thailand is a member of the WTO as of 1 January 1995.

Food and Agriculture Organization of the United Nations (FAO)

Thailand is a member of the FAO as of 27 August 1947.

International Plant Protection Convention (IPPC)

Thailand is a member of the IPPC as of 16 August 1978.

Office International des Epizooties (IOE)/World Animal Health Organization

Thailand is a member of the IOE as of 25 January 1924.

2. Describe the most recent national agricultural policy of your jurisdiction, in particular with respect to biotech crops and new crop growing technologies.

Thailand is still an agricultural-based country, with rice remaining the top economic crop. Due to the high demand for fuel, the continued efforts to promote and produce bio-fuel crops (including cassava, sugar cane, and palm oil) to feed the bio-fuel industries have gained even higher momentum. Other cash crops for Thailand include rubber, coffee, pineapple, longan, durian, mangosteen, potato, and orchids.

Thailand's key agricultural policies are, among others:

- Providing and improving irrigation systems and water management to ensure the supply of water to farmland across the nation to prevent flood/drought damage, as well as to increase total arable land.
- Providing focused research and development, knowledge/technology transfer on production, processing, food safety for these top economic

**The authors would like to acknowledge the contribution of Atthachai Homhuan, Titirat Wattanachewanopakorn, Siraprapha Rungpry, Salil Siriwat, Sriwan Puapondh, Theerapat Sombatsataponkul, Sawita Bosakaranut, and Michael Ramirez to the article.*

crops to enhance productivity, and product safety to generate a higher value of the commodities.

By implementing these strategic policies, Thailand hopes to improve its market share of the world's export markets, as well as enhance the livelihood of farmers across the nation. While efforts continue to implement these policies, Thailand has certainly fallen behind, both at a policy level and implementation level, in the area of new biotech crops and new crop cultivation methods and techniques, as there is no clear policy in these areas. Biotech crops and genetically modified organism (GMO) crops are still restricted at the experimental level.

ACQUISITION OF AGRICULTURAL COMPANIES

3. Is the acquisition of domestic agricultural companies by foreign investors subject to special prior government approval(s)? Set out the approval procedures and the authorities involved.

Restrictions apply to foreign individuals or legal persons from operating restricted businesses or owning land. A foreign legal person in this context is a company in which more than 49% of the total issued shares are held by foreigners and associations, including co-operatives in which the foreign members exceed one-half of the total number of members or those which operate particularly or mainly for the benefit of foreigners. Companies whose foreign ownership is below that percentage can operate without these restrictions.

Restricted businesses

A foreign majority-owned company (a company in which more than one-half of the total shares are held by foreigners) established in Thailand is subject to foreign investment restrictions under the Foreign Business Act B.E. 2542 (1999). The Foreign Business Act has prescribed the categories of restricted businesses into three schedules, including restrictions on agricultural businesses:

- Schedule 1 covers businesses that foreigners are strictly prohibited from operating. There are nine types of activities categorised under this schedule:
 - the press, radio broadcasting station, or radio and television station business;
 - rice farming, plantation, or crop growing;
 - livestock farming;
 - forestry and timber processing from a natural forest;
 - fishery, only in respect of the catchment of aquatic animals in Thai waters, and specific economic zones of Thailand;
 - extraction of Thai medicinal herbs;
 - trading and auction sale of antique objects of Thailand or objects of historical value;
 - making or casting Buddha images and monk alms-bowls;
 - land trading.

- Schedule 2 covers businesses that foreigners are prohibited from operating, but can operate if they receive permission from the Cabinet. Foreigners can operate these businesses only if Thai nationals or legal persons, who are not considered to be foreigners under the Foreign Business Act, hold shares of at least 40% of the capital of that foreign legal person. Unless there is a reasonable cause, the Minister of Commerce, with the approval of the Cabinet, can reduce the proportion requirement, but it must not be less than 25%, and the number of Thai directors must not be less than two-fifths of the total number of directors. There are 13 types of activities included on this list, in the following areas:
 - areas relating to national security (for example, production, selling, repairing, and maintenance of firearms, ammunition, gun powder, explosives, war material, and so on);
 - areas that have an impact on art, custom, folk handicrafts (for example, trading antiques or art objects, being Thai arts and handicraft, production of carved wood, silkworm farming, production of Thai silk yarn, weaving Thai silk, or Thai silk pattern printing, and so on); or
 - natural resources and the environment (for example, manufacturing sugar from sugar cane, salt farming, and also underground salt, and so on).
- Schedule 3 covers businesses that are prohibited to non-Thai nationals, unless permission is granted by the Director-General of the Department of Business Development. The activities included on the list are those that Thais are not prepared to perform in competition with foreigners. There are 21 such types of activities, including:
 - cultivation, propagation or development of plant varieties; or
 - any internal trade related to traditional agricultural products.

Foreigners seeking to perform a Schedule 2 or Schedule 3 activity should apply to the Minister or the Director-General according to the rules and procedures set out in the Ministerial Regulations. Whether a foreign business licence application is granted depends on the effects (positive or negative) that granting the application would have on:

- National safety and security.
- Economic and social development.
- Public order or good morals.
- National values in art, culture, traditions and customs.
- Conservation of natural resources.
- Energy.
- Environmental preservation.
- Consumer protection.
- Sizes of undertakings.
- Employment.
- Technology transfer.
- Research and development.

The outcome of the application is given within 60 days from the submission date. If the application is approved by the Cabinet or permitted

by the Director-General, a foreign business licence will be issued within 15 days after approval or when permission has been granted.

Ownership of land

Land Code B.E. 2497 (1954) restricts foreigners, either individual or legal persons, from owning land, unless they obtain permission to own the land from the government authorities under specific laws (for example the Board of Investment or the Industrial Estate Authorities of Thailand) or obtain land under the Agricultural Land Reform Act B.E. 2518 (1975) under certain conditions (see *Question 7*).

4. Describe if specific legal forms (such as co-operatives) are regulated or used in the agricultural sector and whether they are open to foreign investment.

Any legal entity, individual, legal person, or co-operative is able to conduct agricultural activities, but the co-operative is the legal form generally used in the agricultural sector. Foreigners are not allowed to be a member of co-operatives and/or invest in co-operatives. The establishment of a limited company is generally the preferred structure for foreigners to invest or engage a business in Thailand.

Co-operative

“Co-operative” means a group of persons who jointly conduct affairs for socio-economic interests on the basis of self-help and mutual assistance, and are registered under the Co-operatives Act B.E. 2542 (1999). Co-operatives have capital which is divided into shares of equal value and each member must hold at least one share but not more than one-fifth of the total paid-up shares. Decision-making in co-operatives is based on consensus. Each member or delegate of members has one vote at the meeting. In case of equal votes, the chairman of the meeting has an additional vote as a casting vote. The decision of a general meeting must be made by a majority of votes, but not less than two-thirds of the majority of votes of the members or delegates of members present at the general meeting is required in certain cases, such as the amendment of bye-laws, division of the co-operative, amalgamation of the co-operative, and so on.

Members of co-operatives must be natural persons of at least legal age (that is, 20 years old) and must hold Thai nationality only, to prevent foreigners from taking advantage of the privileges (for example, tax exemption, exemption of government fee, and so on) given to co-operatives' members (*Ruling of the Co-operative Promotion Department no. Gor Sor 1115/054 dated 6 October 2009*). Co-operatives are unable to admit any foreigners as either regular members or associate members. Moreover, most agricultural co-operatives in Thailand are reserved only for farmers, and foreigners are prohibited from agricultural works according to the annex to the Royal Decree prescribing works relating to occupations and professions in which a foreigner is prohibited from engaging (see *Question 3, Restricted businesses*).

Limited company

Under the Civil and Commercial Code of Thailand, a limited company is formed with capital divided into equal shares and the shareholder's liability is limited to the remaining amount unpaid, if any, of the registered capital due on the shares held by them. Foreigners are allowed to own no more than one-half of the shares in a company that owns land or engages in businesses restricted under the Foreign Business Act (*see Question 3*).

5. To what extent does competition (anti-trust) law apply to agriculture?

The Trade Competition Act B.E. 2542 (1999) applies to any business operators who engage in agricultural business, except for groups of farmers, co-operatives, or co-operative communities recognised by law and whose business objectives are for the benefit of agricultural workers.

Under the Trade Competition Act, business operators are prohibited from banding together to conduct any business or transaction that would create a monopoly or unfair competition, including:

- Price-fixing arrangements.
- Joint agreements to control or manipulate a market.
- Exclusivity on territory for the sale of products.
- Limitation of the quantities of goods or services (to be produced, purchased, sold, or provided by each business operator) to be lower than market demand.
- Reduction of quality of good or services to be lower than previously manufactured, sold, or provided at the original or higher price.
- Appointment of an exclusive distributor.
- Imposing of conditions or procedures for the sale or purchase of goods and services to cause the sale or purchase to be performed in the same manner or as agreed upon.

ACQUISITION OF AGRICULTURAL LAND**Sale and transfer of usage rights and ownership****6. Set out the domestic laws that apply to the acquisition of:**

- Usage rights to agricultural land.

- Ownership of agricultural land.

In Thailand, agricultural land reform is regulated by the Agricultural Land Reform Act B.E. 2518 (1975). Reformed land is the lands obtained by the Agricultural Land Reform Office (ALRO) by taking them from the public domain or purchasing and expropriating them from landowners and reformed into agricultural areas.

The ALRO has the power to provide land to agricultural workers or agricultural institutions according to the rules, methods, and conditions prescribed by the Committee (*section 30, Agricultural Land Reform Act*). The rules must meet the following qualifications:

- Not to exceed 50 rai (80,000 m²) for an agricultural worker and persons in the same family engaging in other fields of agricultural work, except for animal husbandry as set out below.

- Not to exceed 100 rai (160,000 m²) for an agricultural worker and persons in the same family engaging in animal husbandry classified as large animals according to the notification of the Ministry of Agriculture and Co-operatives.
- The land area must be designated by the Committee as it deems appropriate for an agricultural institution (for example, a group of agricultural workers or an agricultural co-operative) considering its category and operation.

If the land is provided to agricultural workers, ALRO provides it through a lease or hire-purchase, which is a contract under which the owner of a property lets the land out on hire and on the basis that the hirer makes a certain number of payments, promises to sell it to, or that it will become the property of, the hirer. If the land is provided to an agricultural institution, ALRO provides it through a lease.

Other than agricultural workers and agricultural institutions, any person or legal entity can lease, hire-purchase, buy, or make use of agricultural land or immovable property provided by ALRO for the use of business supporting or involving agriculture land reform only, as long as the land area does not exceed 50 rai (80,000 m²).

The right provided by ALRO is merely the right to enter and make use of the land. This right cannot be transferred to any person except when transferred:

- As inheritance to the rightful heir.
- To an agricultural institution (that is, groups of farmers, co-operatives, or co-operative communities recognised by co-operative law).
- To ALRO for the purpose of agricultural land reform.

It is also possible to transfer agricultural land from private owners that is not in the agricultural reformed land system. This transfer must be registered with the relevant land office.

7. Are there any legal restrictions on the acquisition of agricultural land (or usage rights) by a foreign (or foreign invested) party?

Agricultural reformed land

Foreigners are restricted from owning land under the Land Code (*see Question 3, Ownership of land*). Under the Agricultural Land Reform Act, however, foreigners are eligible to lease or make use of agricultural reformed land as a business operator that supports or whose activities relate to agricultural land reform, provided that permission is granted by the Committee of Agricultural Land Reform Office (ALRO) (*see Question 6*). That business operator must engage in the activities related to agricultural land reform, for example:

- Agricultural academic research.
- Activities related to promoting or guaranteeing the price of agricultural products or the reduction of production costs of agricultural products.
- Any other activities as agreed with ALRO.
- Activities related to the development of the production, distribution, and marketing of agricultural products.

The activities that foreigners can engage in may be restricted under the Foreign Business Act, and may only be engaged in once approval from the Cabinet or permission of the Director-General of the Department of Business Development is obtained (*see Question 3, Restricted businesses*).

Non-agricultural land

In addition to the agricultural reformed land, foreigners can also generally lease immovable property, including non-agricultural land. The lease of immovable property for a period of more than three years must be made in writing and registered with the relevant Land Office where the land is located. If not, the lease agreement can be enforced for only up to three years. The maximum lease period allowed under Thai law is 30 years with an option to renew for another 30 years.

A lease period of more than 30 years (but not more than 50 years) for the lease of land with a total area of less than 100 *rai* (160,000 square metres) may also be granted if the tenant will lease the property for commercial or industrial purposes and either (*Act governing Leasing of Immovable Property for Commercial and Industrial Purposes B.E. 2542 (1999)*):

- The tenant's investment (not including the rental fee) for commercial purposes will be more than THB20 million.
- The tenant's industrial business has received promotion from the Board of Investment.

This right of lease can be transferred or assigned to other parties.

8. Are there any compulsory tendering or prior approval procedures required for a sale and purchase of agricultural land? Briefly describe these procedures and the approval authorities (if any).

To receive the right to use agricultural reformed land, there is no tendering or auction procedure: the applicant must submit an application to the Agricultural Land Reform Office (ALRO) and the decision will then be made at ALRO's discretion (*see Question 6*).

Once the application has been submitted to ALRO, the application will be considered by the Committee. If the application is approved, the applicant will enter into an agreement with ALRO within 30 days after the receipt of the approval letter. If not, the Committee can revoke its approval.

Disposal of the agricultural reformed land is strictly prohibited, except when transferred as inheritance to the rightful heir, or transferred to an agricultural institution or to ALRO for the purpose of agricultural land reform (*see Question 6*).

9. Does the law and/or regulations prescribe minimum land purchase prices if the (local) government sells agricultural land?

There are no laws specifying the minimum land purchase price if the Agricultural Land Reform Office will sell the agricultural reformed land. The land purchase price for each plot of land, however, will be designated and assessed by the Treasury Department.

10. Is there a maximum term applicable to the lease (or use) of agricultural land?

The lease or usage agreement between the farmer and the Agricultural Land Reform Office (ALRO) can last the lifetime of the lessee.

For hire-purchase, agricultural workers can choose the instalment terms considered appropriate for each individual agricultural worker (five years, ten years, 12 years, or 15 years, as appropriate).

Foreigners are eligible to lease or make use of agricultural reformed land as a business operator supporting or relating to agriculture land reform, provided that permission is granted by the Committee of ALRO (see *Question 7, Agricultural reform land*). The lease terms will be considered by ALRO on a case-by-case basis, with a maximum lease period of 30 years.

11. In which circumstances can the government authorities expropriate agricultural land?

The rights to use the agricultural reformed land granted under the Agricultural Land Reform Act will cease when:

- The land user dies or waives the right, except when the right to use the land is transferred via inheritance to the rightful heir under the Agricultural Land Reform Act.
- The land user transfers the right to use the land or the lease of the land to other persons under the Agricultural Land Reform Act.
- The land user is not qualified as an agricultural worker under the Agricultural Land Reform Act before the application is approved.
- The land user has violated the rules and regulations of the Committee related to the use of the agriculturally reformed land.

Tax and financing

12. Which taxes apply with respect to the sale and transfer of land ownership (or usage rights)?

Agricultural land

If the ownership of the land will be transferred to the agricultural workers after all instalments for the hire-purchase agreement have been paid, the buyer will be subject to a registration fee of 0.01% of the official assessed price, as determined by the Land Department.

Non-agricultural land

If the seller is a legal person, the sale of the land is subject to the following transfer taxes and fees:

- **Transfer fee.** This is payable at the rate of 2% of the price of the land, as appraised by the relevant Land Office.
- **Seller's corporate income tax.** This is paid in the form of withholding tax at the rate of 1% of the selling price or official appraisal price, whichever is greater; and
- **Specific business tax (SBT).** This is paid at the rate of 3.3% of the selling price or official appraisal price, whichever is greater.

If the seller is an individual, the sale of the land will be subject to the following transfer taxes and fees:

- **Transfer fee.** This is payable at the rate of 2% of the price of the land as appraised by the relevant Land Office.
- **SBT.** This is payable at the rate of 3.3% (including municipal tax) of the selling price or the price as appraised by the Land Department, whichever is greater, payable for the building withholding period of up to five years.
- **Stamp duty.** This is payable at the rate of Baht 1 per Baht 500 (0.5%) of the selling price or the price as appraised by the Land Department, whichever is greater. If SBT has already been paid for the transfer, the transfer will be exempted from stamp duty (therefore, for a holding period of up to five years, no stamp duty).
- **Seller's personal income tax.** This is paid in the form of withholding tax. In general, an officer of the Land Office will calculate the income tax and withhold the tax at the time of registering the sale with the officer.

The calculation of income tax on the sale of an immovable property is quite complex, involving a specific method. It will be based on the price as appraised by the Land Department (not on the actual selling price) and deducted by a standard rate stated in a Royal Decree issued under the Revenue Code No. 165 (not on the actual acquisition cost of the property). The standard deduction rates vary from 50% to 92% of the income (price as appraised by the Land Department) depending on the number of years the property is held.

The net amount after the deduction will be divided by the number of years the property was held, and multiplied by a progressive rate from 5% (for amounts not exceeding THB100,000) to 35% (for amounts exceeding THB4 million). The amount (after the calculation by the progressive rate) will be multiplied by the number of years the property was held, and the final amount is the amount of tax to be withheld on registration of the transfer of the building.

The income from the sale of the property may be declared and subject to annual personal income tax or corporate income tax, as the case may be, depending on the status of the owner of the property at the time of the sale of the property.

In any case, the seller's personal income tax or corporate income tax, which is withheld at the time of registration of the sale of the building, can be used as credit against annual personal income tax or corporate income tax.

There is no separate capital gains tax in Thailand. Capital gains derived from the sale of land are subject to tax in the same manner as other income.

13. Does your jurisdiction have special regulated agri/green-parks and is (foreign) investment in such parks incentivised? If so, what incentives apply in general?

Special regulated agricultural- or green-parks do not exist in Thailand.

14. Briefly describe the procedures to mortgage/pledge agricultural land rights in order to acquire domestic financing.

Generally, a mortgage over agricultural reformed land is not permitted. The Agricultural Land Reform Office (ALRO) has, however, entered into a memorandum with the Bank for Agriculture and Agricultural Co-operatives (BAAC) which provides that the BAAC will provide financing to agricultural workers who have obtained a right over agricultural reformed land using title deeds issued by ALRO (namely Sor Por Gor 4-01), lease agreements, or hire-purchase agreements, as security for the loan.

CROP SEED BUSINESS

15. Which domestic laws and regulations regulate the crop seed industry and which domestic authorities/agencies supervise this sector?

In Thailand, the legal structure of import and export control measures for plants and propagation materials, including crop seeds, is provided in the:

- Plant Quarantine Act B.E. 2507 (1964).
- Plant Act B.E. 2518 (1975).
- Plant Varieties Protection Act B.E. 2542 (1999).

The government agencies directly involved in enforcing these laws and regulations are the Department of Agriculture and the Customs Department.

The IPPC standards have been incorporated into these acts, and the Agriculture Commodity Standard Act 2008.

Plant Quarantine Act

The Plant Quarantine Act focuses on the inspection of plants and propagation materials to control and prevent the spread of or outbreak from the introduction of plant pests. It provides rules in relation to “prohibited article”, “restricted article”, and “unprohibited article”, which includes plants, plant pests, and carriers, as declared by the Agriculture and Co-operatives Minister, including exceptions and conditions for import and export control measures to prevent possible adverse effects on environmental or human health.

To import or bring in transit any “prohibited article”, the importer must:

- Obtain a phytosanitary certificate issued by an appropriate government agency in the exporting country.
- Obtain the results of a pest risk analysis.
- Comply with the criteria, procedures, and conditions stipulated by the Director-General under the recommendation of the Plant Quarantine Committee.

To import or bring in transit any “restricted article”, the importer must:

- Obtain a phytosanitary certificate issued by an appropriate government agency in the exporting country.
- Comply with the criteria, procedures, and conditions stipulated by the Director-General under the recommendation of the Plant Quarantine Committee.

The “prohibited article” or “restricted article” must be imported or brought in transit through a plant quarantine station for inspection by the responsible plant quarantine officials.

For an “unprohibited article”, the importer must only present a phytosanitary certificate and declare the article to the plant quarantine officials in the form specified by the Director-General of the Department of Agriculture.

Plant Act

The Plant Act mainly regulates the crop seed industry in Thailand. It empowers the Minister of Agriculture and Co-operatives to determine any species and varieties of plant as controlled seeds in the *Government Gazette*. At present, a total of 37 species and varieties of plant are designated by the Minister of Agriculture and Co-operatives as controlled seeds, with standard qualities for germination rate and purity of seed. The controlled seeds for collection, sale, import, export, and transit must comply with the designated standard.

The Plant Act also prohibits the collection, sale, import, export, or transit of controlled seeds for commercial purposes, unless that person has received an appropriate licence from the Department of Agriculture, in which case, the person must keep the controlled seeds in the place specified in the licences.

Licences for business operators related to controlled seeds in Thailand include licences for the:

- Collection of controlled seeds for trade.
- Sale of controlled seeds for trade.
- Importation of controlled seeds for trade.
- Exportation of controlled seeds for trade.
- The transit of controlled seeds for trade.

The licensee must conduct his or her business strictly in accordance with the practices and rules outlined in the Plant Act. If the responsible officials find that any licensee has not complied with the Plant Act or the related Ministerial Order or Notification, they are entitled to suspend the licence of the licensee. As a result, a business operator whose licence has been suspended must immediately stop doing business according to the licence during the suspension period.

Plant Varieties Protection Act

The main objective of the Plant Varieties Protection Act is to provide legal protection for breeders of new plant varieties. On obtaining a plant variety registration in Thailand, the breeder is entitled to the exclusive right to produce, sell, distribute, import, export, and possess the propagating materials, which include seeds, of that particular new plant variety. An offender who produces, sells, distributes, imports, exports, and possesses the propagating materials of a registered new plant variety without authorisation of the right holder could face a maximum sentence of two years’ imprisonment and a THB400,000 fine.

16. State the approvals/licences that are required to engage in the following activities:

- **Import of new plant species or varieties and import of crop growing technologies.**
- **Set up of R&D centres and use of test plots of new crops.**
- **Crop seed production.**
- **Commercial crop production.**
- **Distribution of seeds or crops (wholesale/retail/e-commerce).**

Import of new plant species or varieties and crop growing technologies

Importers must obtain an import licence under the Customs Act, and they must comply with the Plant Quarantine Act, the Plant Act, and the Plant Varieties Protection Act, all of which are regulated by the Department of Agriculture (see *Question 15*). New varieties which are imported must meet the requirements under the Plant Act, and they are subjected to phytosanitary requirements, as well as quarantine proceedings in accordance with the Quarantine Act, while observing other parties protection rights under the Plant Varieties Protection Act. Importation for the purpose of growth trial under the Plant Varieties Protection Act must also be subjected to restrictions/licence and approval under the Plant Quarantine Act and Plant Act. For example, under the Plant Act, if a variety of plant is categorised as a controlled seed, the importer must obtain a licence for the importation of controlled seeds for trade. There is no restriction on bringing crop growing technologies into the country.

The authority must issue a licence to collect, sell, import, or export controlled seeds for trade only when it appears that the applicant (*section 16, Plant Act B.E. 2518 (1975)*):

- Is a person of good financial standing, adequately capable of carrying on the business.
- Is at least 20 years of age.
- Has his or her residence or office in Thailand.
- Is not a person of unsound mind, nor an incompetent or quasi-incompetent person.
- Has a place appropriate for the collection, sale, import, or export of controlled seed for which the licence is applied.
- Uses a trade name which is not the same or similar to the trade name of another licensee or person whose licence has been superseded or revoked within the last two years.

In the case where a legal person applies for a licence, it must be qualified under the first, third, fifth and sixth bullet points above, and have a person to carry out the business who is qualified under the second, third and fourth.

Ministerial Regulation "Criteria, procedures, and conditions for licence application, issuance of licence, renewal of licence, and issuance of licence substitute concerning controlled seeds B.E. 2549 (2006)" provides rules for applying the licence for the importation of controlled seeds for trade. In summary, a licensee must submit "details notification" of seeds to be imported to the Office of Agricultural Regulation of the Department of Agriculture. There is no government fee and the process takes about five to

seven business days. Once the seed is at Customs, the competent official will perform sampling and will dispatch the seeds to the Department of Agriculture laboratory. The laboratory will then perform tests according to the rate of germination, purity, and plant disease. The fee for testing the rate of germination and purity is THB200. There is no government fee for plant disease testing. If the testing results do not meet the Department of Agriculture requirements, the seeds must be sent back to the exporting country.

Set up of R&D centres and use of test plots of new crops

No specific approval or licence is required to set up research and development (R&D) centres. With regard to the usage of test plots for new crops in Thailand, the grower must obtain a licence for collection of controlled seeds for trade if that particular variety of plant is categorised as a controlled seed.

An R&D centre (subject to its scope of activities to be engaged in Thailand) may be deemed to be a service business, as stipulated in Schedule 3 of the Foreign Business Act. This means that a foreign party would require a foreign business licence from the Director-General of the Department of Business Development before engaging in this restricted business (*see Question 3, Restricted businesses*).

Crop seed production

The manufacturer must comply with the Plant Quarantine Act, the Plant Act, and the Plant Varieties Protection Act. The manufacturer must obtain a licence for the collection of controlled seeds for trade if that particular variety of plant is categorised as a controlled seed. According to the Plant Act, a business operator who has obtained a licence for the collection of controlled seeds for trade, a licence for importation of controlled seeds for trade, or a licence for exportation of controlled seeds for trade, is deemed to have already obtained a licence for sale of controlled seeds for trade.

Cultivation, propagation, or development of plant varieties is included in Schedule 3 of the Foreign Business Act, and foreigners require a foreign business licence granted by the Director-General of the Department of Business Development before engaging in such business (*see Question 3, Restricted businesses*).

Commercial crop production

The manufacturer must comply with the Plant Quarantine Act, the Plant Act, and the Plant Varieties Protection Act. The manufacturer must obtain a licence for the collection of controlled seeds for trade if that particular variety of plant is categorised as a controlled seed.

Foreigners require a foreign business licence before engaging in cultivation, propagation or development of plant varieties (*see above, Crop seed production*).

Distribution of seeds or crops

The business operator must comply with the Plant Quarantine Act, the Plant Act, and the Plant Varieties Protection Act. The business operator must obtain

a licence for the sale of controlled seeds for trade if that particular variety of plant is categorised as a controlled seed and the business operator does not already have a licence for collection of controlled seeds for trade, a licence for the importation of controlled seeds for trade, or a licence for exportation of controlled seeds for trade.

Retail and wholesale of all kinds of goods with a capital of less than THB100 million or any internal trade related to traditional agricultural products are stipulated in Schedule 3 of the Foreign Business Act, and foreigners require a foreign business licence granted by the Director-General of the Department of Business Development before engaging in such business (see Question 3, *Restricted businesses*).

17. Set out the domestic labelling requirements in the crop business sector.

A package or container of controlled seeds must have an attached label in the Thai language that displays the following (*Plant Act*):

- Species or variety name of the controlled seed and the wording “Controlled Seed.”
- Trade mark of the controlled seed.
- Collector name and seed production sites.
- Net weight of controlled seeds in metric measurement system, or amount of controlled seeds in other measurement system as stipulated in the Minister’s Order.
- Germination rate of the controlled seeds and the date of testing.
- Date of collection or importation.
- Germination period of controlled seeds and the expiration date for planting or use in propagation.
- If the controlled seed is mixed with another substance, the name and ratio of use of that substance must be provided.
- If the controlled seed contains a harmful chemical substance, the name and ratio of use of that harmful chemical must be provided, including the symbol displayed of a skull and crossbones and the word “Danger” in red.
- Other statements to be added to the label as the Minister considers expedient to make widely known in the *Government Gazette*.

18. Are there any restrictions on foreign direct investment (FDI) in this sector?

There are no restrictions on FDI in this sector.

19. Summarise landmark or recent cases that have defined the law and practice in this sector.

There is no Supreme Court case covering an offence under the Plant Quarantine Act, the Plant Act, or the Plant Varieties Protection Act.

PLANT VARIETY RIGHTS (PVR)

20. Has your jurisdiction ratified the International Convention for the Protection of New Varieties of Plants 1961 (UPOV Convention) and its revisions in 1972, 1978 and 1991?

At present, Thailand is not a member of UPOV. The country, however, has contacted the Office of the Union for assistance in the development of laws based on the UPOV Convention. New plant varieties may be protected under the Plant Varieties Protection Act.

21. Briefly describe the registration process for PVR in your jurisdiction.

After filing, the application will be subject to a formality examination to determine if the application has fulfilled all of the prescribed formality filing requirements. If the application does not comply with the requirements, the applicant will be notified to rectify the defects within 30 days from the date of receiving the notice.

In the arrangement of examination, the Department will notify the applicant to deliver propagation material for the purpose of the examination. The Department will determine the cultivation and propagation plan including the location for cultivation testing. The material will be cultivated at either the applicant's or the Department's trial plot. The new plant variety will then be subjected to examination determining uniformity, stability of the characteristics of the variety, as well as the distinctiveness of the variety (DUS Test). In general, depending on the nature of the plant variety, two growth cycles are needed for the cultivating test to establish the DUS of the variety. If there is no ground for objection, the application will then be published for the purposes of opposition. If no opposition is filed, the application will proceed to grant.

22. Briefly describe the laws and procedures of your jurisdiction covering the protection of PVR in terms of:

- **Requirements for protection.**
- **Extent of the protection.**
- **Restrictions on the rights of the PVR holder.**
- **Farmer's privilege.**

Requirements for protection

Protection is available to those plants that are announced by the Department to be eligible for protection and are a new variety. There is no specific national schedule concerning which plant varieties would be eligible for protection under the Plant Varieties Protection Act. The committee formed under the Plant Varieties Protection Act has developed a list of plants, and it periodically reviews the list and adds more plant varieties which are of economic importance. Since the enactment of the Plant Varieties Protection Act in 1999, there have been 11 Announcements from the Ministry of Agriculture and Co-operatives designating 62 plant varieties as eligible for protection under the Act. The varieties considered to be new are:

- Varieties whose species reproduction parts have not been utilised, whether by sale or distribution in any manner, in or outside of Thailand, by or with the consent of the breeder, for more than one year before the date of submission of the application for registration.
- Varieties that possess differences from other plant varieties which exist on the date of submission of the application for registration, these differences being connected to characteristics beneficial to cultivation, pharmacy, production, or processing. The differences also include the following plant varieties:
 - a plant variety whose protection has been registered, whether in or outside of Thailand, before the date of submission of the application for registration; and
 - a plant variety for which an application for registration was submitted in Thailand and subsequently registered.

Extent of the protection

Extension of protection is not available. The term of protection is divided into three categories:

- 12 years for plant varieties that give yield in accordance with the species characteristics after cultivation from the species reproduction part within a period of not more than two years.
- 17 years for plants that give yield in a period of over two years.
- 27 years for plants that are cultivated for wood that give yield within a period of over two years.

Restrictions on the rights of the PVR holder

The right holder of a new plant variety has the sole rights to produce, sell or distribute, import, export, or possess for these purposes (*section 33, Plant Varieties Protection Act*). However, such rights do not apply to the following circumstances (*section 33(1) to (6), Plant Varieties Protection Act*):

- An act relating to a protected new plant variety without an intention to use it as propagating material.
- Education, study, experimentation, or research relating to a protected new plant variety for the purpose of breeding or developing plant varieties. Currently, using the protected new plant variety in educational and research experiments for the purpose of breeding or developing plant varieties under section 33(2) of the Plant Variety Protection Act does not require a Prior Informed Consent from the right holder and royalties from those activities are not required.
- An act relating to a protected new plant variety committed in good faith. The Plant Variety Protection Act does not define the term “good faith”. Where there is a contentious matter, the court has discretion to determine whether the action performed is considered to be good faith (*section 61, Plant Variety Protection Act*).
- The cultivation or propagation by a farmer of a protected new plant variety from propagating material he has made (this does not apply where a farmer is exchanging or selling the materials with other farmers).

This is provided that in a case where the Minister, with the approval of the Commission, publishes that new plant variety as a promoted plant variety, its cultivation or propagation by a farmer is made in a quantity not exceeding three times the quantity obtained.

- An act relating to a protected new plant variety for non-commercial purposes.
- The sale or distribution by any means, importation or exportation of, or having in possession for the purpose of any of the above activities, the propagating material of the protected new plant variety which has been distributed by the right holder or with the right holder's consent.

Farmer's privilege

See above, *Restriction on the rights of the breeder*.

23. Which legal actions are available to owners of PVR in the event of PVR infringements?

In an infringement case, the owner may file a civil action to seek compensation for damages and loss of benefits, including reimbursement of costs for enforcing the rights.

24. Summarise landmark or recent cases that have defined the law and practice in this sector.

While the Plant Varieties Protection Act has been in place for a number of years, there has not yet been any court case relating to infringement of plant variety protection rights to date. A plant genetic sequence cannot be patented: inventions which naturally exist and are components, animals, plants, or extracts from animals or plants are not subject to patent protection (*section 9, Thai Patent Act B.E. 2522 (1979)*).

GENETICALLY MODIFIED (GM) CROPS

25. Has your jurisdiction ratified the Cartagena Protocol on Biosafety 2002? What is the domestic policy with respect to GM crops?

Thailand adheres to the Cartagena Protocol on Biosafety B.E. 2545 (2002), but has not ratified it. GM crops are regarded as prohibited articles under the Plant Quarantine Act (No. 3) B.E. 2551 (2008), as amended. Importation for study and research purposes is allowed, but must be accompanied by the relevant licence. Food and food products made from soy, soy products, corn, and corn products that are derived from genetically modified/genetically engineered soy or corn, of which the first three key ingredients have an excess of 5% by weight, must convey this with a clear label on the product (*Ministry of Public Health Announcement No. 251 B.E. 2545 (2002)*).

26. Describe the domestic laws regulating genetic engineering. Which authority(ies) is(are) responsible for approving GM crops. Set out the permit requirements and prohibitions as well as sanctions in the event of infringement.

GM crops are regarded as “prohibited articles” under the Plant Quarantine Act (*see Question 15, Plant Quarantine Act*). Commercial-scale cultivation by private sector organisations is currently not allowed. Cultivation, in general, is limited to experiment or research purposes by state organisations or co-operation between state agencies and private sector organisations. GM crops, however, may be imported for research, commercial, or other purposes, but only with permission from the Director-General of the Department of Agriculture:

- For an importation or bringing-in-for-research purpose, it must:
 - be accompanied by a phytosanitary certificate; and
 - comply with the criteria, procedures, and conditions stipulated.
- For an importation, bringing-in-for-commerce purpose, or other purposes, it must:
 - be accompanied by a phytosanitary certificate;
 - be subjected to pest risk analysis; and
 - comply with the criteria, procedures, and conditions stipulated.

The procedure for obtaining the permit is prescribed in the Announcement on the guideline on obtaining the permit.

27. Which safety evaluations are legally required before GM crop commercial market entry? How are GM crops regulated?

A GM crop test is required, and is subject to prior approval and/or licence procedures. The test must be carried out under the supervision of a committee set up by the Department of Agriculture and its progress must be reported to the committee within a prescribed time limit. It must be carried out on an approved site, which has been subjected to field biosafety evaluation under the standards prescribed by the Department. Once the research is concluded, a research report must be submitted to the Department of Agriculture and the crops and the remains must be destroyed according to the procedures described by the committee.

28. Describe the GM crop test plot regulations and requirements.

See Question 27.

29. Describe pre-market approvals requirements (and approval timelines) to grow, produce and sell GM food or feed. Provide details on the competent approval authorities.

The Notification of the Ministry of Agriculture and Co-operation Re: Prescription of plant sources as prohibited exceptions and conditions under the Plant Quarantine Act B.E. 2556 (2013) provides rules on the importation of GM plants. The importation of the GM plants listed in the appendix of this Notification is prohibited, with the following exceptions:

- Importation for use in experiments or research.

- Finished food using GM plants.
- Corn or soybeans used as an ingredient in animal feed and for expression in an oil factory.

The importation of GM plants for sale is prohibited. Only GM corn and GM soybeans are acceptable for import and use as ingredients in feed and oil factories. Requests for permission to import and use of other GM crops listed in the appendix will be considered on a case-by-case basis by the Ministry of Agriculture and Co-operation. The Ministry can be contacted at the Department of Agriculture (DOA), 50 Phaholyothin Rd., Ladyao, Chatuchack, Bangkok 10900, T +66 2579 0151 F +66 2579 5248 W www.doa.go.th

Apart from the Ministry Notification, the Food and Drug Administration (FDA) also has an additional limitation on the importation of GM corn in accordance with the Notification of the Ministry of Public Health (MoPH) (No. 345) B.E. 2555 (2012) Re: Prescribed Prohibited Foods to be Produced, Imported or Sold. GM food containing Cry9C DNA Sequence and food containing such GM food are prohibited from being produced, imported, or sold.

30. Set out the domestic product genetically modified organism (GMO) content labelling obligations (or the absence of them) and sanctions in the event of non-compliance or inaccurate content labelling.

Since the importation of GM plants for sale is prohibited by the Ministry of Agriculture and Co-operation, there is no requirement for GM labelling by the Ministry. Nevertheless, the Food and Drug Administration sets out rules for the labelling of GM corn and soybeans (*Ministry of Public Health Notification (No. 251) B.E. 2545 (2002) Re: Labelling of Food Obtained through Certain Techniques of Genetic Modification/Engineering*):

- Food containing only one main ingredient: its label should have the Thai statement “genetically modified” in conjunction with, or in close proximity to, the name of the food, such as genetically modified corn, and so on.
- Multi-ingredient food: its label should have the Thai statement “genetically modified” in conjunction with, in close proximity to, or under the names of the top three main ingredients of food products, such as genetically modified corn starch, and so on
- To protect consumers from being misled due to labelling, the following statements “free from genetically modified food” or “non-genetically modified food” or “does not contain constituents of genetically modified food” or “segregated genetically modified constituent” or any other similar statements are prohibited.

The above statements must be in a clear and legible manner and with sizes of lettering and spaces that are in good proportion to the sizes of the labels.

31. Summarise landmark or recent cases that have defined the law and practice in this sector.

In 2012, Hawaiian genetically modified papayas were found at a farmer's plantation in Kanchanaburi province. The results from a laboratory study of the Department of Botany, Chulalongkorn University, revealed that 29 samples of Hawaiian papaya in Kanchanaburi were tainted with GMO from a total of 74 samples of papaya. The discoverer sent his report to the Department of Agriculture and requested that it strictly control GMO contamination in crop production.

To date, GMO crops are not allowed in Thailand. Previously, a field trial of GMO papaya in Khon Kaen province was destroyed by a group of environmental activists after they found large-scale contamination of a neighboring papaya farm, which resulted from field trials. The case dates back to 2006, when Greenpeace accused the Department of Agriculture of negligence, in that field trials of GMO papaya plantations had contaminated other papaya plantations. Nonetheless, the court found the Department of Agriculture and its chief not guilty of issuing unlawful orders and not guilty of negligence causing serious genetic contamination of native papaya varieties, as claimed by Greenpeace. The court ruled that the department followed the necessary legal steps to prevent contamination, including stopping distributing GM papaya seeds and destroying all papaya trees in affected plantations.

IMPORTING ANIMALS AND GENE PATENTS

32. Summarise the import/export control measures for animals and genetic resources.

Thailand is a WTO member country and therefore complies with the WTO Agreement on Sanitary and Phytosanitary measures, as adopted in the Agricultural Commodity Standards Act B.E. 2551 (2008).

The importation of terrestrial animal and animal products requires a licence from the Department of Livestock Development (www.dld.go.th), whereas the importation of aquatic animals and their products requires a licence from the Fishery Department (www.fisheries.go.th). The Department sets out specific conditions and requirements for each specific product, including meat and meat products, skin/leather products, live animals (as pedigree), pets, or genetic materials (for example, embryos, sperms, and eggs). A common requirement is that almost all products must meet the OIE standards.

33. Does the law of your jurisdiction allow for patentability of livestock genes on the grounds of isolating and purifying them?

Animals, plants, or extracts from animal or plants are not protected under the Patent Act B.E. 2542 (1999) (see *Question 24*). Isolation or purification of genes also cannot be patented, because under the local interpretation of patentability, an isolated or purified subject matter which naturally exists cannot be regarded as an invention, as it does not result in a new product

and/or an improvement of product or process. A method of isolation or purification, however, may be patentable.

34. Which legal instruments are available to protect animal breeding know-how and a resulting animal nucleus?

Plants and animals are not patentable subject matters under the Patent Act (see Question 33). A breeding method of plant, however, may be patented. Furthermore, while a new plant variety may be protected under the Plant Varieties Protection Act, there is no such legal instrument for the protection of new breeds of animals and related know-how. Information and data on animal breeding know-how may be safeguarded as trade secrets, but this protection will not extend to protection of new breeds of animals. Publication of animal breeding know-how and an animal nucleus would entitle the author to copyright of the publication, but it is doubtful that conducting animal breeding based on the know-how, as published, would be regarded as a reproduction of copyrighted works to the extent that the rights holder can rely on it to pursue a copyright infringement case.

35. Are there legal or practical restrictions on the introduction of new breeds/species, the breeding of certain animal species or certain breeding practices?

There are no restrictions on the introduction of new breeds/species, the breeding of certain animal species, or certain breeding practices. The introduction of live animals, including exotic species or breeding materials (such as eggs, embryos, or sperm) into Thailand is already restricted through licences, customs, and quarantine procedures, as well as specific conditions and requirements for importation set out by the Department of Agriculture.

36. Summarise landmark or recent cases that have defined the law and practice in this sector.

There have been no court cases or administrative orders regarding breeding practices or the introduction of new breeds/species.

AGRICULTURAL SAFETY AND PRODUCT LIABILITY

Standards

37. Summarise the system of food safety standard setting, the main regulator(s) and regulations. If industry input on the standards is possible, indicate how this is conducted.

The Food and Drug Administration (FDA) of the Ministry of Public Health controls food safety in Thailand. The National Bureau of Agricultural Commodity and Food Standards (ACFS) is a governmental agency under the Ministry of Agriculture and Co-operatives. ACFS is responsible for:

- Setting standards for agricultural systems, commodity and food items, and food safety.
- Accreditation of certification bodies.
- Food standard controls.

- Promoting compliance with standards on farms and in-food establishments, as well as communicating with international trade partners on disputes concerning Sanitary and Phytosanitary Measures and Technical Barriers to Trade issues.

ACFS strives to ensure that food trade is not affected and global food security is not endangered.

The Thai Agricultural Standards Act B.E. 2551 (2008) is the applicable legislation that elevates and controls the quality and standards of produce and products originating from agriculture, fishing, livestock and forestry, and any by-product related to them. The Act is divided into nine chapters, and the main focus is on ensuring the safety and quality of food and public health. There are two types of standards under this Act: “mandatory standards” and “voluntary standards” (or general standards). Any producer, exporter, or importer of agricultural commodities regulated under mandatory standards issued by the ministerial regulation must obtain a licence from the AFCS prior to starting its operations. A certified mark for agricultural commodities regulated under mandatory standards must be attached to the products. On the other hand, licensing is not required for agricultural commodities regulated under voluntary standards. Any producer, exporter, or importer of agricultural commodities regulated under voluntary standards that complies with voluntary standards is entitled to use the certified mark with its products to demonstrate its credibility and increase consumers’ confidence.

The technical committee is assigned to draft standards on agricultural commodities which are required to be endorsed by the Committee on Agricultural Standards and which must then receive the recommendation of the Minister, who will issue the standards as either mandatory or voluntary.

Thailand is one of the founding members of the WTO, and joined on 1 January 1995, along with 80 other nations. The Codex Alimentarius Commission, established by FAO and WHO, has developed harmonised international food standards, guidelines, and codes of practice. Thailand has adopted the Codex Standards as national standards, especially in relation to the Codex’s:

- General Principles of Food Hygiene.
- Principles for the Establishment and Application of Microbiological Criteria for Foods.
- Principles for the Risk Analysis of Foods Derived from Modern Biotechnology.
- Guidelines for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants.

Liability**38. Set out the legal requirements to establish the liability of producers and suppliers for defective or contaminated food ingredients that cause damage, in relation to:**

- Tort.

- Product liability.

Agricultural Standards Act B.E. 2551 (2008)

Thailand's Agricultural Standards Act:

- Establishes the rights, obligations, and liabilities of producers, exporters, and importers.
- Sets out clear guidelines for product standards and penalties for violations of the Act.

To conduct any relevant business, the producer, exporter, or importer must apply for a licence. Further, they must meet the criteria and abide by the regulations regarding the display of the licence.

The Act appoints the Agricultural Standards Committee to oversee the implementation of standards and measures. If the standard of a product is deemed unsatisfactory, inadequate, and/or harmful to human, plant, or animal health, the Committee has the power to notify the public of the name of the producer, importer, or exporter of the product in order to recall the product (*section 49, Agricultural Standards Act*). Furthermore, the Committee has the authority to destroy the product or take other actions in accordance with the rules and procedures prescribed by the Committee in the Notification.

Section 32 sets out the responsibilities of the producer, exporter, or importer. This section stipulates that, in a case where the agricultural commodity (having been inspected and certified) is found by the National Bureau of Agricultural Commodity and Food Standards (ACFS) Officer thereafter to be not in compliance with the standard, the ACFS can instruct the producer, exporter, or importer, to correct or improve the agricultural commodity to comply with those standards within a prescribed period of time. This clearly supports the statement regarding the authority of the Committee to act to ensure the safety of the public and the standard of the product. Additionally, if the producer, importer, or exporter fails to comply with the order within the period prescribed, it is liable to (*section 61*):

- A fine not exceeding THB100,000.
- A daily fine not exceeding THB10,000 per day, which is imposed while the failure continues.

The Agriculture Standards Act further details the penalties for failure to comply with the standard established by this Act under Chapter IX, and it also concerns itself with standards and other procedural matters. Additionally, section 47 of Chapter VIII of the Agriculture Standards Act also establishes the right to appeal for producers, exporters, importers, applicants for the licence, or conformity assessment service providers.

Liability for Damages Arising from Unsafe Products Act in B.E. 2551 (2008)

This Act was enacted to provide clear guidance in the event of damage resulting from faulty and unsafe products. The Act deals specifically with the liability of producers for their inadequate and unsafe products. The Act defines the terms “producers”, “importers”, and “sellers” as “entrepreneurs”, and provides that all entrepreneurs are jointly liable for damages occurring to the damaged party from an unsafe product sold to the consumer, regardless of whether or not the damage was intentional (*section 5*).

Food Act B.E. 2522 (1979) and Consumer Protection Act

The production, importation for sale, and distribution of impure and substandard food is prohibited under the Food Act (*section 25*). Impure food is identified as food that (*section 26*):

- Contains substances that will likely cause harm to health.
- Is unhygienically produced, packed, or stored.
- Is produced from diseased animals that might be communicated to humans.
- Is contained in a material which is likely to be dangerous to health.

Substandard food is noted as food that is not up to the quality or standard prescribed by the Ministry (*section 28*).

The distribution of impure foods can lead to either or both of (*section 58*):

- Imprisonment of not more than two years.
- A fine of not more than THB20,000.

The distribution of substandard food is punishable by a fine of not more than THB50,000.

The Food Act and the Consumer Protection Act (which may also impose liability on a producer or supplier) do not impose a presumption of strict liability on a business operator. Liability follows the wrongful act/negligence standards found in tort claims.

Tort (Law of Obligations)

The Law of Obligations is provided under section 420 of the Thailand Civil and Commercial Code (CCC), which states that the producer or supplier can be held liable if the injured person (plaintiff) shows that the producer or supplier (defendant) has wilfully or negligently caused an unlawful injury to the person’s life, body, health, liberty, property, or any other right. Liability could extend to additional defendants in a supply chain, such as importers, however, a plaintiff would need to show that the actions of such persons wilfully or negligently caused the plaintiff’s injury.

The following defences may apply:

- Where the defendant could not have prevented the injury to the plaintiff, even by exercising due care.
- Where the defendant can show that the action of the defendant was not the immediate cause of the damage claimed, or that it was unforeseeable.
- Where the defendant can show that the plaintiff was contributorily negligent or knowingly and voluntarily accepted the risk for using the products.

Any agreement or notification which limits or excludes liability for damages caused by products is not enforceable and cannot be used as a defence by the plaintiff.

The manner and extent of compensation are decided on the basis of the seriousness of the injury caused and other related circumstances. The provisions relating to compensation are laid down under Chapter II (Compensation for Wrongful Acts) sections 438 to 448 of the CCC, including:

- Loss of value.
- Reparation costs.
- Loss of revenue.
- Non-pecuniary damage suffered by the plaintiff as to injury of the body and health.
- Deprivation of liberty.
- Reputational harm.

Product Liability (Unsafe Goods Liability Act) and Consumer Case Procedure Act

The Liability for Damages Arising from Unsafe Products Act, which is also referred to as the Product Liability Act, became effective in February B.E. 2552 (2009). It imposes strict liability and every business operator is presumed liable if:

- The product is defective, even if the manufacturer was not negligent in making that product defective.
- The affected/damaged persons can establish proximate cause for damages/injury suffered. This is established by showing that they suffered damages arising from normal use of an unsafe product; however, they need not prove which business operator caused the damage.

The Act provides that business operators, such as manufacturers, importers, sellers, licensees, and licensors, are presumed jointly and severally liable to the injured party for damage arising from the use of unsafe goods.

There are three defences (*section 7*):

- The goods are not unsafe.
- The injured party knew that the goods were unsafe goods.
- The damage occurred due to incorrect use or storage, and there are reasonable instructions, warnings, and information provided by the business operator.

An additional defence can also exist when an operator can clearly identify the producer of the defective product. Any agreement or notification which limits or excludes liability for damage caused by unsafe products is not enforceable and will not be considered as a defence.

The Consumer Case Procedure Act allows for an alternative procedural means by which an injured party may seek recovery under the same substantive analysis as provided by the Product Liability Law. This procedural alternative allows for a more streamlined and economical process for individual claimants, expediting review and case evaluation. It is useful for less complicated claims, where cost savings are desired and where there is not the same need for more thorough evidentiary evaluation. More sophisticated cases are typically better filed under the Product Liability Act.

Compensation for injury suffered is calculated on the same basis as provided in Chapter II of the CCC (Compensation for Wrongful Acts). Further, the Product Liability Act and the Consumer Case Procedure Act also allow for punitive damages in cases where the behaviour of the defendant is criminal or wilful.

39. Which defences are available to the producer and/or supplier to avoid liability? For instance, is market-entry prior government approval a legal defence against product liability and under which conditions?

For defences, see the various defences in *Question 38*. Prior market entry or government approvals could be useful in defending claims based on theories of wrongful act/negligence, as they could represent some evidence supporting a defence that the defendant acted reasonably under the circumstances. Claims under the Product Liability Act and the Consumer Case Procedure Act, however, presume strict liability, a presumption that requires more than simply that the defendant acted reasonably (*see Question 38, Product Liability (Unsafe Goods Liability Act) and Consumer Case Procedure Act*). In those product liability cases, reasonable prior approvals may eliminate any punitive damages from consideration, but would not serve to remove the presumption of strict liability.

40. Which types of damage are generally compensated by civil courts in food safety liability cases? For instance loss of value, reparation costs, loss of revenue, and personal injury. Are punitive damages available?

For all forms of civil liability under Thai law, except for that associated with the Product Liability Act and the Consumer Case Procedure Act, recovery is limited to actual damages. Special damages are not traditionally available in the Thai courts. However, punitive damages are now recognised in both the Product Liability Act and the Consumer Case Procedure Act, in cases where the behaviour of the defendant is criminal or wilfully negligent (*see Question 38, Product Liability (Unsafe Goods Liability Act) and Consumer Case Procedure Act*).

41. Summarise landmark or recent cases that have defined the law and practice in this sector.

In 2013, the Food and Drug Administration (FDA) surveyed and sampled packed rice products of several brands. They found that the packed rice “Kao Kaw Pimpa, CoCo Brand”, of 5 kg in weight, contained Methyl Bromide (in the form of Inorganic Bromide), which exceeded the MRL of codex (50 mg/kg). The FDA notified the company to resolve this problem. The FDA then implemented the Notification of the Ministry of Public Health (No.361) B.E.2556 (2013) Re: Food Containing Pesticide Residues (No.2), which relates only to Pesticide Residues in rice. The FDA is also monitoring this product. The product is currently within the standards accorded by law.

At present, if the rice contains Pesticide Residues exceeding the MRL under the Ministry of Public Health Notification Re: Food Containing Pesticide

Residues (No.2), the manufacturing company may violate section 25 (3) of the Food Act B.E. 2522 (1979), which stipulates that no one may produce, import for sale, or distribute a substandard food.

ONLINE RESOURCES

Thailand Ministry of Agriculture

W <http://eng.moac.go.th/main.php?filename=index>

Description. Official website of the Ministry of Agriculture, containing related legislation.

Thailand Department of Fisheries

W www.fisheries.go.th/dof/en/

Description. Official website of the Department of Fisheries, containing related legislation.

Contact details

GENERAL EDITOR

Jan VM Holthuis
HIL International Lawyers & Advisers
Room 2505B, ICC-Tower
No. 3000, North Zhongshan Road
200063 Shanghai
The People's Republic of China
T: +86 21 61730388
F: +86 21 61730386
E: jholthuis@hil-law.com
W: www.hil-law.com

ARGENTINA

Pablo Vinals Blake &
Ignacio Sánchez Echagüe
Marval, O'Farrell & Mairal
Leandro N. Alem 928
CABA C1001AAR
Argentina
T: +54 (11) 43100100
F: +54 (11) 43100200
E: pvb@marval.com
imse@marval.com
W: www.marval.com

AUSTRALIA

Andrew Hay
Clayton Utz
Level 28, Riparian Plaza,
71 Eagle Street,
Brisbane, QLD, 4000,
Australia
T: +61 7 3292 7299
F: +61 7 3221 9669
E: ahay@claytonutz.com
W: www.claytonutz.com

BELGIUM

Philippe de Jong
ALTIUS
Havenlaan 86C, B414
1000 Brussels
Belgium

T: +3224261414
F: +3224262030
E: Philippe.deJong@altius.com
W: www.altius.com

BRAZIL

Alexei Bonamin, Andreia de Andrade
Gomes, Darcy Teixeira Junior,
Elysangela de Oliveira Rabelo, Luiz
Renato Okumura, Vera Kanas,
Vladimir Miranda Abreu
TozziniFreire Advogados
Rua Borges Lagoa 1328
São Paulo, CEP 04038-904
Brazil
T: +55 11 5086 5179
F: +55 11 5086 5555
E: abonamin@tozzinifreire.com.br
T: +55 21 3535-2116
F: +55 21 3535-2121
E: angomes@tozzinifreire.com.br
T: +55 11 5086-5153
F: +55 11 5086-5555
E: dteixeira@tozzinifreire.com.br
T: +55 11 5086-5323
F: +55 11 5086-5555
E: erabelo@tozzinifreire.com.br
T: +55 11 5086-5174
F: +55 11 5086-5555
E: lokumura@tozzinifreire.com.br
T: +55 11 5086-5314
F: +55 11 5086-5555
E: vkanas@tozzinifreire.com.br
T: +55 11 5086-5219
F: +55 11 5086-5555
E: vabreu@tozzinifreire.com.br

CHILE

Matias Araya, Sebastián Norris.
Araya & Cía Abogados
Cruz del Sur 133 Of.902 Las Condes
Santiago 758-0151
Chile

T: +56 2 22082993
F: +56 2 22089802
E: matias@araya.cl
snorris@araya.cl
info@araya.cl
W: www.araya.cl

CHINA

Jan VM Holthuis, Yi Tao
HIL International Lawyers &
Advisers
Room 2505B, ICC-Tower
No. 3000, North Zhongshan Road
200063 Shanghai
The People's Republic of China
T: +86 21 61730388
F: +86 21 61730386
E: jholthuis@hil-law.com
ytao@hil-law.com
W: www.hil-law.com

GERMANY

Dr Philipp M Gregor
Dr Gregor Rechtsanwalt
Salzstraße 23
48143 Münster
Germany
T: +49 251 48254 0
F: +49 251 48254 10
E: gregor@dr-gregor.eu
W: www.dr-gregor.eu

GHANA

Cephas Motey, Mame Esaama
Orleans-Lindsay, Victoria Kiki
Quansah
LithurBrew & Company
No. 110B Off Kade Avenue
Kanda Estates, Accra
P. O. Box CT 3865, Accra
Ghana
T: +233 302 248105
F: +233 302 24815
E: cephasm@lithurbrewlaw.com
mameamao@lithurbrewlaw.com
kikiQ@lithurbrewlaw.com
W: www.lithurbrewlaw.com

HUNGARY

Ágnes Balassa, Réka Versics
Bihary, Balassa & Partners
Attorneys at Law
H-1026 Budapest
Pasaréti út 83.
Hungary
T: +36 1 391 44 91
F: +36 1 200 80 47
E: agnes.balassa@biharybalassa.hu
versics@biharybalassa.hu
W: www.biharybalassa.hu

INDIA

Nusrat Hassan
D.H. Law Associates
111, Free Press House
Free Press Journal Road
215, Nariman Point, Mumbai - 400 021
India
T: +91 22 6625 2222
F: +91 22 2285 5821
E: nusrat@dhlawassociates.com
W: www.dhlawassociates.com

ITALY

Ferdinando Albisinni
Studio Legale Albisinni
Via Ciro Menotti N.4
Rome 00195
Italy
T: +39 0632 16171
F: +39 0632 17034
E: f.albisinni@albisinni.it

JAPAN

Takashi Hirano, Taketo Nasu
Blakemore & Mitsuki
Nittochi Bldg, 4F
4-1, Kasumigaseki 1-chome
Chiyoda-ku, Tokyo
100-0013
Japan
T: +81 3 3503 5571
F: +81 3 3503 5577
E: hirano@blakemore.gr.jp
nasu@blakemore.gr.jp

W: www.blakemore.gr.jp

NIGERIA

Dr Oludayo G Amokaye
Dayo Amokaye & Co
West Wing, TBS, Suite 25-28B, 1st Flr
Tafawa Balewa Square
Nigeria
T: +23 4802 300 6055
F: +23 4818 096 7877
E: dayoamokayelaw1@gmail.com
dayoamokaye@yahoo.co.uk

TAIWAN

Yulan Kuo, Hui-ming Huang
Formosa Transnational Attorneys at Law
13th Floor, Lotus Building
136, Jen Ai Road, Sec.
3, Taipei 106
Taiwan, R.O.C.
T: +886 2 2755 7366
F: +886 2 2708 8435
E: yulan.kuo@taiwanlaw.com
hui-ming.huang@taiwanlaw.com
W: www.taiwanlaw.com

THAILAND

Prateep Naboriboon,
Siradapat Ratanakorn,
Chaiwat Keratisuthisathorn
Tilleke & Gibbins International Ltd.
Supalai Grand Tower, 26th Floor
1011 Rama 3 Road
Chongnonsi, Yannawa
Bangkok 10120
Thailand
T: +66 2653 5749
F: +66 2653 5678
E: prateep.n@tilleke.com

T: +66 2653 5622
F: +66 2653 5678
E: siradapat.r@tilleke.com

T: +66 2653 5507
F: +66 2653 5678
E: chaiwat.k@tilleke.com

W www.tilleke.com

THE NETHERLANDS

Jan VM Holthuis
HIL International Lawyers & Advisers
Room 2505B, ICC-Tower
No. 3000, North Zhongshan Road
200063 Shanghai
The People's Republic of China
T: +86 21 61730388
F: +86 21 61730386
E: jholthuis@hil-law.com
W: www.hil-law.com

Marc van der Velden
HIL International Lawyers & Advisers BV
Haaksbergweg 33
1101 BP Amsterdam
The Netherlands
T: +31 20 6513000
F: +31 20 6513001
E: mvandervelden@hil-law.com
W: www.hil-law.com

TURKEY

Zeynep Özkan Özeren
Özkan Law Office
Hüsrev Gerece Cad. Ömer Rüştü Paşa sok
No:12 Teşvikiye Beşiktaş 34 357
İstanbul
Turkey
T: +90 212 327 69 40
F: +90 212 327 69 43
E: zeynep@ozkan.av.tr
W: www.ozkan.av.tr

UNITED KINGDOM

Sian Edmunds, Kevin Kennedy,
William Neville and Alice Scott-Gatty
Burgess Salmon LLP
6 New Street Square
London EC4A 3BF
United Kingdom
T: +44 117 902 7187
F: +44 117 378 6575
E: sian.edmunds@burgess-salmon.com
T: +44 117 307 6934

F: +44 117 378 6638
E: kevin.kennedy@burges-salmon.com
T: +44 117 939 2202
F: +44 117 378 6489
E: william.neville@burges-salmon.com
T: +44 117 902 2729
F: +44 117 378 6749
E: alice.scott-gatty@burges-salmon.com
W: www.burges-salmon.com

UKRAINE

Anna Zorya
Arzinger Law Office
Eurasia Business Centre
75 Zhylyanska St., 5th Floor
01032 Kyiv
Ukraine
T: +38 044 390 55 33
F: +38 044 390 55 40
E: anna.zorya@arzinger.ua
W: www.arzinger.ua

UNITED STATES

Gretchen E. Cleveland
Exact Sciences Corporation
441 Charmany Drive
Madison, WI 53719
United States
T: +608 284 5700
E: gcleveland@exactsciences.com
W: www.exactsciences.com

VIETNAM

Kien Trung Trinh, Dung Thi Kim Vu,
Linh Duy Mai
Tilleke & Gibbins Consultants
Limited
HAREC Building, 4th Floor
4A Lang Ha Street, Ba Dinh District,
Hanoi, Vietnam
T: +84 3772 5567
F: +84 3772 5568
E: kien.tt@tilleke.com

T: +84 3772 5554
F: +84 3772 5568
E: kimdung.v@tilleke.com
T: +84 3772 5537
F: +84 3772 5568
E: duylinh.m@tilleke.com
W: www.tilleke.com

ZIMBABWE

Tatenda Mawere, Regis Chawatama
Mawere & Sibanda Legal
Practitioners
10th Floor, Chiedza House
Cnr 1st Street, Kwame Nkrumah
Avenue
Harare
Zimbabwe
T: +263 4 762 936/+263 4 750 627
F: +263 4 750 759
E: tmawere@maweresibanda.co.zw
E: rchawatama@maweresibanda.co.zw
W: www.maweresibanda.co.zw