

# Agribusiness 2021

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**Sarah L Brew, Jacob D Bylund, John P Mandler and  
Breia L Schleuss**

Faegre Baker Daniels LLP

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Agribusiness*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

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

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

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

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Sarah L Brew, Jacob D Bylund, John P Mandler and Breia L Schleuss of Faegre Baker Daniels LLP for their continued assistance with this volume.



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# China

Jan Holthuis and Li Jiao

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## OVERVIEW

### Regulation

#### 1 | What is the regulatory environment for meat and poultry?

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

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

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

#### 2 | What is the regulatory environment for all other human food?

The six fundamental laws that form the basis of China's food regulatory system are the Food Safety Law, the Law on Agricultural Product Quality and Safety, the Product Quality Law, the Agriculture Law, the Law of Standardisation and the Law on the Inspection of Import and Export Commodities, among which the Food Safety Law is considered the most important law. The idea of food safety from farm to fork serves to unify the conditions and standards of each segment and institution, and to avoid overlaps in regulation and enforcement.

The original Food Safety Law was promulgated and implemented in 2009 and revised in 2015 and 2018. It applies to the following activities in China:

- food manufacturing and processing;
- manufacturing and business operation of food additives;
- manufacturing and business operation of packaging materials, containers, detergents and disinfectants used for foodstuffs, and tools and equipment used in food manufacturing and food business operations;
- use of food additives and food-related products by food manufacturers and business operators;
- storage and transportation of foodstuffs; and
- safety administration of foodstuffs, food additives and food-related products.

The marketing of edible agricultural products, the formulation of the relevant quality and safety standards and announcement of information relating to the safety of edible agricultural products, as well as the

provisions in respect of agricultural inputs, must comply with the Food Safety Law.

The Food Safety Law is not an all-encompassing law covering all aspects of food legislation. It depends on regulatory and technical implementation to fulfil its purpose of food safety and public health. Regulatory implementation depends on the many administrative measures issued by governments at the national and local levels as well as by the various administrative departments in charge of food safety. Technical implementation of the Food Safety Law can be found in the many food safety standards that typify and play an important role China's food regulatory system.

### Relevant organisations

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

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

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

## LAND ACQUISITION AND USE

### Legislation

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

### Ownership and usage rights over agricultural land

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

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

- the Constitution;
- the General Rules of the Civil Law;
- the Land Administration Law;
- the Agricultural Law;

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

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

### Land conservation

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

### Drainage

There are no specific provisions in the state-level legislation on the ownership or usage right of waterworks in rural areas. Local governments may enact rules based on the principle of 'those who invest shall have the ownership and receive the benefits' set forth in the policy document titled Guiding Opinions on Deepening the Reform of the Management System of Small-Scale Water Conservancy Projects jointly released by the Ministry of Water Resources and the Ministry of Finance in 2013 and the Guiding Opinions on Deepening the Reform of Water Conservancy of Farmlands issued by the Ministry of Water Conservancy in 2018.

### Easements

Under Chinese law, if the landowner holds or assumes the easement, the holder of the usage right to the land may continue to hold or assume the established easement. On the other hand, the landowner may not establish any easement without the consent of the existing usage right holder.

An easement may not be solely transferred; it must be transferred concurrently with the usage right unless otherwise stipulated by the contract. Moreover, an easement may not be solely mortgaged; it must be transferred at the time when the mortgage of land use right is realised.

### Non-agricultural land rules

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

According to Chinese law, farmland must be kept or used for agricultural purposes, and there are stringent restrictions on non-agricultural uses. The government set a 'red line' that arable land should form no less than 124 million hectares (by 2020), as anything lower than this may place China's food security at risk. Where the occupation of land for construction purposes involves the conversion of agricultural land, strict examination and approval procedures will apply.

The Land Administration Law (2019 version) entered into force on 1 January 2020. According to the amended Land Administration Law, China implements a permanent basic farmland protection system. Arable land classified as permanent basic farmland according to the general land use plan will be strictly protected. The conversion of permanent basic farmland into construction land must be approved by the State Council. Within the scope of approved conversion of agricultural land, land for specific construction projects may be approved by the municipal and county people's governments.

Special protection over arable land is implemented. The central government implements a system of compensation for the use of cultivated land. Where arable land is used for non-agricultural construction, the entities occupying the arable land must reclaim the same amount and same quality of land as that which they intend to occupy according to the principle of 'reclaim the same as is used'. Where the conditions for reclamation are not met, or the arable land as reclaimed does not meet the requirements, land reclamation fees are paid, which must be used for new land reclamation.

### Lending

- 6 | What special rules are important to agricultural lending in your jurisdiction?

Permanent residence in the administrative villages administered by a town or a county-level town, or staff of state-owned farms and self-employed businessmen in rural areas are entitled to apply for a loan from rural financial institutions engaging in the business in respect of loans to farmer households. Qualified farmers can apply for loans with guarantees, mortgages, pledges and loans with combined guarantees. The loans must be used for specific, production or consumption purposes.

A usage right to state-owned agricultural land can be mortgaged if the following conditions are satisfied:

- the land users are companies, enterprises or other economic organisations and individuals;
- a certificate for the use of the state-owned land has been obtained; and
- a contract to assign the right to use the land is signed, and the land user pays the assignment fee to the local municipal or county government or uses the profit resulting from a mortgage to pay the assignment fee.

Owing to legal restrictions, in principle, a usage right over collectively owned agricultural land cannot be mortgaged unless it relates to collectively owned wasteland for agricultural purposes. With the aim of deepening financial reform and stepping up financial support for farmers, in 2015 China launched a pilot programme allowing farmers to use their land and property as collateral for loans. However, it is still facing many obstacles, in particular, legal restrictions. So far there are only specific administrative rules for the pilot programme, namely the Interim Measures for the Pilot Programme for Mortgages of Management Right of Rural Contracted Land (the Interim Measures).

### Publicly controlled property

- 7 | Describe any rules relating to public control of farm property in your jurisdiction. What enacted legislation governs them?

Agricultural land is owned either by the state or rural collectives, and a farmer may only transfer the usage right. The circulation of usage rights is subject to the principles set forth in the Law on the Land Contract in Rural Areas and the Measures for the Administration of Allotment of Rural Land under Lease and Management Right, which provide that:

- the land shall be kept or used for agricultural purposes, and it shall not be used for non-agricultural development without approval;

- the term of contract is limited: the term of contract for arable land is 30 years; the term of contract for grassland ranges from 30 to 50 years; and the term of contract for forestland ranges from 30 to 70 years;
- the transferee shall have the capability for agricultural operation;
- under equal conditions, members of the same rural collective shall enjoy priority; and
- the lawful rights and interests of the interested parties and the rural collective shall not be impaired.

### Foreign ownership restrictions

- 8 | Are there any restrictions on foreign ownership of farm property in your jurisdiction? What enacted legislation governs them?

Agricultural land is owned either by the state or by a rural collective. Foreign or foreign-invested parties are eligible to acquire usage rights but not ownership.

The land usage right of rural collectively owned agricultural land can only be transferred by farmers to foreign-invested enterprises undertaking agricultural production, processing or research and development. The applicable legislation includes the Law on the Land Contract in Rural Areas and the Measures for the Administration of Allotment of Rural Land under Lease and Management Right.

## GOVERNMENT PROGRAMMES

### Support programmes

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

The government has put many different agricultural support programmes in place in different agricultural sectors. The main general support programmes, including subsidy programmes and price support programmes, are listed as follows.

#### Agricultural industrialisation project subsidies

The central government, jointly with the provincial governments, provides financial support to industrialisation projects by means of a project subsidy or a loan interest refund. The subsidy is mainly granted to specific projects, such as the improvement of production centres, infrastructure construction, procurement of facilities and import of new varieties or advanced techniques.

'Leading enterprises' may apply for the subsidy. This type of enterprise is graded into three levels: national, provincial and city. The level of status will decide the level of government authority from which an enterprise can get support and affects the size and preferential conditions of bank loans.

#### Agricultural Science and Technology Achievement Industrialisation Fund

The Agricultural Science and Technology Fund was established by the Ministry of Science and Technology (MOST) in 2001. It supports the commercialisation of technologies that can be applied in agriculture, with a focus on research and development (R&D) and promotion of new agricultural technologies to the public.

The applicant must be an incorporated enterprise or an R&D institution that is set up in mainland China. In respect of incorporated enterprises, the enterprise can either be a domestic-invested enterprise or an enterprise with a majority holding by domestic investors. It must have existed for at least one year, and its registered capital should be

larger than the subsidised funds. The project must be recommended by the provincial subdivisions of the MOST or the Ministry of Finance to apply the fund.

#### Specific research-oriented subsidy programmes

There are subsidy programmes relating to scientific research on new varieties, genetic modification and breeding techniques of plants. Both the institutions and the enterprises can apply for these programmes. In practice, institutions are more likely to succeed.

#### Agricultural machinery subsidy

The agricultural machinery subsidy is designed for encouraging and supporting farmers to use advanced agricultural machines, accelerating the process of agricultural mechanisation and improving the capability of production. Farmers buy the subsidised machinery at full prices and settle with the government directly.

#### Minimum purchase price programme

China's government introduced a minimum purchase price programme to encourage production of targeted crops in major producing regions. This policy is applied to wheat and rice. When the grain market price falls below the set minimum price, Chinese farmers can sell their commodities to state enterprises (eg, COFCO and Sinograin).

#### Incentives for foreign investors

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

Foreign investment in the agricultural sector in China is, in general, encouraged. The Guiding Opinions of the Ministry of Commerce on Attracting Foreign Investment in China in 2013, released by the Ministry of Commerce (MOFCOM), state that foreign capital to invest in modern agriculture shall be further encouraged in China. According to the Negative List for the Guidance of Foreign Investment in Industries maintained by the Ministry of Commerce and the National Development and Reform Commission in June 2020 (the Negative List), which came into effect on 23 July 2020, foreign direct investment is encouraged in most parts of the agricultural sector (ie, production of green and organic vegetables, sugar-yielding crops, flowers and plants, traditional Chinese medicine herbs, breeding of aquatic offspring and aquatic products). Foreign investment would only be prohibited for:

- aquatic product fishing;
- the breeding of genetically modified varieties of crop seeds, livestock and poultry breeds and aquatic breeds;
- genetically modified seed (seedling) production;
- research and development, cultivation and planting of Chinese rare, unique, precious or fine varieties; and
- manufacture of the relevant propagative materials.

To follow the above-mentioned central government policies, foreign investment in agricultural business is often incentivised by the local governments in China, and most incentives include: tax cuts, mainly to lower the corporate income tax rate; the reduction or exemption of the land-use fee and administrative fee; and other preferential policies concerning housing or children's education for foreign investors.

## FOOD SAFETY, CERTIFICATION PROGRAMMES, ANIMAL SAFETY AND DISEASE

### Livestock legislation

#### 11 | List the main applicable enacted legislation for primary processors of live animals.

The applicable legislation includes:

- the Food Safety Law;
- the Law on the Quality and Safety of Agricultural Products;
- the Law on Animal Epidemic Prevention;
- the Management Regulations on Slaughtering Live Pigs;
- the Interim Management Regulations on Quality of Meat and Meat Products; and
- the Measures on the Administration of Animal Quarantine.

Local regulations on slaughtering livestock and poultry also apply (eg, regulations enacted by the Shanghai local government in this respect that govern the livestock slaughtering within Shanghai).

Meat for export is also governed by the following legislation:

- the Law on Import and Export Commodity Inspection;
- the Law on Entry and Exit Animal and Plant Quarantine;
- the Regulations for the Implementation of the Law on Entry and Exit Animal and Plant Quarantine;
- the Regulations on the Places of Origin of Imports and Exports;
- the Administrative Provisions on the Filing of Export Food Manufacturers; and
- the Measures for the Supervision and Administration of Inspection and Quarantine of Imported and Exported Meat Products.

### Food safety regime

#### 12 | Describe food safety regulations for meat and poultry products, and all other food products in your jurisdiction.

The fundamental legislation on food safety in China is the Food Safety Law (FSL) and its implementing regulations. The FSL governs the following activities within China:

- food production and processing, food sales and catering services;
- production of and trading in food additives;
- production of and trading in food-related products, including food packaging materials, containers, detergents, disinfectants, and tools and equipment that are used in the production of and trading in food;
- use of food additives and food-related products by food producers or traders;
- storage and transport of food; and
- management of the safety of food, food additives and food-related products.

The FSL also applies the formulation of relevant quality safety standards and the release of the relevant safety information for edible agricultural products, as well as agricultural inputs, to the marketing of edible agricultural products.

The safety of edible agricultural products is governed by the Law on the Quality and Safety of Agricultural Products.

Food safety is administered by the following four ministry-level authorities:

- the State Administration for Market Regulation (SAMR): domestic food production, distribution, consumption and enforcement, etc; and import and export supervision of food products, etc;
- the Ministry of Agriculture and Rural Affairs (MoA): domestic primary agriculture production, slaughter and genetically modified organism (GMO) oversight, etc; and

- the National Health Commission: food safety risk assessment and surveillance, food safety standard development and unification, and outbreak response, etc.

The authorities listed above promulgate the specific regulations in their respective governing fields in the form of administrative regulations, including the following:

- the Administrative Measures for Food Production Licensing;
- the Administrative Measures for Food Operation Licensing;
- the Administrative Measures for the Registration and Recording of Health Food;
- the Administrative Measures for the Registration of Food for Special Medical Purposes;
- the Administrative Measures for the Registration of Formulas of Infant Formula Milk Powder;
- the Administrative Measures for Food Recall;
- the Administrative Measures for the Import and Export of Food;
- the Relevant Applicable Standards for Inspection on Imported Food and Food Additives;
- the Rules on Administrative Licensing of Imported Food without National Food Safety Standards;
- the Administrative Measures for Registration of Overseas Manufacturers of Imported Food;
- the Administration Regulations on Label Inspection and Supervision of Import and Export Pre-packaged Food;
- the Provisions for Administration of the Registration of Foreign Exporters and Agents of Food Products and Consignee of Imported Food Products to China;
- the Administrative Provisions on Recording of Import and Marketing of Imported Food;
- the Administrative Provisions for the Record-Filing of Export Food Manufacturers;
- the Rules of Bad Records Administration on Imported Food;
- the Administrative Measures for New Varieties of Food Additives;
- the Measures for the Supervision and Administration of the Safety of Food Offered through Online Catering Services; and
- the Measures of Investigation of Illegal Conducts Concerning the Safety of Food Sold Online.

Another important instrument in the food safety regime is the national food safety standard system. Currently there are more than 600 effective national food safety standards including:

- general standards (eg, contaminants and microbial);
- product standards (eg, dairy products and beverage);
- additive specification (eg, colourant and sweetener);
- food-related products (eg, plastic and metals);
- good practice (eg, hazard analysis and critical control points); and
- testing methods (eg, the physical-chemical method).

### Safety enforcement

#### 13 | What enforcement can take place in relation to food safety? What penalties may apply?

Food producers or traders violating the law or regulations on food safety will be subject to civil liabilities, or administrative or criminal penalties.

A consumer who has been harmed by food that does not conform to food safety standards may seek compensatory damages from a responsible producer or trader as well as punitive damages of up to 10 times the original sale price.

The measures of administrative enforcement include:

- confiscation of the illegal proceeds, food and food additives illegally produced or traded in, and the tools, equipment, raw materials and other articles used in the illegal production or trading;

- revoking relevant licences;
- ordering a suspension of production or trading;
- an administrative fine; and
- cancelling qualifications to engage in food inspection.

Under the criminal law, any food producer or trader that does not comply with food safety standards and any person adding poisonous substances to food is subject to criminal sanctions, including fines, confiscation of property, criminal detention and imprisonment. The death penalty is a potential punishment for very serious food safety incidents.

### Product certification

#### 14 | Describe any certification programmes and regulations for genetically modified foods and organic foods.

##### Certification of organic foods

The Certification and Accreditation Administration of China (CNCA), a subordinate body to the SAMR, is responsible for issuing the official organic label (via certifiers). It also controls and supervises the accreditation process of all certification bodies and grants licences to individual organic inspectors employed by certifiers. The Administrative Measures for Organic Product Certification (AMOPC) cover a wide range of aspects that encompass the competences of the certification bodies as well as the responsibilities of the competent authorities on monitoring the functioning of the certification activities.

The AMOPC sets forth the responsibilities of certification institutes and the procedures that they must undergo towards the CNCA. Among other responsibilities, a certifier is required to ensure the integrity, objectiveness and truthfulness of the certification process, and make a complete record for archive retention to ensure that the certification process and results are traceable. The records of all activities are kept for five years. Further, certification institutes implement effective follow-up inspections of the certified products and their production and processing methods to ensure that the certification conclusions can continue to meet the certification requirements.

In certain cases of non-compliance or fraudulent practice by the producer, the certifier shall suspend or revoke the certificate and publicise the penalty. The certifier can be fined or even disqualified if it fails to do so.

##### Safety certificate of GMO foods

The law on GMOs places emphasis on improving the GMO cultivation and safety evaluation systems. The purpose of safety evaluation of GMOs is to detect the dangers or potential risks caused by GMOs to humans, animals, plants and microorganisms and the environment.

A safety certificate will be issued to a new GMO that has passed the safety evaluation conducted by the Agriculture GMO Safety Committee of the MoA. Under the GMO Regulations, a safety certificate is mandatorily required to conduct the examination, registration, evaluation or approval of certain GMOs including: transgenic planting seeds; livestock and poultry breeds and aquatic fry; pesticides; veterinary drugs; fertilisers; additives; and other things produced using GMOs or containing GMO ingredients.

##### Food labelling requirements

#### 15 | What are the food labelling requirements, including the applicable enacted legislation, enforcement and penalties?

The FSL sets out the general requirements of labelling, mandatory particulars for labels of pre-packaged foods, non-pre-packaged foods and food additives, and special rules for health food, infant formula foods and imported foods, etc. Food and food additives that do not

conform to the contents stated on their labels and instructions shall not be sold in the market.

The relevant national standards, including the General Rules for the Labelling of Pre-packaged Foods (GB7718-2011), the General Rules for Nutrition Labelling of Pre-packaged Foods (GB28050-2011) and the General Rules for the Labelling of Food Additives (GB 29924-2013), provide further detailed guidance in their respective aspects.

If the packaged food or food additive is produced or traded without labels or their labels do not conform with the law, the local branches of the SAMR will confiscate the illegal proceeds, food and food additives that were illegally produced or traded in, and may also confiscate the tools, equipment, raw materials and other articles used in the illegal production or trading.

If the value of the food or food additives in the illegal production or trading is less than 10,000 yuan, a fine not less than 5,000 yuan, but not more than 50,000 yuan, will be imposed. If the value of the food or food additives in illegal production or trading is 10,000 yuan or more, a fine not less than five times but not more than 10 times the value of the food will be imposed. In the event of a serious offence, the production or trading will be suspended until the relevant licence is revoked.

If the labels have a defect that does not affect the foods' safety or does not mislead consumers, the local branches of the SAMR will order the producer or trader to make corrections. In the case of refusal to do so, a fine of not more than 2,000 yuan will be imposed.

If the production enterprise of infant formula foods fails to report the labels to the competent local branch of the SAMR for filing as required by law, the local branch of the SAMR will issue a correction order and warning. In the case of refusal to make corrections, a fine not less than 5,000 yuan, but not more than 50,000 yuan, will be imposed. In the event of a serious offence, the production or trading will be suspended until the relevant licence is revoked.

### Food animal legislation

#### 16 | List the main applicable enacted legislation regarding health of food animals, including transportation and disease outbreak and management.

The principal legislation dealing with the health of food animals is as follows:

- the Law on Animal Epidemic Prevention;
- the Animal Husbandry Law;
- the Administrative Measures for Animal Quarantine; and
- the Law on the Entry and Exit Animals and Plants Quarantine.

### Animal movement restrictions

#### 17 | What are the restrictions on the movement of animals within your country?

The movement (transportation) of animals is subject to the following legal requirements.

##### Quarantine certificate

Before transporting animals, the owner must submit an application to the local animal health supervision institution for quarantine. For the animals and animal products that are to be transported by rail, highway, waterway or air, the consignor must provide the quarantine certificates; otherwise, the carriers will not accept them for transport.

##### Equipment requirement

The vehicles for carrying animals, as well as the bedding, packages and containers, must satisfy the requirements for animal epidemic prevention laid down by the administrative department for veterinary medicine under the State Council.



### Staff requirement

People who are infected with a zoonosis shall not directly transport susceptible animals.

### Prohibited circumstances

It is prohibited to transport animals that:

- are in enclosed epidemic areas and related to the outbreak of animal epidemics;
- are in an epidemic area and susceptible to infection;
- have not undergone the quarantine required by law or fail to pass the quarantine;
- have already contracted epidemic diseases or are suspected of having contracted epidemic diseases;
- are deceased (owing to illness or uncertain reasons); and
- do not conform to the regulations of the administrative department for veterinary medicine under the State Council governing animal epidemic prevention.

China has not enacted any laws or regulations dealing with the welfare of animals in transport.

### Slaughter legislation

18 | Where would one find the regulations related to livestock slaughtering?

In China, livestock slaughtering is deemed to be part of the primary processing of live animals. Local regulations on slaughtering livestock and poultry also apply (eg, regulations enacted by the Shanghai local government in this respect that govern the livestock slaughtering within Shanghai).

### Pest control requirements

19 | Outline the regulatory regime for pesticides in your jurisdiction.

Plant protection products and most biocidal products are regulated by the Regulation on Pesticide Administration, which covers the registration, production, distribution and use of pesticides, and is administered by the MoA.

The Institute for the Control of Agrochemicals, under the MoA, regulates pesticides manufactured and marketed in China. Pursuant to the revised Regulation on Pesticide Administration 2017, the Review and Registration Committee will be established by the MoA to review and register the pesticide before being marketed and exported to China.

There are also other regulations concerning pesticides, including:

- the Implementation Measures of the Regulation on Pesticide Administration;
- the Management Measures for the Production of Pesticides;
- the Provisions on the Administration of the Restricted Use of Pesticides; and
- the Measures for the Administration of Pesticide Labels and Manuals.

To ensure food safety, promote producer compliance with good agricultural practices, and eliminate unnecessary pesticide use to protect the ecological environment, the MoA and the NHFPC have jointly released a new standard on maximum residue limits: the National Food Safety Standard – Maximum Residue Limits for Pesticides in Food (GB 2763–2019).

### Plant quarantine

The key legislation regulating plant quarantine includes:

- the Regulation on Plant Quarantine;
- the Rules of Implementation of the Regulation on Plant Quarantine;

- the Law on the Entry and Exit Animals and Plants Quarantine; and
- the Rules of Implementation of the Law on the Entry and Exit Animals and Plants Quarantine.

The MoA, the State Forestry Administration and the SAMR are responsible for agricultural plant quarantine, forest plant quarantine and import and export plant quarantine respectively. Surveillance, pest outbreaks and invasive species management is undertaken by the National Agro-tech Extension and Service Centre, a public institution directly under the MoA.

### Animal quarantine

Animal quarantine is mainly governed by the following legislation:

- the Law on Animal Epidemic Prevention;
- the Animal Husbandry Law;
- the Quarantine Law on the Entry and Exit Animals and Plants Quarantine;
- the Rules of Implementation of the Law on the Entry and Exit Animals and Plants Quarantine;
- the Measures on the Administration of Animal Quarantine;
- the Measures on the Quarantine and Administration of Hereditary Substance of Inward Animals; and
- the Administrative Regulations on Breeding Livestock and Poultry.

## BUSINESS ORGANISATION

### Typical organisation

20 | How are agricultural operations typically organised in your jurisdiction?

As agricultural land is either owned by the state or by a rural community, agricultural proprietorships do not exist in China. The basic form of agricultural operation is the rural household contractual operation. A rural family can undertake land contracts with the rural community it belongs to in order to obtain rights to use certain agricultural land. Within the validity of the land contract, the family can organise agricultural production and operations based on its own decisions. Any profit made from the farming activities belongs to the family.

China promotes farmers' cooperatives in rural areas as a new model of agricultural operations. A farmers' cooperative is set up in accordance with the Farmers' Cooperatives Law. At least 80 per cent of the members of a farmers' cooperative should be farmers. Other entities who conduct businesses directly in relation to the agricultural activities of the cooperative and are able to serve and contribute to the cooperative can also become a member. Foreign-invested enterprises may join a farmers' cooperative providing that they adhere to the conditions set out in the Farmers' Cooperatives Law and the articles of association of the cooperative.

State-owned or private agricultural companies (normally in the forms of a limited liability company or a stock company) incorporated under the Company Law play important roles in the modernisation of China's agricultural sector. Foreign-invested enterprises set up under the Company Law and the laws concerning foreign-invested enterprises may enter the agricultural sector, subject to foreign investment restrictions on specific sectors.

### Foreign ownership

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

According to Foreign Investment Law, which is effective as of 1 January 2020, the state adopts a management system comprising pre-establishment national treatment and the Negative List for the Guidance of

Foreign Investment in Industries (the Negative List) for foreign investment. Pre-establishment national treatment refers to granting foreign investors and their investments, at the stage of investment access, treatment that is no less favourable than that granted to domestic investors and their investments. The Negative List refers to special administrative measures for access of foreign investment in specific fields as stipulated by the state. The state will provide national treatment to foreign investments outside the Negative List.

Fields not covered in the Negative List are subject to administration pursuant to the principle of consistent treatment for domestic and foreign investments. However, because of the strategic importance of agriculture in China, controlling stakes in new variety breeding and seed production of maize projects shall be held by the Chinese party, and in the seed production of wheat, the Chinese party shall hold at least 34 per cent. Incorporation of such foreign-invested agricultural enterprises must be approved by the Ministry of Commerce or its local counterparts.

In some sectors (eg, the seed sector), enterprises, regardless of whether they are foreign-invested or domestic, must obtain specific permits or qualifications from the industry regulator, the Ministry of Agriculture and Rural Affairs.

## AGRICULTURAL WORKERS, IMMIGRATION, AND HEALTH AND SAFETY

### Worker rights

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

The rights of workers or employees are generally governed by the Labour Law and the Labour Contract Law. There are no specific rules for workers or employees in agricultural operations.

The general rights and interests of self-employed farmers engaged in agricultural operations are regulated in section 9 of the Agricultural Law (Order of the President No. 74, revised in 2012) of China, aiming to prevent farmers from incurring illegal or unreasonable tax and fines, or raising and collecting funds.

### Immigration regulation

**23** How is farmworker immigration regulated in your jurisdiction?

Immigration of foreign farmworkers into China follows general regulations on immigration. China does not specifically issue agricultural-related visas to foreign farmworkers. For permanent stay and work, temporary work and dispatch visa applications, the Law on Administration of Embarkation and Disembarkation and the Administrative Provisions on Employment of Foreigners in China apply.

The immigration of Chinese farmworkers within China does not have limitations. However, as China applies different social insurance and medical insurance systems to rural residents and city residents, farmworkers who move to the city seeking non-agricultural work must comply with insurance policies that are mainly regulated by the Social Insurance Law.

### Work health and safety regulation

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

There is no specific law focusing on farmworkers' health and safety.

If a farmworker has an employment relationship with a legal entity, his or her health and safety is covered by the Labour Law, the Labour Contract Law and the Work Safety Law. The employer is obliged to provide a safe working environment, proper working equipment and

training. The employer must also purchase insurance for the worker for occupational diseases and labour-related injuries.

If the farmworker is not employed but merely provides labour services to a service receiver, the worker's health and safety are covered by the General Principles of Civil Law and the Tort Law. In the event that the injury or damage is caused by the worker during the labour services, liability will be borne by the labour service receiver and the worker in light of their respective degrees of fault.

A self-employed farmworker is responsible for his or her own health and safety.

## INTERNATIONAL TRADE

### Import regulation

**25** Describe the regulatory environment for animal product imports.

The Law on Entry and Exit Animal and Plant Quarantine governs animal and animal products imports.

Animals, plants and their products, containers and packaging materials, as well as means of transport from animal or plant epidemic areas, are subject to quarantine inspection in accordance with this Law. Local animal and plant quarantine offices set up by the state animal and plant quarantine department carry out the quarantine. China prohibits the following from entering the country:

- pathogenic microorganisms (including seed cultures of bacteria and viruses) of animals and plants, insect pests and other harmful organisms;
- relevant animals and plants, their products and other quarantine objects from countries or regions with prevalent epidemic animal or plant diseases;
- animal carcasses; and
- soil.

Meat product imports are further regulated by Administration Measures for Meat Product Import Quarantine and Inspection.

The General Administration of Customs China (GACC) formulates and promulgates inspection and quarantine requirements for imported meat products. Local counterparts of the GACC set a record system for qualified consignees of imported meat products. Consignees who are already on the record system may be able to import meat products.

The consignor or his or her agent reports to the local counterparts of the GACC for inspection before the export meat products are shipped. The GACC and its counterparts inspect the presence of pathogenic microorganisms, residues of agricultural and veterinary drugs and environmental pollutants in export meat products on the basis of risk analysis, and verify and supervise the quality and safety control system in the whole process of export meat production and processing.

**26** Describe the regulatory environment for all other food imports.

In principle, the food safety requirements under the Food Safety Law equally apply to foods imported into China. To ensure compliance, imported foods are subject to inspection by the Bureau of Import and Export Food Safety and the GACC, which have the following responsibilities in relation to food imports:

- studying and formulating the provisions and regulations of quality supervision, inspection and quarantine on the safety of imported food as well as the list of imported food under inspection and quarantine;
- organising the implementation of inspection, quarantine, supervision and administration over imported food;

- collecting information on food safety, hygiene and quality outside China and organising the implementation of risk assessments and evaluations over import food safety and the implementation of emergency preventive measures; and
- administering the investigation and punishment of major accidents of import food safety and quality, together with the disposal of food-borne pollution sources.

More detailed requirements may apply to the import of certain categories of food into China. Those categories may be extended in the future. Furthermore, responsibilities for legal compliance rest both with overseas exporters and Chinese importers.

### Food Import and Export Safety Administrative Measures (2018 Revision)

Import of food must comply with the Chinese national standards for food safety inspection and quarantine requirements. When applying for an inspection, the importer or its agent declares the imported food by the product name, brand, country of origin (region), specification, quantity or weight, total value, date of manufacture (lot number) and other contents required by the GACC. Imported food is kept in a supervisory area designated or accepted by the inspection and quarantine authorities before obtaining a certificate certifying that the food has passed the inspection and quarantine.

A producer or business operator of exported food must ensure that its exported food satisfies the standards of the import country (region) or the requirements of the contract concerned. A food exporter or its agent applies, as required, for an inspection to the local inspection and quarantine authority by presenting the contract, invoice, packing list, pre-delivery inspection certificate and documents certifying the supply of raw materials for the processing of exported food as well as relevant approval documents. When applying for an inspection, the name, specification, quantity and date of manufacture of the exported food is declared.

### Tariffs and quotas

#### 27 | May tariffs, quotas or similar measures be put in place?

After joining the World Trade Organization (WTO) in December 2001, China introduced a tariff quota system for the import of agricultural products; the annual quota is subject to an in-quota tax rate. The import of agricultural products beyond the quota quantities is treated in accordance with the relevant provisions of the Regulation on Import and Export Duties. The agricultural goods subject to import tariff quotas include wheat, corn and rice (including the powders and grains of all three), bean oil, colza oil, palm oil, sugar, cotton, wool and wool tops.

The Ministry of Commerce and the National Development and Reform Commission decide, adjust and announce annual import quotas upon applications by companies. Companies that enjoy tariff quotas are granted a certificate of import tariff quotas of agricultural products. Each quota is valid from 1 January until 31 December of the same year.

### Import and export treaties

#### 28 | What treaties apply to the import and export of agricultural products in your jurisdiction?

The WTO's Agriculture Agreement applies to China. China has also confirmed its compliance with the international phytosanitary standards developed by the International Plant Protection Convention through the promulgation of the General Administration of Quality Supervision, Inspection and Quarantine's Decree No. 41 – Provisions for the Administration of Risk Analysis on Entry Plant and Plant Products.

## INTELLECTUAL PROPERTY

### Plant breeder rights

#### 29 | How are plant breeders' property rights protected in your jurisdiction?

China ratified the International Convention for the Protection of New Varieties of Plants 1978 on 23 April 1999. Domestic laws and regulations for new plant variety right (PVR) protection include the Seed Law 2015, the Regulations on the Protection of New Plant Varieties 2014 and the accompanying Implementation Rules.

The New Plant Variety Protection Office (the PVP Office) under the Ministry of Agriculture and Rural Affairs (MoA) is in charge of agricultural PVR protection. Agricultural PVR protection applications must be filed with the PVP Office. Decisions will be based on the review of written documents.

A breeder's right to apply for PVR protection and the PVR itself are both transferable. Agricultural PVRs are protected for 15 years, and fruit tree PVRs are protected for 20 years. A PVR holder enjoys exclusive rights within the duration of the PVR protection and without the consent of the PVR holder, a party cannot:

- produce or sell, for commercial purpose, the propagation materials of the protected varieties; or
- repeatedly use the propagation material of the protected varieties to produce propagating materials of other varieties for commercial purpose.

Without prejudice to other rights of the PVR holder, using a protected variety for breeding or other scientific purposes does not require consent or a licence from the PVR holder.

Under the following circumstances, the licence of the PVR holder is not required, and no licence fee needs to be paid: using a protected variety for breeding or other scientific research activities; and farmers' personal use of the propagation materials of a protected variety.

In the event of a PVR infringement, a PVR holder can apply for administrative protection at the provincial agriculture department. Administrative protection measures include orders to cease infringement, confiscation of unlawful earnings and propagation materials, and imposing administrative fines. A PVR holder can also lodge a claim at a civil court. Unlike administrative measures in court proceedings, a PVR holder may claim for damages (including loss of revenue).

### Access to plant varieties and technologies

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

The laws and regulations for PVR protection provide privilege to farmers. Farmers who use the propagation materials of a protected variety to breed or plant for personal use do not need a licence from the PVR holder. The most recent (draft) revisions to the Regulations on Protection of New Varieties of Plants published on 10 May 2019 further provide that 'farmer' in 'farmer's privilege' refers to members of rural collective organisations who are party to a rural land contracting agreement under China's rural household contract system. Farmers can use propagation materials that they have obtained by their own planting, but the quantity of this use shall not exceed the reasonable amount that would be required given the contracting land of the household.

With the purpose of verifying the value for cultivation and use, distinctness, uniformity and stability of a new plant variety, in respect of main crops before being commercialised, a new variety is tested in accordance with the variety recognition procedure. Main crops refer to rice, wheat, corn, cotton and soybeans.

For non-main crops, a new variety is filed for record in accordance with the variety registration, formality initially introduced by the Seed Law 2015, before seeds of the crop can be put on the market.

Specific permit procedures are put in place by the MoA and the State Administration for Market Regulation for the production, processing and trade of (seeds of) genetically modified crops.

In addition, the National Agro-tech Extension and Service Centre promotes the application of advanced agricultural technologies in rural areas.

### Other intellectual property

#### 31 | What other intellectual property considerations apply to agribusiness in your jurisdiction?

The laws on intellectual property right protection, including patent law and trademark law and the accompanying regulations, may provide legal protection for other agriculture-related intellectual property. Know-how or planting technologies that are not patentable are normally protected by parties as trade secrets.

## ENVIRONMENTAL ISSUES

### Regulatory agencies

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

According to the Environment Protection Law (Order of the President No. 9), the governments at or above the county level are entitled to take measures to prevent and control pollution of the agricultural ecological environment by waste water and gas and solid waste materials.

According to article 66 of the Agricultural Law, the Ministry of Environmental Protection and the Ministry of Agriculture and Rural Affairs are the competent authorities to investigate and solve pollution in the agricultural ecological environment.

### Water and air pollution regulation

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

Air pollution from primary agriculture is mainly governed by the Environment Protection Law. Agricultural producers and operators must:

- use fertilisers and pesticides properly;
- safely and efficiently collect, store, clean, remove and dispose of sewage, livestock and poultry faeces and bodies; and
- reduce the emission of air pollutants or malodorous gases.

The burning of stalks, fallen leaves or other substances in the open air that causes smoke pollution is prohibited.

Those who illegally discharge pollutants will be requested to make corrections and are subject to fines according to factors such as the operating costs of pollution prevention and control facilities, direct losses arising from violations and illegal gains.

Water pollution in agriculture areas is covered by the Law on the Prevention and Control of Water Pollution (Order of the President No. 87, revised in 2017). The Law focuses on the following issues:

- the transportation and storage of pesticides and the disposal of expired or ineffective pesticides;
- the proper application of fertilisers and pesticides;
- harmless treatment of faeces from domestic animals and poultry and waste water at the farms of domestic animals and poultry and breeding quarters;

- the protection of water in the aquaculture field by determining the breeding density, and casting bait and using medication rationally; and
- the discharge of industrial waste water or urban sewage into farmland irrigation channels.

### Waste regulation

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

According to the Environment Protection Law, solid waste and sewage that fail to meet agricultural standards and environmental protection standards cannot be disposed on farmland. The Law encourages scientific application of pesticides, fertilisers and other agricultural inputs and irrigation to prevent pollution from heavy metals and other hazardous substances.

China is promoting soil protection. Laws and regulations regarding soil pollution control are in the process of becoming legislation and are expected to be published for public review during the 2017–2020 period (Circular of the State Council on Issuing the Action Plan for Soil Pollution Control, *Guo Fa* (2016) No. 31).

All acts that pollute the environment, damage ecology and harm public social interests are subject to fines according to factors such as the operating costs of pollution prevention and control facilities, direct losses arising from violations and illegal gains.

## UPDATE AND TRENDS

### Key developments of the past year

#### 35 | What are the most noteworthy current trends or primary legal issues of concern in relation to agriculture and agribusiness in your jurisdiction? What future trends in relation to agriculture and agribusiness do you foresee in your jurisdiction?

### Abolishment of the 1997 Provisions

The Provisions on the Administration of the Examination, Approval and Registration of Foreign-invested Crop Seed Enterprises (the 1997 Provisions) have been abolished as of 25 April 2019. With the announced abolishment of 1997 Provisions, the foreign-invested seed enterprises of which the business activities do not fall in the Negative List for the Guidance of Foreign Investment in Industries are subject to the Administrative Measures of Production and Operation Licence of Crop Seeds.

### Major revisions (draft) to the PVR Regulations

On 10 May 2019, the Revisions to the Regulations on Protection of New Varieties of Plants (Draft for Comments) (the Draft) were published. The Draft disclosed important developments with regard to introducing essentially derived varieties (EDVs) into China's new variety rights protection system. It provided a definition of EDV and formally revealed the legislative trend of extending the scope of plant variety right (PVR) protection for the first time since the Seed Law 2015.

Under the current version of the PVR Regulations 2013, a PVR holder has exclusive rights to the protected variety. Authorisation of the PVR holder is required for:

- the production and sale for commercial purposes of the propagation materials of the protected variety; and
- repeated use of the propagation materials of the protected variety to produce propagation materials of another variety for commercial purposes.

In article 6 of the Draft, the PVR holder's exclusive right was extended: authorisation of the PVR holder must be obtained for:

- production or multiplication of propagation materials of a protected variety;
- promises to sell, sales or marketing of propagation materials of a protected variety;
- the handling of seeds for the purpose of production, multiplication or sale;
- import or export of propagation materials of a protected variety; and
- the purchase, stock or transport of propagation materials of a protected variety for the purpose of carrying out the above-listed activities.

The same article further provides that, if the PVR holder has not had reasonable opportunity to utilise its rights as provided in the article in relation to the propagation materials of its protected variety, it may exercise those rights on the harvested materials of the propagation materials.

If the PVR holder has not had reasonable opportunity to utilise its rights in relation to the propagation materials or the harvested materials, it may utilise those rights on the products made directly from the harvested materials.

Pursuant to article 7 of the Draft, the PVR holder of a protected variety also has exclusive rights on the varieties:

- of which the production and multiplication require repeated use of the protected varieties; and
- that are essentially derived from the protected variety, provided that the protected variety itself is not an EDV of other variety.

Although China has not ratified the UPOV 91, the definition of essentially derived varieties is close to that of the UPOV 91; article 8 provides that: 'A variety shall be deemed to be essentially derived from another variety ("the initial variety") when, although it is clearly distinguishable from the initial variety, it retains the expression of the essential characteristics or traits of the initial variety, except for the differences which result from the act of derivation.'

For the PVR holder of an EDV of a protected initial variety to exercise its plant variety rights to the EDV, consent of the PVR holder of the protected initial variety is required.

### **Planned revamping of regulatory regime on agricultural products quality safety**

China is overhauling the Law on Agricultural Product Quality Safety to strengthen the risk control and management of agricultural products and tighten its regulatory requirements for agricultural products. This will be the first major revisions to the Law since its enactment in 2006.

On 18 June 2019, the Ministry of Agriculture and Rural Affairs introduced new draft Law on Agricultural Product Quality Safety for public comment.

The proposed revised Law on Agricultural Product Quality Safety would expand the scope of agricultural business operators subject to the Law, build an agricultural product quality tracing system and management and supervision system on the origin of agricultural products, and introduce harsher legal liabilities, among other things.

### **Coronavirus**

- 36 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

There have been no major amendments or legislation; however, there are some temporary regulations to help China to manage the pandemic.

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To cushion businesses from the impact of the pandemic, Chinese central and local governments have been rolling out a package of supporting policies, which includes policies on taxation, social security, financing incentives, fiscal subsidies, and cost reduction of energy and rent. Several measures have been taken to help citizens and businesses to cope with the pandemic, such as providing a refund of excess value-added tax credits to production enterprises of key supplies, implementing reduction or exemption of employer contributions in staff insurances for a period, and extending the repayment period of loans to banks.

This package of supporting policies is intended to 'offer fuel in snowy weather' to business, including foreign-invested enterprises. Therefore, clients should pay attention to new regulations that could affect business and make full use of the benefits.

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