

Agricultural Law in China: Overview

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AGRICULTURAL POLICY

1. Briefly outline recent agricultural policy and main developments in your jurisdiction.

China is a member of the:

- World Trade Organization (WTO). When joining, China made several reservations relating to market access and land ownership. Most related limitations are now outdated and have been replaced by market access restrictions and prohibitions set out in the Special Administrative Measures for Access of Foreign Investment (Negative List) (2021 Edition).
- Food and Agriculture Organization of the United Nations (FAO), without reservations.
- International Plant Protection Convention (IPPC), without reservations.
- Office International des Epizooties (OIE)/World Animal Health Organisation.

The Communist Party of China Central Committee and the State Council jointly issue annual national policy documents on accelerating the development of modern agriculture and rural development with Chinese characteristics (No. 1 Central Document).

Based on the most recent No. 1 Central Document released on 4 January 2022, China's two fundamental tasks in agricultural policy are to:

- Focus on ensuring national food security and the stability of grain production and the sown area.
- Prevent a massive return to poverty by implementing timely support measures to upgrade the relevant industries in poor areas and other measures including:
 - the development and construction of villages;
 - promoting the expansion and healthy development of e-commerce;
 - strengthening infrastructure development;
 - improving rural sanitation infrastructure and transport

A nationwide pilot project to extend land contracting for another 30 years will be carried out. The construction of innovation platforms in the seed industry will be promoted, and major projects in agricultural bio-breeding will be launched. Other measures are mainly to promote new progress in the revitalising of the countryside and the modernisation of agriculture and rural areas.

Finance tools and investment for agricultural development are being encouraged. Agricultural subsidies (see *Question 2*) continue to support modernising agricultural technology and grain production. A mixture of minimum purchase price, temporary reserve measures and target price subsidy aims to secure the supply of wheat, rice, corn, soybean, rapeseed, cotton and sugar, and prevent volatile price fluctuations.

Subsidies

2. Is there a system for subsidies or other support for agriculture in your jurisdiction? Briefly outline its main provisions.

Subsidies are a fundamental way to support the agricultural industry in China. China has established a basic policy framework for agricultural subsidy that conforms to WTO rules, taking into account local conditions. The core of the framework is the following:

- Direct subsidy for grain producers.
- Subsidy for superior crop varieties.
- General subsidy for agricultural input.
- Subsidy for the purchase of advanced farm tools and machinery.
- Subsidy for grassland ecological protection
- Subsidy for moderate scale business.
- Training subsidies for new vocational farmers.
- Subsidy for animal disease prevention.

To protect farmland productivity and support appropriate food production scale, in 2013 the government issued the Finance Management Measures for Agricultural Production and Development, as revised from time to time. The 2020 revision came into effect on 24 March 2020 and will be valid until 2023. Under Article 6, government financial support for agriculture focuses on the following:

- Protecting cultivated land resources, with a focus on arable land.
- Subsidies to buy agricultural machinery, mainly advanced and practical agricultural machinery, and to carry out projects of scrapping and updating machinery and relevant innovation pilot projects.
- Green development of agriculture and technical services, mainly in terms of increasing quality and efficiency, dry farming and saving water on key crops, trials to replace chemical fertilisers with organic fertilisers for fruit, vegetables and tea, deep soil preparation by agricultural machinery, reforming, constructing and popularising agricultural technology, and popularising improved seeds and methods.
- Innovations in agricultural operations, mainly to support new agricultural business entities, social agricultural production services, cultivation plans for competent farmers, agricultural credit guarantees, and so on.
- Developing the agricultural industry, mainly through:
 - supporting advantageous and characteristic agricultural industries;
 - revitalising the dairy industry and healthy breeding of livestock and poultry;

- integrating primary, secondary and tertiary industries in rural areas, such as agricultural industrial parks and towns;
 - protecting geographical indications of agricultural products; and
 - introducing IT into villages.
- Other key tasks identified to develop agricultural production.

Under Article 7 of the Finance Management Measures for Agricultural Production and Development, financial support is mainly provided to farmers, new agricultural operators, and units and individuals undertaking the project tasks.

To promote sustainable development of agriculture, the government also issued the Finance Management Measures for Agricultural Resources and Ecological Protection Subsidies which will be valid until 2023. Under Article 6, government financial support for agriculture resources and ecological protection focuses on:

- Protecting arable land resources.
- Protecting fishery resources, especially on support for fishery stocking and the pilot ban on fishing in key waters of the Yangtze River Basin, among others.
- Protection on grassland and utilisation incentive, mainly used to subsidise the farmers who implement grassland grazing bans and grass-livestock balance in accordance with relevant regulations.
- Resource utilisation of agricultural waste.
- Other key tasks identified to support agricultural resources and ecological protection.

Under both sets of measures, the financial support is provided to farmers, fishermen, new agricultural operators, and businesses and individuals undertaking specific projects.

The Agricultural Science and Technology Fund, established by the Ministry of Science and Technology (MOST), supports the commercialisation of technology in agriculture, with a focus on R&D and promoting new agricultural technology. To obtain funding:

- An applicant must be an enterprise or R&D institution set up in Mainland China. For an incorporated enterprise, all or most of its equity interest must be held by Chinese domestic investors.
- The enterprise must have existed for at least one year and its registered capital must be larger than the funds applied for.
- The project must be recommended by the provincial subdivisions of the MOST or the Ministry of Finance.

Environmental Issues

3. Do environmental issues form part of government support for agriculture in your jurisdiction? If yes, please give brief details.

The Environmental Protection Law of the People's Republic of China imposes inclusive environmental obligations on the government for agriculture, stipulating that all levels of the People's Government must:

- Strengthen the protection of the agricultural environment.
- Promote the use of new environmental protection techniques in agriculture.
- Strengthen monitoring and warning of agricultural pollutants.

- Ensure that the relevant departments adopt measures to prevent soil pollution and desertification, salinisation and ground subsidence.
- Prevent ecological imbalances such as the destruction of vegetation, soil erosion, eutrophication (excessive algae growth), water depletion, extinction of species and so on.
- Promote integrated prevention and the treatment of plant diseases and insect pests.

In addition, all levels of government should guide agricultural operators in:

- Scientific cultivation and breeding techniques.
- The use of agricultural inputs such as pesticides, fertilisers and so on.
- The disposal of agricultural waste such as agricultural film and straws.
- Preventing agricultural pollution.
- (Article 49, Environmental Protection Law).

Article 50 of Environmental Protection Law further requires all levels of government to make available funds to support environmental protection works such as protecting rural drinking water sources, disposing of sewage and other waste and others.

The Ministry of Agriculture and Rural Affairs of the People's Republic of China (PRC) (MARA) promulgated the Opinions on Deepening the Work of Ecological and Environmental Protection on 20 August 2018. This put forward the following measures to address environmental issues in agriculture and rural development:

- Strengthen the sense of responsibility and mission to protect the ecological environment and rural areas.
- Accelerate the establishment of a system to protect the agricultural and rural ecological environment.
- Take solid steps to promote green agricultural development.
- Focus on improving the living environment in rural areas.
- Strengthen environmental protection in production areas for agricultural products.
- Promote the conservation of agricultural resources.
- Improve capacity to support science and technology.
- Establish a sound evaluation mechanism.

The Finance Management Measures for Agricultural Production and Development and the Finance Management Measures for Agricultural Resources and Ecological Protection Subsidies (see Question 2), provide comprehensive and detailed plans for government support for environmental protection in agriculture, showing that the government is committed to helping dealing with environmental issues.

Regional Variations

4. Briefly outline how disadvantaged areas such as uplands are treated within agriculture.

In 2013, the MARA formulated the Poverty Alleviation and Development Plan for the Agricultural Industry (2011 to 2020) (Development Plan), to increase support for agriculture and animal husbandry in disadvantaged areas. The plan focuses on 11 very disadvantaged areas, including the Liupanshan area, Qinbashan area, and Wulingshan area, and involves 19 provinces in total. The plan concentrates on:

- Developing characteristic industries.
- Poverty alleviation through science and technology.
- Improving infrastructure.
- Developing education and culture.
- Improving public health and population service management.
- Improving the social security system.
- Energy and ecological environment construction.

Each disadvantaged area has specific policies according to local conditions. Among others, the major projects and policies are as follows:

- Increasing production capacity, including increasing the number of new fields, improving species scientific research and breeding, and agricultural technology service systems. In particular, establishing a production base for raffinose, dry farming water-saving demonstrations, national modern agricultural areas and standard-scale community breeding farms.
- Improving agricultural science and technology innovation capacity. In particular, establishing the planting, livestock and aquatic breeding industries.
- Agricultural public service. In particular, establishing a quality and safety inspection system for agricultural products, an animal epidemic prevention system, plant protection projects, and a fishery administration and fishing ports.
- Agricultural resource protection and use. In particular, returning natural grasslands to pasture, protecting cultivated land, upgrading and allocating special machines and tools for conservation tillage, and building auxiliary facilities such as parking lots and sheds for machines and tools. Further, setting up an agricultural biological resource protection project and a rural biogas project.
- Preferential policies for agriculture, including:
 - the four subsidies policy;
 - animal epidemic prevention subsidy;
 - fishery diesel subsidy;
 - grassland ecological protection subsidy;
 - fishery resource protection subsidy;
 - supporting the proliferation and release of aquatic organisms;
 - incentive policies for large grain (oil) producing counties;
 - incentive policies for large pig producing counties;
 - agricultural disaster prevention key technologies subsidy;
 - in-depth promotion of the establishment of high yields of grain, cotton, oil and sugar;
 - soil testing and formula fertilisation subsidy;
 - subsidy of agricultural products primary processing in producing areas; and
 - rural labour training and rural practical talent training.

The Development Plan for 2021-2030 has not been issued yet. On 7 April 2021, MARA issued the Guiding Opinion on Promoting the Sustainable Development of Special Industries in Poverty Alleviation Areas, which states that the development of poverty alleviation areas needs to adhere to four principles.

- Develop rural resources, by encouraging leading industries with special characteristics to create more jobs and value-added industrial development in the country and for farmers.
- Maintain the overall stability of industrial support policies, change from focusing on supporting poor households in poor villages to supporting the holistic development of industries for the general benefit of farmers, and to change from mainly supporting the breeding process to expanding the whole industrial chain.
- Enhance the adaptability of supply, promote variety cultivation, quality improvement, brand building and standardised production, and improve the quality, efficiency and competitiveness of the industry.
- Pay attention to the follow-up, long-term cultivation and scientific planning of the industry.

5. Is agriculture governed at national and local level? Briefly outline any regional framework and variations if applicable.

China has a multi-level government structure and a top-down governance model. The local governments at various levels throughout China are state administrative bodies under the leadership of the State Council and are subordinate to it.

MARA and Other State Council Departments

The MARA is a department of the State Council in charge of agriculture and rural economic development. Its main mandates include to:

- Draw up agricultural development plans and industry policies.
- Research and put forward reforms of the rural economy.
- Draw up technical standards for various agricultural industries and organise their implementation.
- Draft laws and provisions on animal and plant disease prevention and quarantine.
- Supervise foreign-related agricultural affairs.

Other departments of the State Council perform functions relating to agriculture. For example, the National Development and Reform Commission (NDRC), the Ministry of Finance, the State Administration of Taxation, and the Ministry of Supervision are responsible for rural taxes.

Local Government

The MARA is established at:

- Provincial level, under the respective local government and operational guidance or leadership of the MARA.
- City level, under the respective local government and operational guidance or leadership of the MARA at higher levels.
- County and district level, under the respective local government and operational guidance or leadership of the MARA at higher levels.

AGRICULTURAL BUSINESS VEHICLES

6. What business vehicles are typically used in the agriculture sector? Are specific forms such as co-operatives used and are they open to foreign investment?

Agricultural land is collectively owned by farmers or by the state. The basic agricultural operation is rural household contract farming (see *Question 10*).

Business Vehicles

The following business vehicles are typically used in the agriculture sector:

- Companies, including:
 - limited liability companies (LLCs), which are private companies; and
 - companies limited by shares (CLS), which are both private and public companies.
- Partnerships, including:
 - general partnerships, where the partners have unlimited joint and several liability for the partnership's debts; and
 - limited liability partnerships, where the general partners have unlimited joint and several liability for the partnership's debts, while the limited partners have liability for its debts to the extent of their capital contributions.
- Farmer professional co-operative (FPC), which is a specific legal form for the agriculture industry in China.

FPCs

FPCs are regulated by the:

- Law of the PRC on Farmer Professional Co-operatives (FPC Law). The 2017 revision came into force on 1 July 2018.
- Administrative Regulation of the People's Republic of China on the Registration of Market Entities. The regulation came into force on 1 March 2022.

FPCs are mutually assisting economic organisations, managed democratically by producers, operators and users of the same kind of agricultural products and services.

They mainly serve their members, offering services such as buying the means of agricultural production, marketing, processing, transporting and storing farm products, and providing production and operation technology and information (*Article 2, FPC Law*).

FPCs are legal entities and their members are liable up to the limit of their capital contribution. FPCs are subject to the following requirements:

- An FPC must have at least five members.
- At least 80% of the members of an FPC must be farmers.
- For FPCs with fewer than 20 members, one member can be an enterprise, public institution or organisation.
- For FPCs with more than 20 members, no more than 5% of its members can be enterprise or institutional members.
- An FPC must have a membership assembly, a director-general (the legal representative of the FPC), directors and an executive supervisor or board of supervisors.

Foreign investors cannot be a member of an FPC and engage in investment activities as a member of an FPC (*Special Administrative Measures for the Access of Foreign Investment (Negative List) (2021 Edition)*, released by the National

Development and Reform Commission of the PRC (NDRC) and the Ministry of Commerce of the PRC (MOFCOM)).

7. Is the acquisition of domestic agricultural business vehicles by foreign investors subject to special prior government approval(s)? If yes, set out the approval procedures and authorities involved.

The regulation of the acquisition of domestic businesses (including agricultural businesses) by foreign investors has been relaxed and reformed in recent years, especially through the Foreign Investment Law effective from 1 January 2020.

Negative List for Foreign Investment

The Negative List for Foreign Investment (2021 edition) sets out:

- Prohibited sectors: foreign investors cannot invest or acquire local businesses in these sectors. For agriculture, this is:
 - R&D, cultivation and plantation of Chinese rare and unique precious fine varieties, and manufacturing the relevant propagative materials (including excellent genes of planting, husbandry and aquaculture); and
 - breeding GM varieties of crop seeds, livestock and poultry breeds and aquatic breeds, and GM seed production.
- Restricted sectors: foreign investors can invest or acquire local businesses in these sectors subject to prior approval and conditions. For agriculture, this is breeding and seed production of a new variety of wheat and maize, on condition that a Chinese party is the controlling shareholder of the business in the maize sector and has no less than 34% share ratio of the business in the wheat sector.

A foreign acquisition of a domestic business in a sector outside the Negative List is subject to the same government registration procedure as a domestic acquisition. Foreign investors are obliged to submit information about investment through the Enterprise Registration System and National Enterprise Credit Information Publicity System. The market regulatory authorities must promptly forward the investment information submitted by foreign investors and foreign investment enterprises to the commercial administrative authorities. The model of ex ante regulation has been changed to ex post regulation or ongoing regulation.

National Security Review

If a foreign investor acquires a domestic business relating to important agricultural products that impact on national security, and obtains control of the business, the acquisition is subject to a national security review conducted by a ministerial panel. This panel is formed ad hoc, organised by the NDRC and the MOFCOM, and composed of relevant authorities in the industries concerned.

The review considers the impact of the acquisition on:

- National defence security, including the capacity of domestic production, service delivery, and related equipment and facilities required by national defence.
- The stable operation of the national economy.
- The basic social order of life.
- R&D capabilities of key national security related technology.

The review is based on the actual effect of the transaction. It cannot be avoided by placing the transaction overseas through equity entrustment, agency, a trust, multi-tier reinvestment, leasing, loans, variable interest entity (VIE) or other structures.

The transaction can proceed if it is considered to have no influence on national security. Transactions with potential influence on

national security are ordered to be terminated. The parties can reapply after amendments.

If a transaction is likely to cause or has already caused a great impact on national security, it must be terminated immediately.

To date there are no reported transactions in the agricultural sector which are subject to national security review. Given the restricted sectors in the Negative List, the filing which would mostly likely trigger national security review is investment in seed business. In August 2021, MARA claimed that international co-operation in the seed industry should be carried out prudently, and a joint review system for the security of the seed industry has been established to conduct a comprehensive assessment review of foreign investment in the seed industry.

Anti-Monopoly Review

Any acquisition that will give a foreign company a controlling interest in a Chinese company is a concentration of undertakings subject to anti-monopoly review by the State Administration for Market Regulation (SAMR) under the Anti-monopoly Law and other relevant regulations. (see *Question 8*).

NDRC Project Review

An acquisition by a foreign investor of a domestic agricultural business involving a land reclamation project triggers a (National Development and Reform Commission) NDRC foreign investment project review. The project must be reported to and approved by the competent provincial government, otherwise it cannot be proceed.

8. Is there a specific competition (anti-trust) law regime for the agriculture sector? Briefly set out the aspects of the competition regime that are most relevant to agriculture (for example, restrictive agreements and practices and merger control).

There is no specific competition (anti-trust) law regime for the agriculture sector. All sectors, including the agriculture sector, are subject to the general regime under the Anti-monopoly Law.

The Anti-Monopoly Law authorises the State Administration for Market Regulation (SAMR) to review a concentration of undertakings which has or may have the effect of eliminating or restricting competition. The following are a concentration of undertakings:

- Merger of operators.
- An operator obtaining control over other operators by acquiring shares or assets.
- An operator obtaining control over other operators, through contracts or other means, or exerting a decisive influence on other operators.

If the operators are unsure about whether to file, consultation with the Anti-Monopoly Bureau of SAMR is available.

A concentration must be filed in advance with the SAMR if at least two participants in the transaction each have a turnover in China of more than RMB400 million in the previous accounting year and either the:

- Global turnover of all participants exceeds RMB10 billion.
- China turnover of all participants exceeds RMB2 billion.

Transactions not meeting these thresholds may still be investigated by the SAMR if there is evidence that the transaction has or may have the effect of eliminating or restricting competition. Recent cases indicate that Chinese merger control is becoming stricter.

During the review procedure, the SAMR will organise hearings, where the operators can put forward their case or reach a solution with the SAMR.

If the SAMR, after review, deems that the acquisition has or may have the effect of eliminating or restricting competition which cannot be rectified, the transaction will be ordered to be terminated. For acquisitions that are not prohibited, the SAMR can decide to impose restrictive conditions to mitigate the negative impact on acquisitions.

Tentative Regulations of Review of Concentration of Undertakings (latest amendment effective since 1 May 2022) further clarified the important criteria in the review of Concentration of Undertakings, such as:

- The extent/nature of the acquisition of control.
- The capability to exercise decisive influence over other operators.
- How to calculate turnover.

ACQUIRING AND HOLDING AGRICULTURAL LAND Ownership

9. Are there restrictions on the acquisition of agricultural land? Consider any restrictions on local and foreign investors, and on legal entities and natural persons.

In China, agricultural land is collectively owned by farmers or by the state.

Agricultural land collectively owned by farmers is operated and managed by the local rural collective economic organisation (RCEO) or village committee.

Any other parties, domestic or foreign, cannot acquire ownership of agricultural land. Only a usage right to agricultural land can be granted and transferred, subject to conditions (see *Question 10*).

Under Chinese law, agricultural land is land used directly for agricultural production, including:

- Cultivated land.
- Forest land.
- Grassland.
- Land used for irrigation.
- Bodies of water used for breeding purposes.

The government imposes a land use control system. Conversion of agricultural land to development land is strictly regulated (see *Question 12*).

Land Tenure and Usage Rights

10. Briefly outline the main ways that agricultural land is held. What usage rights are typically granted over agricultural land (for example, leases)? Are there restrictions (such as a maximum length of lease terms)? Consider any restrictions on local and foreign investors, and on legal entities and natural persons.

Household Contract Farming

In China, agricultural land is collectively owned by farmers or by the state and managed and operated by the local RCEO or village committee (see *Question 9*). The basic form of agricultural operation is household contract farming.

Areas where household contract farming is not suitable, such as a barren mountain, gully, barren hill or deserted beach, can be

contracted by way of tender, auction, public negotiation and so on, for planting, forestry, animal husbandry and fishery operations.

State-owned agricultural land can be contracted and operated by an organisation or individual for planting, forestry, animal husbandry and fishery operations.

Contractual Management Right

Under the household contract farming system, members of the RCEO, that is, farm households in the village, have a right to use agricultural land by entering into a rural land contract with their RCEO (contractual management right). Organisations or individuals cannot deprive the RCEO members of this right, or illegally restrict it (*section 11, Property Law*).

To grant a contractual management right, the RCEO requires the consent of at least two-thirds of the members of the RCEO's village committee or of the villagers' representative (*Law of the PRC on Land Contract in Rural Areas*).

Land must be contracted out under the following procedures:

- A contract-working team is elected by the village committee. The contract-working team draws up and announces its contracting plan, according to laws, administrative rules and regulations.
- The village committee is convened to adopt the contracting plan through discussion.
- The public is notified of arrangements to implement the contracting plan.
- The contractual management right is concluded with the farmer.
- (*Law of the PRC on Land Contract in Rural Areas*).

After agricultural land is contracted, ownership of the land remains unchanged and it cannot be purchased or sold.

Under a contractual management right, the contractor enjoys certain rights to the land, including to:

- Use and reap yields from the land, and to decide arrangements for production, operation and disposal of its produce.
- Obtain compensation for the land if it is expropriated, requisitioned or occupied (*see Question 12*).

Contractors can, for the convenience of farming or for their own needs, exchange between themselves their contractual management right to land belonging to the same RCEO. They must notify this to the RCEO. No prior approval is required.

A contractor can, with the RCEO's consent, transfer all or part of his/her contractual management right to another farm household in the same RCEO.

The term of a contractual management right varies:

- Cultivated land: 30 years, which can be extended for another 30 years.
- Grassland: from 30 to 50 years, which can be extended for the same period.
- Forest land: from 30 to 70 years, which can be extended for the same period.

Circulating a Land Management Right

There is a distinction between a contractual management right and a land management right relating to the same land. A contractor can retain the contractual management right and circulate the land management right by entering into a contract with the transferee by means permitted by law, including a lease, sub-contract, or equity capital contribution. The contractor must notify the circulation of the land management right to the RCEO.

The transferee of a land management right must have the capability or qualifications to carry out agricultural operations. The contractor must first offer the land management right to the other members of the RCEO on equal terms.

After acquiring a land management right, the transferee can occupy the land for the term stated in the contract granting the land management right and carry out agricultural production and operation, provided that:

- The land ownership and use for agriculture purposes must not be changed.
- No damage must be caused to the overall agricultural production capacity and ecological environment.

The term of circulation of a land management right must not exceed the remaining term of the contractual management right.

The transferee can re-circulate the land management right by obtaining the contractor's prior written consent and notifying this to the RCEO.

If enterprises and other private investment parties obtain a land management right through circulation, the relevant RCEO can charge management fees.

Restrictions on the Use of Agricultural Land

A contractor must keep using the land for agricultural purposes, and not use it for non-agricultural development without approval granted according to law. The government imposes a land use control system. Conversion of agricultural land to development land is strictly regulated (*see Question 12*).

In addition, cultivated land must not be left idle or barren. If an approved non-agricultural development project holds cultivated land but does not use the land:

- Within a year, it must be cultivated by the rural collective or the previous contractor and the land user must pay an idle fee.
- For two years, the people's government of the county will take back the usage rights to the land without compensation. If the land is owned by an RCEO, the land will be returned to it to resume cultivation.

Further Restrictions on a Business Obtaining a Land Management Right

Administration Rules on Circulation of Land Management Right to Rural Land released by the MARA on 26 January impose further restrictions on a business obtaining a land management right. In particular, it must:

- Be qualified to engage in agricultural operations.
- Be properly capable of agricultural management.
- Have a specific business project.
- Make legitimate use of land.
- Be equipped with a risk prevention mechanism.
- Conform to the local industrial layout.
- Operate in line with the local modern agricultural development plan.
- Be conducive to agricultural production safety and ecological environment protection.
- Comply with other necessary conditions.

Further, if a business obtains a land management right through circulation, it must not engage in the following:

- Digging ponds or planting trees on basic farmland.
- Building houses, digging sand, quarrying stone, mining and fetching earth on cultivated land without authorisation.

- Unauthorised change of land use.
- Damaging the land or the ecological environment.
- Other acts damaging the land.

Special Acquisition Procedures

11. Are there any compulsory tendering or prior approval procedures required for a sale of agricultural land? Briefly set out these procedures and any approvals required. Are there mandatory minimum land prices if the government sells agricultural land?

In China, agricultural land is collectively owned by farmers or by the state and ownership cannot be transferred. It is possible to acquire a contractual management right and a land management right, subject to certain prior approval procedures (see *Question 10*). For areas not suitable for household contract farming, other options such as tendering, auction and public consultation are available (see *Question 10*).

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

The government imposes a land use control system. Conversion of agricultural land to development land is strictly regulated. The scale of urban development land must comply with state standards, make full use of existing development land, and must not occupy agricultural land or keep occupation of agricultural land to a minimum.

There is special protection for cultivated land. If cultivated land is classified as permanent basic farmland by government according to the land use master plan, no organisation or individual can occupy permanent basic farmland or change its land use purpose arbitrarily. If it is indeed difficult for key development projects (such as national energy, transport, water conservation and military facilities) to avoid permanent basic farmland, approval of the State Council must be obtained for conversion or requisition of the land.

For the needs of the public interest, agricultural land collectively owned by farmers can be requisitioned by law in any of the following circumstances, if there is a genuine need:

- Military and diplomatic needs.
- Energy, transport, water conservation, communications, postal infrastructure construction and other infrastructure facilities, organised and implemented by the government.
- Public utilities such as technology, education, culture, health, sports, ecological or environmental and resource protection, disaster prevention and mitigation, cultural relic protection, community services, public welfare, municipal undertakings, care arrangements for national heroes and their dependants and so on, organised and implemented by the government.
- Poverty alleviation, relocation and construction of affordable housing projects, organised and implemented by the government within the scope of urban construction land determined by the overall land use plan or by the local government at or above county level, as approved by the local government at or above the provincial level.
- Any other circumstances under which the law stipulates that it is necessary for the public interest to expropriate land collectively owned by farmers.

The acquisition of the following land must be approved by the State Council:

- Permanent "basic" farmland.

- Cultivated land other than permanent basic farmland exceeding 35 hectares.
- Other land exceeding 70 hectares.
- The expropriation of land other than those specified above must be approved by the people's government of the province, autonomous region or municipality directly under the control of Central Government.

Water Controls

13. Is the abstraction of water controlled by licence or quantities? Briefly set out the main provisions, legislation and regulatory authorities.

China implements a water extraction permit system and a paid use system for water resources. (*Articles 3 and 7, PRC Water Law*).

The watershed management agency established by the State Council's water administrative department in important rivers and lakes is responsible for the organisation, implementation, supervision, and management of the water-drawing permit system. The water administrative department, financial department, and price department of the rural government at or above the county level are responsible for the collection, management and supervision of water resources fees (*Article 4, Regulations Governing the Licensing for Water Drawing and the Levying of Water Resource Fees (Water Licensing Regulations)*).

There is no need to apply for a water extraction permit in the following situations:

- An RCEO or its meters use the water in the ponds or reservoirs of the RCEO;
 - Take a small amount of water for domestic life, scattered rearing, captive livestock, and poultry for drinking, etc.;
 - Temporary emergency water extraction to ensure the construction safety and production safety of underground projects such as mines;
 - Temporary emergency water extraction to eliminate the harm to public safety or public interest;
 - Temporary emergency water extraction to avoid agricultural drought and maintain ecology and environment.
- (*Article 5, Water Licensing Regulations*)

In practice, the NDRC and the Ministry of Water Resources (MWR) have reformed the agricultural water right distribution system in pilot schemes in seven provinces. Under the reform, an RCEO or any of its members using water in its pond or reservoir must confirm its water right. Generally, there are four steps to do this:

- Defining the regional total water consumption control index.
- Defining the water resources allocation schemes of various industries.
- Defining the available water consumption of each water user.
- Issuing agricultural water rights certificates.

An agricultural water rights certificate can be issued to RCEOs, water users associations or water users.

For example, in some local counties, the local counterparts of MWR issue a water resources use certificate to RCEOs. At the village level, where conditions can be confirmed at household level, based on the wishes of the local people, the RCEO issues irrigation water use certificates to farmers. In other areas, only water organisations or large water users can obtain water right certificates.

In general, a water extraction licence is required to extract water. The local counterpart of MWR must decide an application for water extraction within 45 working days of accepting the application. If it approves it, it will issue an approval document for the application. The time limit for examination and approval does not include time needed for holding hearings and soliciting the opinions of the relevant departments.

parties extracting water are subject to conditions imposed in their licence. A licence includes the following: (*Article 24, Water Licensing Regulations*)

- Name of the entity or individual that extracts the water.
- Valid term for the water extraction.
- The amount of water for extraction and use of the water.
- Type of water sources.
- The location of water extraction and withdrawal, the method of water withdrawal, and amount of water withdrawn.

The valid term of a water extraction licence is generally five years, and the longest term is ten years.

Users must also install measurement facilities according to national technical standards, ensure they operate normally and fill out water extraction statistics according to the relevant provisions.

Users must pay water resource fees and extract water according to the approved annual water extraction plan. For water extraction exceeding the applicable quota, water resource fees are charged progressively on the excess amount.

A person committing any of the following will be ordered to stop the illegal act, make a correction within a time limit and be fined (if the correction is not made within the time limit, or if the circumstances are serious, that person's water extraction licence may be revoked):

- Takes water without approval or fails to take water according to the licence.
- Refuses to implement a decision by the regulatory authority on restricting the amount of water for extraction, or assigns a water extraction entitlement without approval.
- Fails to submit annual information on water extraction in accordance with the relevant provisions.
- Refuses to accept supervision or inspection, or practises fraud.
- The quality of the water withdrawn fails to meet the prescribed requirements.
- (*Article 69, PRC Water Law and Article 51 and 52, Water Licensing Regulations*)

A person who extracts water without approval or extracts water without following the conditions in a water extraction licence and causes an obstruction or loss to another person must eliminate the obstruction and compensate for the loss (*Article 48, Water Licensing Regulations*).

Tax

14. Which taxes apply to the sale and transfer of land ownership or usage rights?

The acquisition of land ownership by private parties is not allowed (*see Question 10*).

In general, if a transfer of usage rights to agricultural land does not involve a change of use, for example, from agricultural land to development land, most taxes do not apply. Relevant taxes include the following:

- Value-added tax (VAT): if a taxpayer transfers the contracted land to agricultural producers for agricultural production, by subcontracting, lease, exchange, transfer, equity investment or otherwise, the taxpayer is exempt from VAT. If the contracted land is transferred for other use purposes, VAT applies (*Notice on Pilot Policies of Levying Value-added Tax in Lieu of Business Tax for Construction Services and Other Sectors, promulgated by the Ministry of Finance of the PRC (MOF) and the State Administration of Taxation (SAT)*). The current effective VAT rate applied to a transfer of usage rights to land is 9%.
- Land appreciation tax: currently, this only applies to a transfer of usage rights to state-owned land, not collectively owned land. Under the current Provisional Regulations of the PRC on Land Appreciation Tax, a four-tier progressive tax rate system applies. Land appreciation tax is levied from 30% to 60% on a gain on a disposal of landed property, with reference to the percentage of appreciated value over the deductible amount.
- In the draft Law of Land Appreciation Tax 2019 issued by the MOF and the SAT for public comment, this tax will apply to a transfer of usage rights to collectively owned land, but a transfer of a contractual management right will be exempt.
- Urban land use tax: land used directly for agriculture, forestry, husbandry and fishery purposes is exempt.
- Deed tax: in general, a transfer of a usage right to land is subject to deed tax, with tax rates generally ranging from 3% to 5%, but a transfer of a contractual management right is exempt.
- Stamp tax: a transfer of a contractual management right is exempt.
- Individual income tax: income from a lease of contracted land or a transfer of usage rights is subject to individual income tax.

To transfer a usage right to agricultural land for non-agricultural purposes through the primary land market, the land user pays a number of taxes, including farmland conversion tax, deed tax, stamp tax, urban land use tax and individual income tax.

Taking Security

15. How is security over agricultural land typically created and perfected to raise finance?

A usage right to rural land not suited to household contract farming (*see Question 10*) can be mortgaged to raise finance. A mortgage placed on the usage right must be registered with the local counterpart of MARA or trading platform authorised by the government, depending on the local regulations.

A usage right to state-owned agricultural land can be mortgaged with the approval of the land administration and property management departments of the municipal or county government if the following conditions are satisfied:

- The land users are companies, enterprises or other economic organisations and individuals.
- A certificate to use the state-owned land has been obtained.
- 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 proceeds from the mortgage to pay the assignment fee.

A land management right over collectively owned agricultural land can also be mortgaged. The contractor can apply to a financial institution for a financing guarantee by presenting the land management right and notifying this to the RCEO. The contractor must possess the land contract management right certificate

issued by the local government and clearly inform the issuer of the mortgage of the contracted land.

A transferee who obtains a land management right by circulation can also apply to a financial institution for a financing guarantee by presenting the land management right after obtaining the contractor's written consent and reporting this to the RCEO. The parties must register the land management right and the mortgage with the local land registration authority.

CROP SEED BUSINESS

16. State the approvals/licences that are required to import new plant species or varieties and crop growing technologies. Briefly outline the approval process, legislation and regulatory authorities.

Legislation and Regulatory Authorities

The main laws and regulations on importing new plant species or varieties and crop growing technologies are as follows:

- Seed Law promulgated on 8 July 2000, as most recently amended on 24 December 2021 (Seed Law 2021).
- Regulations on Administration of Agricultural Genetically Modified Organism (GMO) Safety.
- Quarantine Law of the PRC on the Entry and Exit of Animals and Plants (promulgated on 30 October 1991, effective as of 1 April 1992 and latest revised on 27 August 2009).
- Regulations on Plant Quarantine promulgated by the State Council on 3 January 1983 and latest revised on 7 October 2017.
- Implementation Rules of Regulations Plant Quarantine (Agriculture Part) promulgated by the Ministry of Agriculture (predecessor of MARA) on 25 February 1995 (amended on 8 November 2007).
- Measures for the Quarantine and Administration of Propagation Materials for Plants Entering China (Issued by Order No. 10, SAEIQ, amended by General Administration of Customs and effective as of 1 July 2018) (GACC Quarantine Measures).
- Measures of Administration for Quarantine Approval for Imported Breeds (1993 Agriculture No.18)
- Circular of Further Intensifying Administration for Quarantine Approval for Imported Breeds (1999 Agriculture No. 7).
- Administrative Measures on Quarantine Approval for Inbound Animals and Plants (No. 25 Order of the former General Administration of Quality Supervision, Inspection and Quarantine, latest revised in 2018) (Quarantine No. 25 Measures).

Importing plant propagation materials is subject to quarantine approval from the MARA and the General Administration of Customs (GACC).

Quarantine Examination and Approval

The quarantine examination and approval with the GACC is set out as follows, according to the GACC Quarantine Measures:

- To import propagation materials, quarantine approval formalities must be properly arranged in advance. The quarantine requirements must be listed in the sale contract. A Quarantine Approval Form must be obtained before entry. Filing formalities must be completed at the port ten to 15 days before entry.
- Following registration of the Quarantine Approval Form, the plant propagation materials must be submitted to the designated customs for inspection at least seven days before entry, by presenting the plant quarantine certificate, certificate

of origin, sale contract, invoice and other necessary documents issued by the official plant quarantine department of the exporting country (or region).

- If the inspection shows a low level of risk (depending on whether dangerous and harmful organisms are found or whether limited non-quarantine harmful organisms exceed the relevant statutory level), customs will release the plant propagation materials or release them after quarantine treatment.
- If the inspection shows a high or medium level of risk, the plant propagation materials are sent to the designated quarantine garden. Whether quarantine treatment will occur depends on whether dangerous and harmful organisms are found, or whether limited non-quarantine harmful organisms exceed the statutory level.

Import and Export Permit

Import and export permit. Entities that import or export seeds must, in addition to the seed production and operation licence (see *Question 17*), obtain an import and export permit. The Quarantine No. 25 Measures stipulate that the importer must apply to the Examination and Approval Agency and obtain a Quarantine Permit before signing the trade contract. Seeds imported to produce hybrid seeds for other countries that are not sold in China are exempt from this requirement.

An application for an import and export permit must be submitted to the provincial MARA for pre-examination. The provincial MARA is required by law to render an opinion within 20 working days. The final decision will be issued by the MARA within 20 working days on receipt of a (positive) opinion from the provincial MARA and other application documents required.

The import and export of false and inferior seeds is prohibited. The quality of the seeds imported must meet the industry standards (see *Question 17*). If no standards apply, the standards agreed in a contract can be applied.

Prohibited plants and seeds. China prohibits entry of plants and seeds it believes to be potentially harmful to its ecosystem and economy. These plants are stated on a prohibited list distributed by the MARA, expanded through subsequent notices issued by the MARA and the SAMR.

To introduce a prohibited item into China for special reasons such as scientific research, an application must be submitted in advance and approved by the GACC (*Prohibition List for Inspection and Quarantine of Imported Plants, promulgated by the GACC in 2018*).

To import plant propagation materials with soil or growth medium, an application must be made to the GACC for examination and approval with special quarantine. The GACC designates the port of entry for examination and approval.

IPPC Compliance

As a WTO member, China must meet the obligations of the *Agreement on the Application of Sanitary and Phytosanitary Measures*.

The international phytosanitary (plant health) standards are developed by the *IPPC Secretariat*. China has confirmed its compliance with these through the State Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) Decree No. 41, Provisions for the Administration of Risk Analysis on Entry Plant and Plant Products.

17. Briefly outline any additional approvals/licences that are required for:

- **Setting up R&D centres and test plots for new crops.**
- **Crop seed production.**

- **Commercial crop production.**
- **Distribution of seeds or crops (wholesale, retail and e-commerce).**

R&D Centres and Test Plots for New Crops

Under the Negative List for Foreign Investment 2021, foreign investors must not invest in R&D in certain agricultural sectors (see *Question 7*), though research *alone* is permitted.

The Agricultural Science and Technology Fund, established by the MOST, supports the commercialisation of technology in agriculture, with a focus on R&D and promoting new agricultural technology (see *Question 2*).

To enter into breeding of new crops, a company must apply for a seed production and operation licence integrated for breeding, production and operation.

Crop Seed Production

Under the Seed Law 2021 and the Administration Measures of Crop Seed Production and Operation Licence 2022, an enterprise must obtain a crop seed production and operation licence to produce main crop seeds. The main crops are rice, wheat, maize, cotton and soybean (*Seed Law 2021*).

Licences are granted by local counterparts of the MARA at different levels:

Seed production and operation licence with import/export approval: examined, approved and issued by the MARA.

Seed production and operation licence for breeding, production and operation by integrated enterprises: applications to the county MARA for pre-examination. Approved and issued by the provincial MARA.

General seed production and operation licence: applications to and issued by the county MARA

Crop seeds manufactured and distributed in China must also be labelled in compliance with the national standard (*General Directive for Labelling of Agricultural Seeds (GB 20464-2006)*). If there are national standards or industry standards available, the quality index of crop seeds must be labelled by following these standards. If such standards are not available, the general rule is that, for seeds of grain crops, cash crops, melon and vegetables and so on, the purity, germination rate and moisture content must be listed on the seed label.

Seed producers and traders can voluntarily apply to eligible certification agencies for seed quality certification. Once qualified, they can use the certification marks on their packaging.

Commercial Crop Production

Commercial crop production does not require a specific licence.

Distribution of Seeds or Crops

Distribution of seeds requires a crop seed production and operation licence (see *above, Crop seed production*).

There is a licensing system for food manufacturing and food business operations (see *Question 28*) but a permit is not required to sell edible agricultural products.

PLANT VARIETY RIGHTS

18. What are the legal conditions to obtain a plant variety right (PVR) and which legislation applies?

To obtain a PVR, the variety must:

- Belong to a genus or species listed in the National List of Protected Plants;
- Novel.
- Distinct, uniform, and stable (DUS test).

In addition, the name given to the new variety must comply with the Regulation for the Naming of the Agricultural Plant Variety.

China ratified the International Convention for the Protection of New Varieties of Plants 1961 (UPOV Convention) (revisions in 1978) in 1999. China did not ratify the 1991 revision which provides stronger PVR protection. The main reason for this was that the overall R&D capability of China's seed industry is less competitive than developed economies (for example, in North America or the EU).

However, the PVR legislator currently uses the UPOV 1991 Act as a guideline to revise the Regulations on the Protection of New Varieties of Plants (the latest draft for public consultation was published on 10 May 2019).

19. How is a PVR obtained in your jurisdiction?

Legislation and Authorities

The New Plant Variety Protection Office (PVP Office) of the MARA manages agricultural PVRs.

Forestry PVRs are managed by the New Plant Variety Protection Office of the State Forestry Bureau. Forestry PVRs are subject to the same laws and similar registration and protection procedures as agriculture PVRs.

The following regulations apply, regardless of whether the applicant is a Chinese or foreign individual or legal person:

- Regulations on the Protection of New Plant Varieties issued by the State Council on 20 March 1997 and revised on 29 July 2014 (New Variety Regulations).
- Detailed Implementation Rules on the Regulations on the Protection of New Plant Varieties issued by the Ministry of Agriculture on 31 December 2011 (New Variety Rules).

Under Article 2 of the New Variety Rules, agricultural plants include grain, cotton, oil plants, hemp, sugar crop, vegetables (including west melon or water melon), tobacco, mulberry, tea trees, fruit trees (excluding nut trees), decorative plants (excluding woody plants), grass, green manure, herb medicine, edible mushrooms, algae, and rubber trees.

Registration Process

The registration process for an agricultural PVR consists of the following three stages.

Application and acceptance. To apply for a PVR, the applicant must submit the request letter, instructions and photos of the variety that meet the formal requirements to the PVP Office. All application materials must be in Chinese.

Where the applicant claims priority, the application date, the application number and the country or organisation that accepted the application must be stated in the application, otherwise it will be deemed that the priority has not been claimed.

If the application is accepted, the PVP Office will inform applicants to pay the application fee within one month from the application date.

The right to apply for a PVR and the PVR itself are both transferable.

Preliminary examination. The PVP Office will conduct a preliminary examination of the following contents after the applicant has paid the application fee:

- Whether the variety belongs to protectable plant genus or species.
- Whether it meets the novelty requirements.
- Whether the name of the variety is appropriate.

This procedure usually takes six months. Varieties that pass the preliminary examination must undergo a substantive examination of their distinctness, uniformity, and stability. For a variety that is unqualified after preliminary examination, the applicant must make amendments within three months. If there are no amendments or the application is still unqualified after the amendment, the application will be rejected.

Substantive examination. The PVP Office examines the distinctness, uniformity and stability of the variety. The PVP Office mainly conducts the examination based on application documents. When necessary, it can request a designated testing institution to conduct trials or field inspections.

On substantive examination, if the PVP Office decides that the application satisfies the New Variety Regulations, it will grant the PVR, issue a certificate for the PVR and then register and publicly announce the PVR. If the application is deemed to not comply with the New Variety Regulations, the PVP Office will reject the application and notify the applicant of its decision.

A rejection of an application after the preliminary examination or substantive examination can be challenged on application to the Review Board of the PVP Office, within three months from the date of receiving the rejection notice.

20. How long does PVR protection last? Are there restrictions on the rights of the PVR holder or exemptions, such as farmer's privilege?

Extent of the Protection

PVRs provides protection for 20 years from the date of grant of vines, forest trees, fruit trees and ornamental trees, and 15 years for other eligible plants.

A holder enjoys exclusive rights for the duration of the PVR and without the authorisation of the PVR holder, other parties must not conduct any of the following acts in respect of the propagating material of the protected variety:

- Production.
- Reproduction.
- Conditioning for the purpose of propagation.
- Offering for sale, selling, exporting, importing, stocking for any of the above purposes.
- Repeat use for commercial purpose in the production of the propagating material of another variety.

Under the Seed Law 2021, the scope of protection for PVR is extended from propagating materials to harvested materials. Any of the above acts in respect of harvested material obtained through the unauthorised use of propagating material of the protected variety require the authorisation of the PVR holder of the relevant variety, unless the PVR holder has had reasonable opportunity to exercise their right in relation to the propagating material.

The PVR protection rules [##(see Questions 19 and 20)] also apply in relation to essentially derived varieties.

Under the Seed Law 2021, essentially derived variety is defined a variety that is:

- Essentially derived from the initial variety, or derived from a variety that is itself essentially derived from the initial variety.
- Clearly distinguishable from the initial variety.
- (Except for the differences which result from the act of derivation) conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Procedures and measures for implementing the system of essentially derived varieties will be further formulated by the State Council. The scope of protection for PVR is extended from propagating material to harvested material obtained through to the unauthorised use of propagating material of protected varieties, unless the PVR holder already had a reasonable opportunity to exercise its rights in respect of the propagating material.

Restrictions on the Rights of the Holder

Under the following circumstances, the company or individual can use the PVR without the permission of the right holder, without having to pay royalties:

- Use of protected varieties for breeding or other scientific research activities without the PVR holder's consent or paying royalties to the PVR holder is permitted.
- Self-producing the propagating materials of protected varieties by farmers for their own use.

For the sake of national or public interest, the PVP office can decide to implement a compulsory licence for new plant varieties. The company or individual that obtains the compulsory licence must pay the right holder a reasonable royalty.

Farmer's Privilege

Use of the propagation material of a protected variety by farmers for breeding and for propagation purposes is permitted. Selling the propagation material for a commercial purpose and sharing or exchanging it with other farmers is prohibited.

In practice, farmers who share or exchange the propagation material are rarely prosecuted. China has over 200 million subsistence farmers, who are generally not able to pay fines or damages.

The most recent draft revisions to the Regulations on the Protection of New Varieties of Plants published on 10 May 2019 provide that farmer's privilege refers to a member of an RCEO who is party to a contractual management right (see Question 10). Further, farmers can use propagation materials which they have obtained by their own planting, but the quantity of such self-use must not exceed a reasonable amount required given the contracted land of the household.

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

A PVR holder can apply for administrative enforcement or file a civil claim in the event of PVR infringement.

Administrative enforcement is carried out by the provincial MARA, which can:

- Order the infringer to stop the infringement.
- Confiscate unlawful earnings and propagation materials.
- Impose fines.
- Mediate between the parties on the compensation of damage caused by the infringement.

A civil claim can be filed in court separately or at the same time as administrative enforcement. The advantage of a civil claim is that a PVR holder can claim damages and also punitive damages (up to five times of the damages) in the case of serious infringement.

GENETICALLY MODIFIED (GM) CROPS

22. Set out the legislation and regulatory authorities in relation to genetically modified (GM) crops. Has your jurisdiction ratified the Cartagena Protocol on Biosafety 2002? What is your government's policy in relation to GM crops?

The safety approvals needed to introduce GMOs are set out in the:

- Regulations for Administration of Safety of Agricultural GMOs, effective from 23 May 2001 and revised in 2017 (GMO Regulations).
- Measures for Administration of Safety Evaluation of Agricultural GMOs (GMO Measures).

The processing of GMOs is regulated in the Measures for the Examination and Approval of the Processing of Agricultural GMOs.

Imports are regulated in the Measures for the Administration of Import Safety for Agricultural GMOs. There are further detailed regulations on other uses of GMOs.

Cross-border transportation of GMOs are regulated in the Administrative Measures for Inspection and Quarantine of Entry and Exit Genetically Modified Products (2018).

Advertisements and promotional material regarding GMOs are regulated in Notice on Guiding the Management of Genetically Modified Advertisements (2015).

China has ratified the Cartagena Protocol on Biosafety.

The MARA is the primary regulator of GM crops. GMO regulation is divided between the following:

- MOFCOM: GM trade.
- National Health Commission (NHC): safety standards and inspection of GM products.
- MARA: GM crops.
- Ministry of Ecology and Environment (MEE): biosafety of GM products.
- SAMR: market supervision, inspection and quarantine of GM products.

Government Policy on GM Products

China cautiously reviews the introduction and development of GMOs and GM products. The authorities actively promote research but strictly control the planting of GM crops. In theory, crops that pass the safety tests are considered safe and can be planted.

China has so far approved seven GM crops, of which only Bt cotton (a genetically modified pest resistant plant cotton variety) and transgenic papaya are grown on a large scale. In addition, China has approved four imported GM crops (cotton, soybean, corn and canola) as raw materials for processing, but they cannot be imported as seeds.

23. Set out the permit/licensing requirements and prohibitions in relation to GM related activity and the key legislation and regulatory authorities.

Ag GMO Safety Certificate

GMO production, processing and trade each require a specific licence. The key requirement for all licences is the MARA Ag GMO Safety Certificate. To apply for this, the applicant must carry out the following tests:

- Medium (controlled environment) test.
- Environmental release test.
- Production test.

The safety requirements are set out in Appendix 4 of the GMO Measures, including safety requirements for laboratories and field tests.

After each test, the applicant must provide samples to the MARA GMO qualified testing institute (there are 29 of these throughout China). This institute conducts its own tests on the applicant's samples and sends back its own safety assessment.

Both the applicant's and the institute's test results must be submitted to the MARA after each test stage, to be approved for the next test. After the production test is completed, the applicant can apply to the MARA for an Ag GMO Safety Certificate, submitting the following:

- The safety class of the GMO and the reasons for it. The GMO Regulations classify GMOs as class 1: no verified risk yet, class 2: low risk, class 3: medium risk and class 4: high risk.
- A summary report of the production test.
- The experimental materials, testing methods, and other materials required by the MARA.

The commercial production of GM seeds requires an operation and production licence (see *Question 17*). The following additional requirements must also be met to produce GM seeds:

- Full-time managerial personnel and marketing files.
- Appropriate safety administration and precautionary measures.
- Other conditions imposed by the MARA.
- (*Article 25, GMO Regulations*)

Importing and exporting GM seeds requires an import and export permit (see *Question 16*).

Foreign investors cannot invest or acquire local businesses that operate in the breeding of GM varieties of crop seeds, livestock and poultry breeds and aquatic breeds, and GM seed production (see *Question 7*).

Research into and testing of GMOs in agriculture within China conducted by Chinese-foreign contractual co-operation, joint capital or sole foreign capital must be approved by the competent agricultural administrative department of the State Council (*Article 18, GMO Regulations*).

GM Food and Feed

The processing of GM crops into food or feed and importing GM food and feed requires a specific licence from the relevant provincial MARA, which is valid for three years.

Labelling

Sales of GMOs and products containing GM ingredients must be labelled if they are on the list of GMOs published by the MARA

(Measures of Administration for Marking of Agricultural GMOs). This list currently contains beans, corn, rape, cotton and tomatoes.

The MARA is responsible for the examination and approval, supervision and administration of labelling of genetically modified organisms in agriculture nationwide.

The agricultural administration at or above the county level is responsible for the supervision and administration of the labelling of GMO in agriculture within its administrative region.

The State Administration for Quality Supervision, Inspection and Quarantine is responsible for the inspection of the labelling of imported agricultural GMOs at ports.

The label must be clearly visible, be in standard Chinese and state whether the product is a GMO or is made from GMOs.

Incorrectly labelled GMOs and products can be:

- Ordered to be corrected by a certain time.
- Confiscated along with resulting illegal income.
- Subject to a fine.

Penalties

The following penalties apply to breaches of the GMO Regulations:

- Companies that produce, process or import GMOs without the required approvals can be ordered to stop their activities.
- Illegally produced seeds, products and income can be seized.
- A company can further be fined up to five times the illegal income, if the income is RMB100,000 or above. If the illegal income is less than RMB100,000, the company is fined between RMB100,000 and RMB200,000.

ANIMAL AND ANIMAL WELFARE ISSUES

Importing Animals

24. Briefly outline the import/export control measures for animals and related genetic resources.

Import Approval

To import animals and related genetic resources into China, approval by GACC must be obtained in advance. On the issue of a quarantine permit by the GACC, the goods can be imported.

Applicants must apply and obtain a quarantine permit from the GACC before entering into a trade contract or agreement and before the transport of animals.

The local counterparts of the GACC conduct a preliminary examination on the application, including whether:

- The information submitted by the applicant is complete and complies with the law.
- There is an epidemic relating to the animals in the exporting country or region, or the countries or regions where the animals were in transit.
- The application complies with relevant Chinese laws, regulations and administrative rules on quarantine for animals and plants.
- The application complies with bilateral quarantine agreements (including treaties, protocols and memoranda) between China and the exporting country or region.
- The conditions for transport, manufacturing, processing, storage and treatment of animals and derivative products comply with quarantine and control requirements (import quantities are verified in accordance with the processing).

The GACC or its local counterparts can, when they deem necessary, organise experts to conduct a risk analysis on the inbound product, and applicants must provide relevant documents and samples for their inspection.

For applications that pass the preliminary examination, the local counterparts of the GACC will issue a preliminary opinion and a permit for temporary quarantine station for inbound animals at an animal temporary isolation and quarantine site.

The GACC will issue a quarantine permit or notice of a rejected application based on the examination results, within 20 working days from receipt of the application as forwarded by its local counterpart (*Administrative Measures on Quarantine Approval for Inbound Animals and Plants*)

Prohibited Objects

The following are prohibited from entering China:

- Pathogenic micro-organisms (including seed cultures of bacteria and viruses) of animals and plants, insect pests and other harmful organisms.
- Certain animals and plants, their products and other quarantine objects from countries or regions with prevalent epidemic animal or plant diseases.
- (*Law on the Quarantine of Importing and Exporting Animals and Plants*).

The MARA specifies a number of animals in the catalogue of objects prohibited from entering China (*Ministry of Agriculture Order No.72 of 29 July 1997*). This was slightly amended by the catalogue of plants and animals and their products prohibited from carrying and mailing (*Ministry of Agriculture and AQSIQ Order No.1712 effective from 13 Jan 2012*).

If a port animal and plant quarantine officer discovers any such objects, they will be returned or destroyed.

Imports of prohibited objects can be permitted in specific cases, for instance scientific research.

OIE Compliance

Since China is a WTO member, restrictions on the import of animals and genetic resources must be based on international standards or justified on a scientific basis under the WTO Agreement on Sanitary and Phytosanitary Measures. The international sanitary standards for animals are developed by the OIE. For animals these are, in particular, the Terrestrial Animal Health Code and the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals.

In April 2021, the MARA released *National Animal Disease Surveillance and Epidemiological Investigation Plan (2021-2025)*, including specific sanitary planning concerning 32 animal diseases. This confirms how China will harmonise its animal sanitary laws and regulations according to the WTO rules, OIE international sanitary standards and accepted practices.

Animal Welfare

25. Briefly outline the regulatory regime for animal welfare.

In China, animal welfare is regulated by various items of legislation, including the:

- Law on the Protection of Wildlife (promulgated by the Standing Committee of the NPC in 1988, latest revision in 2018).
- Law on Quality and Safety of Agricultural Products (promulgated by the Standing Committee of the NPC in 2006, latest revision in 2018).

- Law on Animal Epidemic Prevention (promulgated by the Standing Committee of the NPC in 1997, latest revision in 2021).
- Animal Husbandry Law (promulgated by the Standing Committee of the NPC in 2005, latest revision in 2015).
- Management Regulations on Slaughtering Live Pigs (promulgated by the State Council in 1997, latest revision in 2016).
- Administration Regulations on Experimental Animals (promulgated by the State Council in 2011, latest revision in 2017).
- Implementation Regulations of Aquatic Wildlife Protection (promulgated by the State Council in 2011, latest revision in 2013).
- Regulations for the Administration of Affairs Concerning Experimental Animals (latest revision effective on 1 March 2017).
- Implementation Regulations of Land Wildlife Protection (promulgated by the State Council in 2016).
- Interim Management Regulations on Quality of Meat and Meat Products (promulgated by the MOFCOM in 1989).
- Measures on the Administration of Animal Quarantine (promulgated by the MARA in 2002, latest revision in 2019).
- Notice on Promulgation of the Guiding Opinions on Punishing the Crime of Illegal Trade in Wildlife in Accordance with Law (Promulgated by the Supreme People's Court, the Supreme People's Procuratorate, The Ministry of Public Security, The Ministry of Justice in December 2020).

On 24 February 2020, the Standing Committee of the NPC issued a decision to comprehensively ban illegal wildlife trade, abolishing the overeating of wild animals, and effectively protecting the lives, health and safety of the people.

Local regulations have also strengthened animal welfare legislation in recent years. For example, the:

- Standing Committee of the Beijing People's Congress promulgated the Regulation on Protection and Management of Wildlife, effective from 1 June 2020.
- Shanghai Municipal Committee of Science and Technology formulated Measures for the Licence Administration of Experimental Animals, effective from 1 January 2020.
- Notice on Promulgating and Distributing the Guide for Licensing the Production and Use of Experimental Animals, effective from 15 June 2020.

26. Does the law of your jurisdiction allow for patentability of livestock genes on the grounds of isolating and purifying them? Is there legal protection for animal breeding know-how and a resulting animal nucleus?

A gene or DNA fragment includes those isolated from a micro-organism, plant, animal or human body, and those obtained by other means. Gene or DNA fragments found in nature and existing in their natural state are merely a scientific discovery under Article 25 of the Patent Law, so are not patentable. Under the Guidelines for Patent Examination (Examination Guidelines, latest version effective as of 15 January 2021), a gene or a DNA fragment is, in essence, regarded as a chemical substance (*Order 68, Part 2, Chapter 10, section 9.1.2.2*).

A gene or DNA fragment and its obtaining method can be patented if all of the following apply:

- It is isolated or extracted from nature for the first time.

- Its base sequence is unknown in the prior art, that is, it has not been recorded in the existing technology and can be clearly characterised.
- It is capable of industrial application.
- (*Order 68, Part 2, Chapter 10, section 9.1.2.2., Guidelines for Patent Examination*)

Under the Patent Law, animal and plant varieties cannot be granted patent rights. However, the manufacturing methods for such products may be granted patent rights. The methods referred to are non-biological methods and do not include methods for producing animals and plants that are primarily biological. Know-how can also be protected under confidentiality agreements and competition law. An animal nucleus can be protected on the basis of ownership rights.

27. 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 legal restrictions on the breeding of new species or breeds of animals under Chinese law, as long as they do not pose a danger to human health or the environment.

AGRICULTURAL SAFETY AND PRODUCT LIABILITY Standards

28. 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.

Food Standards

Food safety standards. Food manufacturers or business operators must engage in manufacturing or business operations according to laws, regulations and food safety standards (*Article 4, PRC Food Safety Law (FSL), amended in 2021*). The FSL further states that food safety standards are mandatory and no other mandatory food standards can be formulated.

The NHC, with the SAMR and the MARA, formulates national food safety standards planning and an annual implementing scheme. The NHC publishes drafts of these on its website to obtain public opinion.

The NHC and the SAMR are jointly responsible for formulating and publishing the national food safety standards (GB standards). Limits on pesticides and veterinary drug residues are jointly imposed by the NHC, the MARA and the SAMR. The inspection procedures for slaughtering livestock and poultry are formulated by the MARA and the NHC.

National food safety standards are based on food safety risk assessment findings and safety risk assessment findings of edible agricultural products. They refer to international standards and food safety risk assessment findings. Draft standards are announced to the public, and the opinions of food manufacturers and business operators, consumers, the relevant authorities and so on are obtained.

Science-based risk analysis methodologies of the *Codex Alimentarius* are a basis for China's risk-based food safety standard framework. Alignment with international standards and best practice should be understood in light of China's attempt to restore trust in its domestic food chain. The government has called for further studies of, and comparisons with, international food safety standards and involvement in food codex affairs.

National food safety standards are examined and passed by the National Food Safety Standards Review Committee organised by the NHC. It consists of medical, agricultural, food, nutrition, biology, environment and other experts, and representatives from relevant departments under the State Council, food industry and consumer associations. It reviews the scientific basis and practicability of draft national food safety standards.

In the absence of national food safety standards addressing local foods, provincial counterparts of the NHC, autonomous regions, and municipalities directly under the central government can formulate local food safety standards (DB/T standards). These local authorities can invite public opinion when formulating local food safety standards and must file them with the NHC within 30 working days from when they are issued.

If local food safety standards violate laws, regulations or national food safety standards, the NHC will take prompt corrective action. If corresponding national food safety standards are subsequently issued, the local standards will be repealed.

Enterprise standards. The state encourages food manufacturing enterprises to formulate and apply enterprise standards (QB/T standards) which are more stringent than national and local food safety standards, and to file them with local counterparts of the NHC.

National, local and enterprise food safety standards are available for free on the websites of the local counterparts of the NHC.

Legislation And Regulatory Authorities

Policy, standards, licensing, enforcement and supervision are conducted by the following:

- SMAR: food safety, including domestic food production, distribution, consumption and enforcement oversight, quality control, certification and accreditation, and formulating food safety standards with the NHC.
- NHC: mainly responsible for technical affairs such as food safety risk assessment, surveillance and outbreak response, and formulating food safety standards.
- MARA: domestic primary agriculture production, slaughter, GMO oversight and so on.
- GACC: import and export supervision, mainly through inspections of imported and exported food.

Food safety is governed at the following five different levels in China:

- The FSL, as promulgated by the Standing Committee to the NPC in 2009 (latest revision 29 April 2021) and the Law on Agricultural Product Quality and Safety (29 April 2006, latest revision 26 December 2018) by the Standing Committee of the NPC.
- The Implementation Regulation of the FSL (Implementation Regulation) issued by the State Council. The latest came into force on 1 December 2019.
- Local governments above county level issue local regulations, usually when delegated to them under the FSL. For example, Article 36(2) of the 2015 FSL requires local governments to formulate regulations for local food business.
- Administrative departments under the State Council issue various departmental rules, mainly supporting measures for food safety supervision and management. Examples include the Administrative Measures for Food Production Licensing promulgated by SMAR on 2 January 2020, effective as of 1 March 2020, and Administrative Measures for Food Operation Licensing promulgated by the former China Food and Drug Administration (its powers were transferred to the SAMR in March 2018) on 31 August 2015 (latest revised on 17 November 2017).

- Local government departments formulate local rules according to local conditions, for example to clarify national rules. Local departments implement national rules and have some discretion to set rules suitable for their local area. An example is the Shanghai Online Catering Service Supervision and Administration Measures, formulated by Shanghai's local food and drug administration.

Liability

29. 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 and product liability.

The liability of producers and suppliers for defective or contaminated food is regulated in the:

- The Civil Code of the People's Republic of China (Effective from 1 January 2021).
- Product Quality Law of the PRC (Product Quality Law).
- Food Safety Law of the PRC (FSL).
- Supreme Court of the PRC Regulations on Several Issues on the Trial of Cases Concerning Food and Drugs Disputes (Supreme Court's Opinion Concerning Food and Drugs Disputes).

The liability of producers and suppliers varies under these laws and regulations.

Producers

Strict liability applies to producers. The legal requirements to establish the liability of a producer include:

- There is a defect in a food product.
- Another person suffers harm.
- The defect in the food product causes the harm to the other person.
- (*Article 1202, Civil Code of the People's Republic of China*)

Suppliers

In the event of damage caused to others due to a product defect, anyone harmed can seek compensation from the manufacturer or the seller of the products.

Where the product defect is caused by the producer, the seller can, after paying compensation, claim the equivalent from the producer. Where the product defect is caused by the fault of the seller, the producer can, after paying compensation, claim the equivalent from the seller (*Article 1203, Civil Code*).

When product defects compromise the personal and property security of others, anyone affected has the right to request the manufacturer and the seller to bear tortious liability and be ordered for example, to cease the infringement, remove the obstruction, eliminate the danger and so on (*Article 1205, Civil Code*).

Among others, if a product is found defective after being put into circulation, both the producers and the suppliers must take remedial measure such as stopping sale, issuing warnings and recalling. If such measures are not taken in a timely manner, they will be held liable for aggravated damage.

30. 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?

Under the Product Quality Law, a producer can avoid liability if it can prove any of the following:

- The product has not been put into circulation.
- The defect causing the damage did not exist at the time when the product was put into circulation.
- The science and technology at the time the product was put into circulation was not capable of detecting the defect.
- The statutory limitation for legal actions involving damages caused by a defect in a product is two years from the day when the party concerned knew or should have known the infringement of the rights and interests.
- The right to claim for damages arising from defective products will be forfeited on completion of ten years from the day when the defective product causing the damage is delivered to the first user or consumer, unless the clearly stated safe-use period has expired.
- (Article 45, Product Quality Law)

According to the Supreme Court's Opinion Concerning Food and Drugs Disputes, the following defences are available to food producers and suppliers:

- The food manufactured or sold complies with quality standards.
- The damage is not caused by the food not complying with quality standards.

Prior government approval for entry on the market can be used as a legal defence in civil courts if it includes official recognition of the food quality, or the food complying with food quality standards.

31. 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?

Compensation for damage generally awarded to a victim by civil courts is as follows.

Damage to Personal Rights

Personal injury. The following can be compensated:

- Medical treatment expenses.
- Nursing fees.
- Travel expenses.
- Loss of revenue.

Disability. The following can be compensated:

- The cost of disability assistance living equipment for the victim.
- Disability indemnity.
- Living expenses necessary for any other person(s) supported by the disabled person.

In some cases, civil courts compensate the victim for mental distress, if harm caused by a tort inflicts serious mental distress on the victim.

Death. The following can be compensated:

- The funeral service fee.
- Death compensation.
- Living expenses necessary for any other person(s) supported by the deceased before his/her death.

Damage to Property Rights

Loss of value and reparation costs can be generally compensated.

Punitive Damages

If a producer produces food not complying with the food safety standards, or a supplier sells food knowing that it does not comply with the food safety standards, a consumer can require the producer or supplier to pay damages based on either of:

- Ten times the amount of compensation paid by the producer or supplier for the consumer's losses.
- Three times the amount of the consumer's losses.

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Publications.

- *Agricultural Law in China, Global Practice Guide, General Editor, Thomson Reuters, London, 2021*
- *China chapter on Shareholders' Rights and Shareholder Activism, Global Practice Guide, Thomson Reuters, London, 2021*
- *Plant Variety Rights Versus Plant Patents: Legal Developments and Frictions in a Regional Perspective, IBA Business Law International, May 2019, Vol 20, page 95 - 136*
- *China chapter Product Liability, Lexology/Getting the Deal Through, 2021*
- *China chapter on Dispute Resolution, Lexology/Getting the Deal Through, July 2021.*

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- *China chapter Product Liability, Lexology/Getting the Deal Through, 2021*
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Languages. Chinese, English, Dutch

